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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0210**

Michelle Moynan,  
Relator,

vs.

Rehabcare Group East, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 19, 2013  
Affirmed  
Peterson, Judge**

Department of Employment and Economic Development  
File No. 30115252-3

Michelle D. Moynan, Sartell, Minnesota (pro se relator)

Rehabcare Group East, Inc., Nashville, Tennessee (respondent employer)

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

Considered and decided by Smith, Presiding Judge; Peterson, Judge; and Chutich,  
Judge.

## **UNPUBLISHED OPINION**

**PETERSON**, Judge

This certiorari appeal is from an unemployment-law judge's (ULJ) decision that relator's request for reconsideration was untimely. We affirm.

### **FACTS**

Relator Michelle Moynan was dismissed from her position as a physical-therapy assistant for falsifying her timecard and for falsely recording services that she performed for nursing-home patients. Relator applied for and received unemployment benefits. Relator's employer, respondent Rehabcare Group East, Inc., appealed.

Following an evidentiary hearing, a ULJ ruled that relator was discharged because of aggravated employment misconduct, was ineligible to receive benefits, and was overpaid benefits of \$3,568.00. The ULJ's decision stated that the decision would become final unless relator filed a request for reconsideration "on or before Tuesday, November 13, 2012."

Relator did not request reconsideration of the ULJ's decision until December 18, 2012. The ULJ dismissed the request for reconsideration as untimely. This certiorari appeal followed.

### **DECISION**

This court may modify or reverse a ULJ's decision if the rights of an unemployment-benefits applicant are prejudiced because the findings, inferences, conclusion, or decision are made upon unlawful procedure, affected by an error of law, or not based on substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d)(3)-(5)

(2012). We review de novo a ULJ's decision to dismiss an appeal for untimeliness. *Rowe v. Dept. of Emp't & Econ. Dev.*, 704 N.W.2d 191, 194 (Minn. App. 2005) (stating that with regard to unemployment-compensation appeals, "[t]he timeliness of an appeal presents a question of law, which we review de novo."); see *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2012) (giving de novo review to untimely appeal from Minnesota Department of Employment and Economic Development decision on eligibility for benefits).

A ULJ's decision becomes final unless "within 20 calendar days of the sending of the [ULJ's] decision" the unemployment-benefits applicant files "a request for reconsideration." Minn. Stat. § 268.105, subd. 1(c), 2(a) (2012). This court will strictly construe "the procedures for filing and serving appeals," particularly when a statute "fall[s] within a unique statutory scheme." *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986) (quotations omitted), *review denied* (Minn. Aug. 13, 1986); see *Rowe*, 704 N.W.2d at 194 ("An administrative agency's jurisdiction depends entirely on the statute under which it operates.").

"[S]tatutes relating to the time for appeal or review of determinations made" under the unemployment-compensation statute are strictly construed. *Kenzie v. Dalco Corp.*, 309 Minn. 495, 497, 245 N.W.2d 207, 208 (1976) (construing appeal under predecessor unemployment-compensation statute). This court has construed the statutory period for filing an appeal from an initial determination of eligibility for unemployment benefits as absolute, and has dismissed untimely appeals for lack of jurisdiction. See *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012) ("An untimely

appeal from a[n eligibility] determination must be dismissed for lack of jurisdiction.”); *Kennedy*, 714 N.W.2d at 739-40 (stating that statutory appeal period for challenging an eligibility determination is “absolute and unambiguous” and an untimely appeal “must be dismissed for lack of jurisdiction”). The statutory time limit for filing an appeal has been strictly enforced, even when the benefits applicant missed the filing deadline by only one day. *See, e.g., Semanko v. Dep’t of Emp’t Servs.*, 309 Minn. 425, 427, 430, 244 N.W.2d 663, 664, 666 (1976) (affirming dismissal of appeal brought by benefits applicant when appeal was filed eight days after mailing of eligibility decision, under predecessor statute that provided for seven-day appeal period, construing provision as “absolute and unambiguous”). We are not aware of any authority that permits us to depart from the rule of strict construction when construing the procedure for filing a request for reconsideration.

Relator does not dispute that she failed to file a request for reconsideration within 20 days after the ULJ’s decision was mailed, but she asserts that she was medically unable to make a timely request for reconsideration. Relator asserts that under Minn. Stat. § 268.105, subd. 2(d) (2012), if a benefits applicant who files a request for reconsideration can show good cause for failing to participate in an evidentiary hearing before the ULJ, the ULJ must order a new evidentiary hearing. While this is an accurate description of section 268.105, subd. 2(d), relator fails to recognize that, before an applicant may attempt to show good cause for failing to participate in an evidentiary hearing, the applicant must file a timely request for reconsideration. Relator did not file a timely request for reconsideration.

Because the 20-day period to request reconsideration of the ULJ's decision is absolute and unambiguous and must be strictly construed, the ULJ had no authority to consider relator's request for reconsideration. We, therefore, affirm the ULJ's decision to dismiss relator's request for reconsideration.

**Affirmed.**