

No. A12-1283

State of Minnesota
In Court of Appeals

JOHN GODBOUT,

Relator,

vs.

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 untimely appeal of a determination of ineligibility must be dismissed by the unemployment law judge, without exception. The Minnesota Department of Employment and Economic Development (“DEED”) mailed John Godbout a determination of overpayment on April 25, 2006, at the address he had on file with DEED. Godbout did not file an appeal until 2010, well outside the 30-calendar-day period provided for by law. Was the unemployment law judge required to dismiss the appeal as untimely?

Unemployment Law Judge Richard Mandell dismissed Godbout’s appeal as untimely.

Statement of the Case/Statement of Facts¹

John Godbout applied for unemployment benefits and established a benefit account with DEED in February of 2005.² Godbout stopped receiving unemployment benefits in September 2005.³ In 2005, during the time he was receiving unemployment benefits, Godbout resided in an apartment at Edmund Avenue, This is the address he listed on record for DEED. From February 2006 to October 2006, Godbout was incarcerated in

¹ For ease of understanding, the Statement of the Case and Statement of Facts have been combined.

² E-10, p. 24; T. 19. Exhibits in the record will be “E” with the number following. Transcript references will be indicated “T” with the page number following.

³ E-10, p. 25.

⁴ T. 23.

Ramsey County.⁵ During that time, Godbout gave up his apartment on Edmund Avenue.⁶ Over the years, Godbout has used his mother's address _____ to receive important documents such as medical bills.⁷ However, he did not have his mail forwarded either to his mother's address or to any other address while he was incarcerated.⁸ Godbout did not update his address with DEED until 2010; thus, his address on record remained _____ Edmund Avenue until that time.⁹

On April 25, 2006, DEED mailed a Determination of Overpayment to Godbout at his last address on record with DEED at _____ Edmund Avenue

⁰ The determination held that Godbout was overpaid all of the unemployment benefits he received in 2005; per an anonymous tip,¹¹ DEED received information from Yellow Cab Company that Godbout had leased a cab and worked as an independent contractor during this time and had failed to report his employment and earnings to DEED.¹² The determination concluded that Godbout was overpaid a total of \$11,570; this included a penalty fee of \$2,314 because it was determined that Godbout had intentionally and fraudulently

⁵ E-10, p. 8.

⁶ E-10, p. 8.

⁷ T. 10, E-10, p. 9.

⁸ T. 10.

⁹ E-13, p. 71.

¹⁰ E-4, E-13, p.p. 72-73.

¹¹ E-5.

¹² E-4, p. 1.

provided DEED with incorrect information.¹³ The determination also stated that it would be become final unless Godbout filed an appeal within 30 calendar days.¹⁴ Because he was incarcerated and no longer resided at Edmund Avenue, Godbout did not receive the determination and did not file an appeal within 30 calendar days.¹⁵ A Notice of Potential Overpayment was also mailed to Godbout at his Edmund Avenue address prior to this, on March 29, 2006.¹⁶ Again, he did not receive the mailing due to his incarceration.¹⁷ On September 30, 2006, Godbout's overpayment was referred to the Department of Revenue Collections Division.¹⁸

Due to a change in the law effective September 30, 2007, interest at 1.5 percent per month began accruing on Godbout's overpayment.¹⁹ In August 2007, a letter explaining this law change was mailed to Godbout at his Edmund Avenue address.²⁰ Godbout did not receive this letter because he was not residing at that address.²¹

In September 2010, DEED's collections department was able to obtain Godbout's current mailing address (at his mother's address), by looking up Godbout's drivers

¹³ E-4, p. 1.

¹⁴ E-4, p. 2, E-10, p. 16.

¹⁵ T. 16.

¹⁶ E-10, p. 16.

¹⁷ E-10, p. 8.

¹⁸ E-13, p. 29.

¹⁹ E-10, p. 16-17.

²⁰ E-13, p.p. 75-76.

license information.²² On September 7, 2010, DEED mailed Godbout an Overpayment Billing Statement at this address.²³ Godbout received this document.²⁴ On September 15, 2010, Godbout's address of record with DEED was changed from the Edmund Avenue address to his mother's address.²⁵ Shortly thereafter, Godbout called DEED to inquire about the overpayment.²⁶

On October 7, 2010, Godbout (by his attorney, Laura Melnick) sent a letter to DEED requesting that DEED reissue the determination of overpayment.²⁷ On November 10, 2010, Godbout sent another letter to DEED stating that he had not received a response to his October 7, 2010, letter.²⁸ On November 24, 2010, Unemployment Law Judge ("ULJ") Richard Mandell issued a Notice of Order finding that Godbout's appeal to the April 25, 2006, Determination of Overpayment was untimely.²⁹ On December 6, 2010, Godbout requested reconsideration of ULJ Mandell's order that his appeal was untimely.³⁰ On March 15, 2012, ULJ Mandell issued an Order Setting Aside Findings of Fact and Decision ordering an evidentiary hearing to determine if Godbout made a timely

²¹ T. 16.

