

No. A11-1207

State of Minnesota
In Court of Appeals

INDUSTRIAL WELDERS & MACHINISTS, INC.,

Relator,

vs.

ERIC KANGAS,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Legal Issue

Under the law, an appeal to a determination of ineligibility must be dismissed by an unemployment law judge, without exception, if it is untimely filed. Conversely, ULJs have jurisdiction over appeals filed within the 20-calendar-day period provided for by law. Eric Kangas filed his appeal of a determination of ineligibility within the 20-day period. Was the unemployment law judge required to hear the case, as the appeal was timely filed?

Unemployment Law Judge David Huber found that Kangas timely filed his appeal, and that the ULJ had jurisdiction to consider it.

Statement of the Case/Statement of Facts

Here, the Statement of the Case and Statement of Facts have been combined for simplicity.

Eric Kangas applied for unemployment benefits and established a benefit account with the Minnesota Department of Employment and Economic Development ("Department") following his separation from employment with Industrial Welders & Machinists, Inc. ("Industrial Welders"). The Department issued a determination of ineligibility on March 10, 2011, which held that Kangas was discharged from Industrial Welders for employment misconduct, and therefore was ineligible for unemployment benefits.¹ On March 25, 2011, the

¹ T. 3, 7. (Transcript reference will be indicated "T." Exhibits in the record will be "E" with the number following.)

Department issued another determination of ineligibility, finding that Kangas was ineligible for benefits beginning February 27, 2011, because he had failed to submit a documented work search.²

Kangas went online on March 28, 2011, and filed an appeal.³ The first sentence explained “I am appealing the decision due to I did not commit theft by removing my own tool box.”⁴ This appeal listed all of the reasons why his conduct did not constitute misconduct.⁵ ULJ Huber held a de novo hearing in which both parties participated. At hearing, the ULJ noted that when appealing the determinations, Kangas had only clicked the box indicating that he was appealing the determination concerning his availability and search for employment.⁶ However, it was clear from his written description of his appeal that he was also appealing the misconduct determination, and so ULJ Huber found that Kangas had timely appealed both determinations, and heard testimony on both.⁷

Following the hearing, ULJ Huber issued an order finding that Kangas was not ineligible for benefits due to misconduct, and also found that he was available and actively seeking employment.⁸ Industrial Welders requested reconsideration,

² E-2.

³ T. 3, 7.

⁴ E-3.

⁵ *Id.*

⁶ T. 3.

⁷ T. 3-4.

⁸ Return-3 (Appendix, A6-A11).

and ULJ Huber affirmed.⁹ In his decision, ULJ Huber specifically found that Kangas' written statement arguing that he was not discharged for misconduct constituted an appeal of the misconduct determination under Minn. Stat. § 268.103, subd. 2(b).¹⁰

Industrial Welders now comes before the Minnesota Court of Appeals upon a writ of certiorari under Minn. Stat. § 268.105, subd. 7 (2010) and Minn. R. Civ. App. P. 115.

Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Industrial Welders' substantial rights may have been prejudiced because the decision of the ULJ was based on an unlawful procedure, affected by error of law, is unsupported by substantial evidence, or is arbitrary or capricious.¹¹

This Court generally considers jurisdictional questions in the unemployment context when applicants contend that the Department should not have dismissed their appeals. In those cases, the Court relies on *Christgau v. Fine*, which held that when a final agency decision concludes that it lacks jurisdiction to consider an appeal, the only question before the Court is whether the agency

⁹ Return-6 (Appendix A1-A5).

¹⁰ *Id.*

¹¹ Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2010).

decision was correct in that respect.¹² That precedent remains instructive here, as the Court considers Industrial Welders' sole argument on appeal: whether the Department was correct in finding that it did have jurisdiction. The Supreme Court indicated in *Harms v. Oak Meadows* that jurisdiction is a question of law that the Court reviews de novo.¹³

Argument

The only issue before the Court is whether Kangas properly and timely appealed the March 10, 2011, determination of ineligibility due to misconduct. In its brief to this Court, Industrial Welders argues that he did not timely file such an appeal, and that the ULJ therefore lacked jurisdiction to hear it.

According to Minn. Stat. § 268.101, subd. 2(f), a determination of ineligibility is final unless an appeal is filed by the applicant within 20 calendar days after sending. Minn. Stat. § 268.103 discusses the methods an applicant can use to file an appeal. Under § 268.103, subd. 2(b), which addresses applicants who appeal by mail:

A written statement delivered or mailed to the department that could reasonably be interpreted to mean that an involved applicant is in disagreement with a specific determination or decision is considered an appeal. No specific words need be used for the written statement to be considered an appeal.

¹² 27 N.W. 2d 193, 199 (Minn. 1947).

¹³ 619 N.W. 2d 201 (Minn. 2000).

And § 268.103, subd. 1, which addresses appeals by electronic submission, is even more broad. It does not direct that any specific format be required by the Department in its electronic appeals system, but instead under subd. 1(c) requires only that “All information requested by the commissioner when an appeal is filed by electronic transmission must be supplied or the communication does not constitute an appeal.” And subd. 1(b) allows, but does not require, the Department “restrict the manner and format under which an appeal by electronic transmission may be filed.”

Under the clear language of the statute, an applicant who wants to appeal by mail must simply write out his reasons for appealing, and send it in. If he wishes to do so electronically, he must only fill out the information requested by the Department; the statute does not require the Department to further impose requirements on applicants who appeal electronically, and it has not done so. No law or administrative rule state that an applicant who lays out his reasons for disputing a determination, and electronically transmits his written appeal to the Department, has failed to file an appeal simply because he did not also check the correct box next to both of the determinations that he sought to appeal.

The Department’s form asked Kangas to “enter the reason you are appealing this decision.”¹⁴ He explained that he was appealing because he did not steal from his employer, which was the basis for the Department’s earlier finding

¹⁴ E-3.

that he was discharged for misconduct. Kangas' written analysis served the same purpose that a checked box would have done: it alerted the Department and his former employer that he did not believe he had been discharged for misconduct, and asked for a hearing on the matter.

It is true that the Department has no jurisdiction over untimely appeals. In *Cole v. Holiday Inns, Inc.*, the Court of Appeals said that there are no exceptions to the statutory time period for appeal,¹⁵ and in *King v. University of Minnesota*, the Court said that time periods must be strictly construed, regardless of mitigating circumstances.¹⁶ But Kangas did not file an untimely appeal; within 20 days of both determinations of ineligibility he went online and appealed them. He clearly explained why he had not been discharged for misconduct, and requested a hearing. Under the language of the statute this was enough, and ULJ Huber did not err in finding that Kangas' appeal was timely.

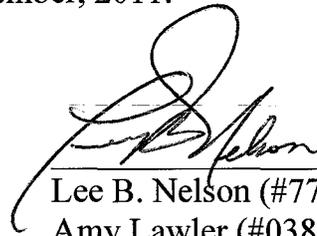
Conclusion

Unemployment Law Judge David Huber correctly concluded that Kangas' appeal of the misconduct determination was timely, and decided the issue on the merits. The Department requests that the Court of Appeals affirm the decision of the unemployment law judge.

¹⁵ 347 N.W. 2d 72, 73 (Minn. App. 1984).

¹⁶ 387 N.W. 2d 675, 677 (Minn. App. 1986).

Dated this 9th day of November, 2011.



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