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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2330**

Lucky's Station, LLC,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed September 30, 2013  
Affirmed  
Kalitowski, Judge**

Department of Employment and Economic Development  
File No. 28376663-5

Joseph A. Wentzell, James W. Moen, Wentzell Law Office PLLC, St. Anthony, Minnesota (for relator)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Chutich, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

In this certiorari appeal following remand, relator Lucky's Station, LLC challenges the unemployment-law judge's (ULJ) decision dismissing as untimely relator's request for reconsideration. We affirm.

## DECISION

When reviewing a ULJ's decision, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2012). A ULJ's decision of whether to dismiss an appeal as untimely raises a question of law, which we review de novo. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012). We view the ULJ's factual findings in the light most favorable to the decision. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). We will not disturb the factual findings if the evidence substantially sustains them. *Id.* Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 288 Minn. 294, 299, 180 N.W.2d 175, 177-78 (1970).

A ULJ's decision on appeal becomes final unless an involved applicant, involved employer, or the commissioner files a request for reconsideration within 20 calendar days of when the decision is mailed. Minn. Stat. § 268.105, subs. 1(c), 2(a) (2012). An appeal filed by facsimile transmission (fax) is considered filed on the day it is received by the Minnesota Department of Employment and Economic Development (DEED). Minn. Stat. § 268.035, subs. 12d, 17 (2012). We have repeatedly held that the statutory period for appeal is "'absolute and unambiguous' and must be strictly construed." *Rowe v. Dep't of Emp't & Econ. Dev.*, 704 N.W.2d 191, 195 (Minn. App. 2005) (quoting *Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976));

*see also King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986) (“[T]he time for appeal from decisions of all levels of [DEED] should be strictly construed.”), *review denied* (Minn. Aug. 13, 1986). A ULJ must dismiss an untimely appeal for lack of jurisdiction. *Kangas v. Indus. Welders & Machinists, Inc.*, 814 N.W.2d 97, 100 (Minn. App. 2012).

Because the background facts of this appeal are set forth in detail in *Lucky’s Station, LLC v. Dep’t of Emp’t and Econ. Dev.*, No. A12-0083, 2013 WL 3023426, at \*1 (Minn. App. July 23, 2012), we limit our discussion to the facts directly related to this appeal. In September 2011, the ULJ issued an order affirming an earlier determination that relator was a successor of Twin Cities Stores, Inc. for purposes of calculating relator’s unemployment insurance tax rate. *Id.* The deadline by which relator could file a request for reconsideration was October 6, 2011. Relator filed a request for reconsideration via fax; the ULJ summarily dismissed relator’s request, finding that it was not filed on or before the deadline. Relator appealed the ULJ’s decision, and we remanded the case for an evidentiary hearing solely to resolve the factual question of when relator filed the request for reconsideration.

The ULJ conducted an evidentiary hearing and affirmed the dismissal of relator’s request for reconsideration as untimely. The ULJ found that “[a] preponderance of the evidence presented shows [relator] faxed [the] request for reconsideration on Friday, October 7, 2011, after the decision had already become final.” Relator argues that the ULJ’s finding is not supported by substantial evidence. We disagree.

The following facts are undisputed: (1) Scott Stevens prepared for relator a request for reconsideration, dated October 6, 2011, and faxed the request to DEED; (2) the fax received by DEED bore a transmit terminal identifier (TTI) stamp that read “Oct. 7.2011 2:37PM Caseys No. 4328 P. 1/31.”; (3) relator subsequently mailed a hard copy of the materials, postmarked Saturday, October 8, 2011; and (4) DEED captured and uploaded relator’s faxed request for reconsideration on Monday, October 10, 2011.

DEED’s server administrator, Debra Baker, testified at the evidentiary hearing that DEED employees typically capture and upload a fax either the day it is received on DEED’s server or the next business day. She concluded that because relator’s fax was captured and uploaded on Monday, October 10, 2011, it likely was received by DEED’s server on Friday, October 7, or Monday, October 10.

Relator argues that Baker’s testimony is unreliable because she failed to offer any evidence that DEED’s normal fax-receipt procedures were actually complied with here. We disagree. Besides asserting that Baker’s testimony is unreliable, relator offers no evidence or testimony that DEED’s normal fax-receipt procedures were not complied with in this instance. Further, this court defers to the credibility determinations made by the ULJ. *Jenson v. Dep’t of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), *review denied* (Minn. Dec. 20, 2000). Based on Baker’s testimony, the ULJ found that DEED captured the fax on October 10, 2011. Because the weight of the evidence substantially supports the ULJ’s finding that the fax was captured on October 10, 2011, and no evidence suggests that DEED’s normal fax-receipt procedures were not followed, we will not disturb this finding.

Relator also argues that the TTI stamp indicating that relator sent the fax on October 7 is “wholly unreliable” because there is no explanation for why the name “Caseys” is contained in the stamp. But Baker testified the TTI stamp is generated by the sender’s fax machine. Relator does not dispute that the fax machine Stevens used generated the TTI stamp. Nor does relator provide any evidence that the fax machine was not accurately programmed as to the date and time when Stevens used the machine to fax the request for reconsideration.

We conclude that based on substantial evidence in the record, the ULJ’s finding that relator filed the request for reconsideration on October 7, 2011, is supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Minneapolis Van*, 288 Minn. at 299, 180 N.W.2d at 177-78. Thus, under our standard of review, we cannot say that the ULJ erred by dismissing relator’s request for reconsideration as untimely.

**Affirmed.**