²² T. 31, E-13, p. 69.

²³ T. 31, E-10, p. 14.

²⁴ T. 31-32.

²⁵ E-13, p. 71.

²⁶ *Id.*

²⁷ E-6.

²⁸ E-8, p. 1.

²⁹ E-7.

³⁰ E-10.

appeal to the Determination of Overpayment.³¹ A telephone hearing was held on April 4, 2012, with ULJ Christine Steffen.³² Following the evidentiary hearing, ULJ Steffen found that Godbout did not file a timely appeal and therefore she had no jurisdiction to consider the case on the merits.³³ In her decision, ULJ Steffen addressed Godbout's argument that he should not have been expected to update his address with DEED after he stopped requesting benefits, and found that Minnesota statute does not contain any exceptions to the appeal period, even if an applicant no longer resides at the address in which the determination was sent.³⁴ Godbout requested reconsideration³⁵ and ULJ Steffen affirmed her decision.³⁶

Godbout now comes before the Minnesota Court of Appeals upon a writ of certiorari under Minn. Stat. § 268.105, subd. 7 (2012) and Minn. R. Civ. App. P. 115.

Unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not by an employer or from employer funds.³⁷ DEED's interest therefore carries over to the Court of Appeals'

³¹ E-14.

³² Return, R-2.

³³ Appendix, A6-A10.

³⁴ Appendix, A6-A10.

³⁵ Appendix, A6-A10.

³⁶ Appendix, A1-A5.

³⁷ Minn. Stat. § 268.069, subd. 2 (2012); *N.L.R.B. v. Gullett Gin Co.*, 340 U.S. 361, 364 (1951) ("Payments to the employees were not made to discharge any liability or obligation of respondent, but to carry out a policy of social betterment for the benefit of the entire state."); *see also Lolling v. Midwest Patrol*, 545 N.W.2d 372, 376 (Minn. 1996); *Jackson v. Minneapolis Honeywell Regulator Co.*, 47 N.W.2d 449, 451 (Minn. 1951) (recognizing that unemployment benefits are

interpretation and application of the Minnesota Unemployment Insurance Law. DEED is thus considered the primary responding party to any judicial action involving a ULJ's decision.³⁸ And under Minn. Stat. § 268.069, subd. 2 (2012), an applicant's entitlement to unemployment benefits is decided without regard to a burden of proof.

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 Godbout's substantial rights may have been prejudiced because the decision of the ULJ was in excess of the statutory authority or jurisdiction of DEED, based on an unlawful procedure, affected by error of law, is unsupported by substantial evidence, or is arbitrary or capricious.³⁹

When the final agency decision concludes that DEED lacks jurisdiction to consider an appeal, the Supreme Court in *Christgau v. Fine* held that the only question before the Court is whether the agency decision was correct in that respect.⁴⁰ The 2000 decision of the Supreme Court, in *Harms v. Oak Meadows*, indicated that jurisdiction is a question of law that the Courts review de novo.⁴¹

paid from state funds, even though employer taxes helped support the state trust fund).

³⁸ Minn. Stat. § 268.105, subd. 7(e).

³⁹ Minn. Stat. § 268.105, subd. 7(d).

⁴⁰ 27 N.W. 2d 193, 199 (Minn. 1947).

⁴¹ 619 N.W. 2d 201 (Minn. 2000).

Argument

The issue before the Court is whether the ULJ was correct in dismissing as untimely Godbout's appeal of the April 25, 2006, Determination of Overpayment. Godbout does not deny that he failed to file a timely appeal but argues that this Court should make an exception for him because he had no knowledge that an overpayment had been determined until four years after it was issued.⁴² The Court of Appeals has addressed this issue numerous times in published decisions and literally hundreds of times in unpublished ones. While the facts surrounding an untimely appeal vary in each of those cases, the result does not. Although Godbout may not have received the April 2006 determination, it does not change the fact that his appeal was untimely, and that, as a result, the ULJ lacked jurisdiction to consider the merits of his appeal.

