

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-147**

Oscar Garcia,  
Relator,

vs.

AEP Industries, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 28, 2010  
Affirmed  
Toussaint, Chief Judge**

Department of Employment and Economic Development  
File No. 23351139-3

Oscar M. Garcia, Mankato, MN (pro se relator)

AEP Industries, Inc., Columbus, OH (respondent)

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

Considered and decided by Toussaint, Chief Judge; Schellhas, Judge; and  
Muehlberg, Judge.\*

---

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

## UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator Oscar Garcia challenges the dismissal of his untimely appeal from a notice of his ineligibility for unemployment benefits. Because there are no exceptions to the statutory time period for an appeal, we affirm.

### DECISION

On September 21, 2009, respondent Minnesota Department of Employment and Economic Development (DEED) sent relator a notice that he had been determined to be ineligible for unemployment benefits. The notice told relator that the determination would become final unless he filed an appeal by October 12, 2009. Relator filed an appeal on October 21, 2009. The unemployment-law judge (ULJ) dismissed the appeal as untimely and, on relator's request for reconsideration, affirmed the dismissal.

The ULJ's determination that he had no authority to consider relator's untimely appeal was mandated by statutory and case law. *See* Minn. Stat. § 268.101, subd. 2(f) (Supp. 2009) (providing that DEED determination is final unless appeal is filed within 20 days); *see also Semanko v. Dep't of Emp't Servs.*, 244 N.W.2d 663, 666 (Minn. 1976) (describing appeal periods as "absolute"); *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986) (holding that statutory time periods must be strictly construed regardless of mitigating circumstances), *review denied* (Minn. Aug. 13, 1986) ; *Cole v. Holiday Inns, Inc.*, 347 N.W.2d 72,73 (Minn. App. 1984) (stating no exceptions to statutory time period for appeal).

As his reason for appeal, relator said, “I sent the statement from my doctor late. I had to wait for the form from the doctor because he was out sick, but I got the form in as soon as I received it.” But there is no legal support for the position that the unavailability of evidence extends the time to file an appeal. In his request for reconsideration, relator said that he has difficulty comprehending and waited until his girlfriend returned to tell him what the notices meant. Again, there is no legal support for the view that failure to comprehend a DEED notice extends the time to appeal. *See Andstrom v. Willmar Reg’l Treatment Ctr.*, 512 N.W.2d 117, 118-19 (Minn. App. 1994) (holding that time to file appeal from denial of unemployment benefits is not extended by employee’s adjudication of chemical dependency and commitment and declining to address whether determination of legal incompetence would extend it).

The ULJ correctly and necessarily dismissed relator’s untimely appeal.

**Affirmed.**