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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1843**

Michael G. Mesaris,
Relator,

vs.

Team Industries Bagley-Audubon, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed May 21, 2012
Affirmed
Cleary, Judge**

Department of Employment and
Economic Development
File No. 28003208-3

Michael Mesaris, Clearbrook, Minnesota (pro se relator)

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

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Relator seeks review of an order issued by an unemployment-law judge (ULJ) on October 3, 2011, dismissing relator's request for reconsideration as untimely. Relator argues that he submitted his request on time, by United States mail, to the Department of Employment and Economic Development (DEED), and that DEED's receipt of the request was delayed due to the Labor Day holiday. Because relator offered no evidentiary support for his claim that he mailed the request for reconsideration on time, we affirm.

FACTS

Relator Michael Mesaris was discharged from his employment with respondent Team Industries Bagley-Audubon, Inc. on June 28, 2011. Relator applied for unemployment benefits, and DEED determined that he was ineligible to receive benefits. Relator appealed DEED's determination, and a telephone evidentiary hearing was held with the ULJ. On August 12, 2011, DEED sent relator notice that the ULJ had issued a decision, as well as a copy of that decision. The ULJ had determined that relator was discharged for misconduct and was ineligible to receive benefits. The decision contained a section entitled "REQUEST FOR RECONSIDERATION" which stated:

If you believe this decision is factually or legally incorrect, you may request the unemployment law judge to reconsider the decision. You may do this by logging in to your account at www.uimn.org, by fax, or by mail (fax number and address are listed at the bottom of this page). A request for reconsideration must include the issue identification number.

Under MN Statute 268.105, subd. 2, this decision will be final unless a request for reconsideration is filed with the unemployment law judge on or before Thursday, September 1, 2011.

Relator filed a request for reconsideration through his online account on September 5, 2011. The ULJ issued an order on October 3, 2011, dismissing relator's request for reconsideration as untimely. Relator now challenges the ULJ's untimeliness determination and claims that he actually submitted his request for reconsideration by U.S. mail on August 31, 2011.

DECISION

“When reviewing a ULJ’s decision, we may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced.” *Stassen v. Lone Mountain Truck Leasing, LLC*, ___ N.W.2d ___, ___, 2012 WL 686098, at *3 (Minn. App. Mar. 5, 2012). “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). “[T]his court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

“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.” Minn. Stat. § 268.101, subd. 2(f) (2010). “If an application, appeal, or other required action is made by electronic transmission, it is considered filed on the day

received by the department.” Minn. Stat. § 268.035, subd. 17 (2010). The statutory time period to review a decision of a ULJ is absolute and unambiguous. *Rowe v. Dep’t of Emp’t & Econ. Dev.*, 704 N.W.2d 191, 195 (Minn. App. 2005). The time limit for an appeal of a ULJ’s decision should be strictly construed, regardless of mitigating circumstances. *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). “An untimely appeal from a determination must be dismissed for lack of jurisdiction.” *Stassen*, 2012 WL 686098, at *3.

Relator claims that he mailed his request for reconsideration of the ULJ’s decision on August 31, 2011, via U.S. mail, and that the request was likely delayed due to the Labor Day-holiday weekend. Respondent claims that it never received any request in the mail; that relator filed his request online on September 5, 2011; and that the online request does not mention any August 31, 2011 letter. The parties do not dispute that the deadline for relator to submit his request was September 1, 2011. There was no evidence in the record before the ULJ involving the request that relator now claims he mailed on August 31, 2011.

In another unemployment case, a relator challenged an order dismissing an appeal as untimely, arguing that the relator never received the referee’s decision in the mail. *Mgmt. Five, Inc. v. Comm’r of Jobs & Training*, 485 N.W.2d 323 (Minn. App. 1992). The relator had filed the appeal after the statutory deadline, but argued that because the decision had never been mailed, the time limit was not triggered. *Id.* at 324. The relator presented two affidavits supporting its claim that the decision was never mailed. *Id.* The Department of Jobs and Training argued that the decision itself and a statement issued by

the department supported its claim that the decision had been mailed. *Id.* Without an evidentiary hearing, the department commissioner's representative had ruled that the decision was mailed on the date specified by the department. *Id.* This court concluded that the relator should have been given a chance to present evidence to resolve the factual dispute. *Id.* at 325. This court stated,

We recognize that the Department is frequently confronted with claims, some of which are frivolous, that documents were never mailed. However, where evidence of a failure to mail is presented, the Department cannot summarily dismiss the claim without conducting a factual inquiry to distinguish the meritorious claims from the frivolous.

Id.

The facts here are distinguishable from *Management Five* because relator's claim that he sent the request for reconsideration in the mail is completely unsupported by evidence. Relator does not dispute that the ULJ's decision was mailed to him and that the statutory period to respond was triggered. He instead suggests that he mailed his request on August 31, 2011, which was within the window of time he was given to respond. In fact, relator is equivocal in his recollection, stating in a submission to this court dated November 25, 2011, that "As I recall I had sent my request by US mail on Wednesday [A]ugust 31st, 2011." Relator does not present affidavits, receipts, or any other documentation to support his claim that he sent the request via U.S. mail.

In other similar cases, when relators filed appeals after the appropriate deadline, courts have consistently upheld department determinations that the appeals were

untimely. *See Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976); *Kennedy*, 714 N.W.2d at 739–40.

The only request for reconsideration DEED acknowledges receiving here was from relator's online benefit account.¹ Although the document regarding the online request contained in the file does not indicate on its face when it was filed, relator does not dispute that this request was filed on September 5, 2011. The record substantially supports the ULJ's finding that relator submitted his request for reconsideration online in an untimely manner. Because relator offers no substantiation for his claim that he sent his request in the mail on August 31, 2011, this case does not rise to the level of a factual dispute that would merit an additional evidentiary hearing. The ULJ did not err when she dismissed relator's appeal as untimely.

Affirmed.

¹ DEED also received a handwritten letter from relator, dated September 21, 2011, which appears to be an argument in support of his request for reconsideration. It is improbable that this is the letter relator remembers sending on August 31, 2011. As respondent notes in its brief, relator was notified after his reconsideration request was received online on September 5, 2011, that he could provide additional argument if he wished. This was likely the purpose of relator's letter dated September 21, 2011.