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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-884
A10-1154**

Shakiru Alowonle,
Relator,

vs.

Opal In-Home Services, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 4, 2011
Affirmed
Toussaint, Judge**

Department of Employment and Economic Development
File Nos. 24527591-3 and 24626589-3

Shakiru Alowonle, St. Paul, Minnesota (pro se relator)

Opal In-Home Services, Inc., St. Paul, Minnesota (respondent)

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

Considered and decided by Toussaint, Presiding Judge; Stoneburner, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator Shakiru Alowonle challenges the decision of the unemployment-law judge (ULJ) dismissing his administrative appeal as untimely. Because relator did not file his administrative appeal within the 20-day period, the ULJ properly dismissed the appeal and we affirm.

DECISION

On February 22, 2010, respondent Department of Employment and Economic Development (DEED) notified relator that he was ineligible for unemployment benefits because he had been discharged for employment misconduct. *See* Minn. Stat. § 268.095, subd. 4(1) (2008) (“An applicant who was discharged from employment by an employer is ineligible for all unemployment benefits . . . [if] the applicant was discharged because of employment misconduct . . .”).

DEED sent relator a determination of ineligibility, which explained why he is ineligible for benefits and notified him of his right to an administrative appeal. The determination informed relator that it would become final “unless an appeal is filed by Monday, March 15, 2010,” which was 20 days after the initial determination. *See* Minn. Stat. § 268.101, subd. 2(f) (Supp. 2009) (establishing 20-day appeal period for determination of ineligibility). The document further explained: “The ‘filed’ date is the postmark date, if mailed, or the date received by the Unemployment Insurance Program, if sent by fax or internet.” Relator filed his administrative appeal by fax on the morning of March 16, one day after the appeal period ended. On March 17, the ULJ dismissed the

administrative appeal as untimely. Relator requested reconsideration, and the ULJ affirmed. Relator now appeals that determination to this court by writ of certiorari.

“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). The statutory requirement concerning the time period for filing an administrative appeal is unforgiving. “The time limitation provided in [the unemployment-insurance statute] is absolute and unambiguous.” *Semanko v. Dep’t of Emp’t Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976) (discussing then-existing seven-day appeal period); *see also Jackson v. Minn. Dep’t of Manpower Servs.*, 296 Minn. 500, 501, 207 N.W.2d 62, 63 (1973) (holding that administrative appeal mailed one day late was untimely). This court came to the same conclusion in *Kennedy*, holding that the rule of *Semanko* applied to the then-existing 30-day appeal period. 714 N.W.2d at 739-40 (holding that “[w]hen an appeal from a disqualification determination is untimely, it must be dismissed for lack of jurisdiction”). After *Kennedy*, the legislature amended the statute to establish a 20-day appeal period. 2007 Minn. Laws ch. 128, art. 5, § 7, at 979-80. Regardless of the length of period for filing an administrative appeal, the reasoning of *Semanko* and *Kennedy* continues to apply.

It is undisputed that DEED mailed the ineligibility determination to relator on February 22, 2010. Relator’s time for filing an administrative appeal expired on March 15, but relator did not file his administrative appeal until March 16. Thus, his administrative appeal was untimely. *See Kennedy*, 714 N.W.2d at 739-40; *Semanko*, 309 Minn. at 430, 244 N.W.2d at 666. While relator asserted in his request for

reconsideration that he was given a one-day extension to file his administrative appeal, the ULJ rejected this assertion stating: “There is no record or note in [relator’s] file of this extension” and relator had not adequately explained why he could not have met the time requirement. The ULJ’s implicit determination that relator was not granted such an extension is a credibility determination to which we must defer. *See Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (stating this court reviews ULJ findings “in the light most favorable to the decision,” giving deference to credibility determinations). Moreover, relator is not entitled to a hearing to show “compelling good cause” for not filing his administrative appeal before the deadline. *Semanko*, 309 Minn. at 428-30, 244 N.W.2d at 665-66.

Accordingly, the ULJ did not err by dismissing relator’s administrative appeal. We therefore do not consider the merits of relator’s other arguments.

Affirmed.