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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1065**

Bruce Henry,
Relator,

vs.

Iron Mountain Information Management Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 9, 2010
Affirmed
Huspeni, Judge***

Department of Employment and Economic Development
File No. 21268374-3

Bruce P. Henry, Memphis, Tennessee (pro se relator)

David J. Duddlestone, Minneapolis, Minnesota; and

Sarah M. Fleegel, Minneapolis, Minnesota (for respondent Iron Mountain Information Management Inc.)

Iron Mountain Information Management Inc., c/o Talx UCM Services, Inc., St. Louis, Missouri (respondent-employer)

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

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Huspeni, Judge.

UNPUBLISHED OPINION

HUSPENI, Judge

Relator Bruce Henry brings a pro se certiorari appeal to challenge the decision of the unemployment law judge (ULJ) that his appeal from the determination of ineligibility by the Minnesota Department of Employment and Economic Development (DEED) was untimely, asserting that he never received the determination. Because relator's appeal from the ineligibility determination was untimely and because there are no exceptions to the requirement that the appeal be timely, we affirm.

FACTS

Relator applied for unemployment benefits on September 14, 2008. DEED issued a determination of ineligibility on October 13, 2008, stating that it would become final unless an appeal was filed by Monday, November 3, 2008. The determination was mailed to relator's last known address, which relator acknowledges was on file with DEED. But relator, who had moved several times since he applied for benefits, asserted that he never received the determination. No appeal was filed by November 3, 2008.

Relator explains that the first document he received from DEED was one dated December 17, 2008, with an appeal deadline of January 5, 2009. He also cites to another document he received in early March 2009. These documents are not in the record, however. Relator attempted to file an appeal on January 5, 2009, but did not complete the process. He then successfully filed an appeal on February 10, 2009, which the ULJ

dismissed as an untimely appeal from the October 13, 2008 determination. On reconsideration, the ULJ affirmed, ruling that even if relator had completed an appeal on January 5, 2009, it still would have been untimely. Relator challenges the decision by certiorari appeal.

D E C I S I O N

This court can affirm or reverse a decision by a ULJ if the substantial rights of the relator may have been prejudiced because the decision was affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). “An agency decision to dismiss an appeal as untimely is a question of law, which we review de novo.” *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

A “determination of ineligibility is final unless an appeal is filed by the applicant . . . within 20 calendar days after sending.” Minn. Stat. § 268.101, subd. 2(f) (2008). Relator argues that his appeal should be considered on its merits, noting that he did not receive the October 13, 2008 determination of ineligibility. In a similar case, this court affirmed a determination that the relator’s appeal was untimely. In that case, as in this case, a notice had been mailed to the relator’s last known address, but the relator, who had moved three times, asserted that she had not received it. *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 381-82 (Minn. App. 1986). “The statute does not require actual notice for the appeal period to run.” *Id.* at 382. The date of mailing, not the date of receipt, “commences the time for appeal.” *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992). The statutory appeal period is “absolute and unambiguous,”

and there are no provisions for extensions or exceptions. *Kennedy*, 714 N.W.2d at 739-40.

Relator also refers to the other documents that he received from DEED. But in his attempt to appeal, he was challenging only the ineligibility determination made on October 13, 2008. He did not complete an appeal on January 5; he did successfully complete an appeal on February 10, 2009. While we are not insensitive to the efforts put forth by relator, unfortunately an appeal on either January 5 or on February 10, 2009 from an October 13, 2008 determination of ineligibility would have been untimely, because it was not made within the 20 days required by Minn. Stat. § 268.101, subd. 2(f). The ULJ's decision dismissing the appeal as untimely is affirmed.

Affirmed.