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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0674**

Tony C. Smith,
Relator,

vs.

Volt Management Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 29, 2008
Affirmed
Wright, Judge**

Department of Employment and Economic Development
File No. 1016 07

Tony Smith, 13700 Valley View Road, #256, Eden Prairie, MN 55344 (pro se relator)

Volt Management Corp., 3470 Washington Drive, #165, Eagan, MN 55112 (respondent)

Lee B. Nelson, Department of Employment and Economic Development, E200 1st
National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for respondent
department)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and
Huspeni, Judge.*

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

UNPUBLISHED OPINION

WRIGHT, Judge

Relator challenges the dismissal as untimely of his appeal from a determination that he is disqualified from receiving unemployment benefits. Relator argues that unforeseen circumstances prevented him from filing an appeal within the statutory time limit. We affirm.

FACTS

Relator Tony Smith established an unemployment-benefits account with respondent Department of Employment and Economic Development (department) in April 2006. He later began to work for respondent Volt Management Company but subsequently became unemployed again. As a result, Smith reactivated his benefits account and sought to resume his unemployment benefits.

A department adjudicator determined that Smith was disqualified because, according to Volt Management, Smith quit his employment. On December 5, 2006, the department mailed a notice of disqualification to the address it had on file for Smith. The notice stated that the determination of disqualification would become final unless Smith filed an appeal within 30 calendar days after the mailing date of the decision.

Smith filed an appeal on January 15, 2007. Because the appeal was filed 41 calendar days after the notice was mailed, the unemployment law judge (ULJ) dismissed Smith's appeal as untimely. Smith sought reconsideration based on mitigating circumstances. The ULJ affirmed the dismissal, reasoning that the statute conferring

jurisdiction to hear Smith's appeal requires the appeal to be timely filed and does not contain a "good cause provision" for late filing. This certiorari appeal followed.

D E C I S I O N

Whether an appeal is timely filed presents a question of law, which we review de novo. *Rowe v. Dep't of Employment & Econ. Dev.*, 704 N.W.2d 191, 194 (Minn. App. 2005). If a department adjudicator determines that an applicant for unemployment benefits is disqualified based on an issue raised by an employer, the department is required to send the applicant a "determination of disqualification." Minn. Stat. § 268.101, subd. 2(b) (2006). Unless sent electronically, this determination of disqualification must be sent to the applicant's "last known address." Minn. Stat. §§ 268.101, subd. 2(b), 268.032(b) (2006). The disqualification determination "shall be final unless an appeal is filed by the applicant . . . within 30 calendar days after sending." Minn. Stat. § 268.101, subd. 2(e) (2006).

Here, Volt Management reported that Smith quit because he was unable to obtain transportation to work. The department adjudicator determined that Smith was disqualified from receiving benefits because his reason for quitting did not satisfy any of the statutory exceptions to disqualification. *See* Minn. Stat. § 268.095, subd. 1 (2006) (disqualifying applicant who quits employment unless reason for quitting falls within statutory exceptions). On December 5, 2006, the department mailed a notice of disqualification to the address on file for Smith. Therefore, the deadline for a timely appeal was January 4, 2007. Minn. Stat. § 268.101, subd. 2(e).

Smith argues that the ULJ erred by affirming the dismissal of his untimely appeal, which he filed on January 15, 2007, because he no longer was living at the address to which the department mailed its determination. In his request for reconsideration, Smith indicated that, as a result of a family crisis, he “became homeless for over two weeks” and could not receive his mail.

It is well settled that statutory time limits for filing an appeal must be strictly construed. *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 382 (Minn. App. 1986). The time limit at issue here is absolute and unambiguous, and “there are no statutory provisions for extensions or exceptions to the appeal period.” *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 740 (Minn. App. 2006). When an appeal from a disqualification determination is untimely, dismissal is required. *Id.*

Section 268.101, subdivision 2(e), does not require actual notice for the appeal period to run. *See Johnson*, 395 N.W.2d at 382 (construing prior version of time-limit statute). The act of sending the disqualification determination, not receiving it, triggers the time limit. Minn. Stat. § 268.101, subd. 2(e). Moreover, the department is required only to send notice to Smith’s “last known address,” not his current address. Minn. Stat. § 268.032(b). Although Smith’s mailing address may have “changed during . . . the time period to appeal,” Smith does not dispute that the address to which the notice was sent was the “last known address” that the department had for him. Thus, the appeal period began to run when the department sent its determination to this address on December 5.

Smith also asserts that he had “good cause” to be late because Volt Management falsified the information on which the disqualification determination is based. Smith also

refers to a pending discrimination lawsuit against Volt Management. But an untimely appeal must be dismissed “regardless of [any] alleged mitigating circumstances.” *Baldinger Baking Co. v. Stepan*, 354 N.W.2d 569, 571 (Minn. App. 1984). Therefore, the ULJ correctly dismissed Smith’s appeal.

Affirmed.