

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0957**

Stephen Rensink,
Relator,

vs.

Blu Dot Design & Manufacturing, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 4, 2013
Affirmed
Collins, Judge***

Department of Employment and Economic Development
File No. 29219116-3

Stephen Rensink, Blaine, Minnesota (pro se relator)

Blu Dot Design & Manufacturing, Inc., Minneapolis, Minnesota (respondent)

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

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and
Collins, 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UNPUBLISHED OPINION

COLLINS, Judge

Relator challenges the unemployment law judge's (ULJ) dismissal of his appeal of the initial determination that he is ineligible for unemployment benefits. Because relator did not timely appeal the ULJ's determination that relator is not eligible for unemployment benefits, we affirm.

FACTS

On January 15, 2012, relator Stephen Rensink applied for unemployment benefits following his discharge from employment with respondent Blu Dot Design & Manufacturing Inc. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Rensink is ineligible for benefits because he was discharged for employment misconduct due to "absence or other conduct that had a significant negative effect on the employment." The determination of ineligibility mailed to Rensink on February 13 stated, "This determination will become final unless an appeal is filed by Monday, March 5, 2012[,]" and specified various means to file an appeal, including fax, Internet submission, or U.S. mail. Rensink filed his appeal on March 6.

On March 7, the ULJ dismissed Rensink's appeal as absolutely time barred. Rensink timely filed a request for reconsideration, and on May 3, 2012, the ULJ affirmed the determination of ineligibility and the order dismissing Rensink's appeal. Certiorari appeal to this court followed.

DECISION

Rensink argues that he is entitled to unemployment benefits because his absences were excusable due to a medical condition. He also offers mitigating arguments to rebut the determination that his appeal was untimely. Because the ULJ dismissed Rensink's appeal as untimely without addressing the merits, we first address the timeliness issue. We apply a *de novo* standard of review to an agency's decision to dismiss an administrative appeal as untimely. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

If a person is determined ineligible for unemployment benefits, DEED must send notice of the determination to the employer and to the applicant by mail or electronic transmission. Minn. Stat. § 268.101, subd. 2(a) (2012). "A determination of eligibility or determination of ineligibility is final unless an appeal is filed by the applicant or notified employer within 20 calendar days after sending. The determination must contain a prominent statement indicating the consequences of not appealing." *Id.*, subd. 2(f) (2012).

The statutory requirement regarding the time for an administrative appeal is inalterable. In *Semanko v. Dep't of Emp't Servs.*, the supreme court concluded that an applicant's appeal period (then seven days) was "absolute and unambiguous" such that the applicant was not entitled to a hearing to show "compelling good cause" for his late appeal. 309 Minn. 425, 428-30, 244 N.W.2d 663, 665-66 (1976); *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 is

without authority to alter this absolute deadline. *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 382 (Minn. App. 1986), (concluding that prior unemployment law provided no provisions for extensions).

Rensink has asserted justification for his untimely filing, including the means by which he received DEED's determination, the time lag between "a verdict [being] handed out . . . and [having to] wait for the determination letter," and his access to a computer.¹ However, given the untimeliness of his administrative appeal, we are not at liberty to consider Rensink's mitigating arguments. See *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986). Rensink's deadline to appeal the determination of ineligibility was March 5, 2012. It is undisputed that Rensink filed his appeal on March 6. The deadline for appeal is "absolute" and the ULJ was compelled to dismiss Rensink's appeal. See *Cole v. Holiday Inns, Inc.*, 347 N.W.2d 72, 73 (Minn. App. 1984) (holding that untimely appeal must be dismissed for lack of jurisdiction). Accordingly, we conclude that the ULJ did not err by dismissing Rensink's appeal and do not address his arguments on the merits.

Affirmed.

¹ For the first time on appeal, Rensink "challenge[s] the claim that [DEED] sent original decision by mail on February 13th, and that it was not by certified mail to prove their claim." Because this argument was not presented to the ULJ, we will not address it on appeal. See *Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988); see also *Big Lake Ass'n v. Saint Louis Cnty. Planning*, 761 N.W.2d 487, 492-93 (Minn. 2009) (applying *Thiele v. Stitch* to administrative hearings).