In 2006, Minn. Stat. § 268.18, subd. 2(b), provided that “[u]nless the applicant files an appeal within 30 calendar days after the sending of the determination of overpayment by fraud to the applicant by mail or electronic transmission, the determination shall become final.” Per Minn. Stat. § 268.032, subd. (b) (2006), if any required determination is sent by mail, it must be sent to the last known address. Furthermore, the Court of Appeals and the Supreme Court have ruled that the period in which the applicant has to file an appeal begins on the date of mailing to the last known address, and can expire regardless of whether the

⁴² Relator's brief, p. 16.

determination was received.⁴³ On April 26, 2006, a Determination of Overpayment was mailed to Godbout's last known address of record at Edmund Avenue . The Supreme Court in *Jackson v. Department* held that the statutory time period for appeal commences from the date of mailing.⁴⁴ Moreover, the Minnesota Supreme Court ruled 124 years ago that the risk of failure of the mail is on the person to whom it is addressed.⁴⁵ That has remained the law in Minnesota since. An appeal was not filed by Godbout until 2010, four years after the 30-day statutory time period expired.

In his brief, Godbout does not dispute that the determination was mailed to the last known address he had on record with DEED, nor that he failed to file a timely appeal.⁴⁶ What Godbout argues here is that his due process rights were violated because DEED had an obligation to provide him notice that he was at risk for future determinations from DEED being mailed to him after he stopped receiving unemployment benefits.⁴⁷ Godbout cites no authority, statutory or otherwise, that requires DEED to provide such notice, and essentially asks this Court to blaze new ground to create such a requirement.

⁴³ *Jackson v. Dep't of Manpower Servs.*, 296 Minn. 500, 501, 207 N.W.2d 62, 63 (1973); *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 382 (Minn. App. 1986); *Grewe v. Comm'r of Econ. Sec.*, 385 N.W.2d 894, 895 (Minn. App. 1986). See *Ahl v. Dep't of Empt. & Econ. Dev.*, 2010 WL 5071378 (Minn. App. Dec. 14, 2010).

⁴⁴ 207 N.W. 2d 62 (Minn. 1973).

⁴⁵ *VanAernam and Others v. Winslow*, 37 Minn. 514, 516, 35 N.W. 381, 382 (1887).

⁴⁶ Relator's brief, p.p. 4, 6.

⁴⁷ Relator's brief.

Unemployment benefits are protected by the procedural due process requirements of the fourteenth amendment.⁴⁸ As Godbout notes in his brief, he does have constitutional rights stemming from his property interest in unemployment benefits. *Mathews v. Eldridge*⁴⁹ and *Goldberg v. Kelly*,⁵⁰ long ago established that applicants have procedural due process rights, including the right to a hearing. As the Supreme Court explained in *Mathews*, quoting *Goldberg*, procedural due process requires that “the procedures be tailored, in light of the decision to be made, to ‘the capacities and circumstances of those who are to be heard,’ to insure that they are given a meaningful opportunity to present their case.”⁵¹

Contrary to his assertions otherwise, DEED’s notice to Godbout in this case was entirely sufficient. Minn. Stat. § 268.18, subd. 2(a) (2012) provides, in part, that “[a]fter the discovery of facts indicating fraud, the commissioner shall make a determination that the applicant obtained unemployment benefits by fraud and that the applicant must promptly repay the unemployment benefits to the trust fund.” Minn. Stat. § 268.18, subd. 2(e) states that “[u]nemployment benefits paid for weeks more than four years prior to the date of a determination of overpayment by fraud issued under this subdivision shall not be considered overpaid unemployment benefits.” Thus, it is specifically mandated by statute that DEED

⁴⁸ *Schulte v. Transp. Unlimited, Inc.*, 354 N.W.2d, 830, 832 (Minn. 1984).

⁴⁹ 424 U.S. 319 (1976).

⁵⁰ 397 U.S. 254 (1970).

⁵¹ *Mathews*, 424 U.S. at 348-49

has a time window of almost four years in which to issue an overpayment determination involving fraud. Yet, as stated above, Minnesota statute provides only that a determination be mailed to an applicant's last known address. Given that the fraud overpayment determination was issued and mailed to Godbout well before the four-year time window expired, DEED's mailing of the Determination of Overpayment to Godbout's last known address seven months after he stopped collecting unemployment benefits was statutorily sufficient. DEED did what it was legally obligated to do.

Furthermore, Godbout was not without notice that it was important that DEED have his current address. Unemployment benefits are taxable income under both federal and state law. In 2005, all applicants who applied for and received unemployment benefits were mailed an information handbook. Under the heading "Income Tax Liability," the information handbook stated that the "IRS 1099-G will be mailed no later than January 31st of each year, to your last known address." The handbook also advised, "If your address changes during the year, call TELECLAIM to make an address change even if you have stopped requesting benefits."⁵² Similarly, as an example, if a person was employed at multiple places throughout a given year, he would be responsible for providing each of his former employers with an updated or current address in order to receive a copy of a W-2 or a 1099. At the very least, a forwarding address should be provided to the post

⁵² Appendix, A11-A13.

office to ensure that such documents reach him. Godbout made no effort to do that in this case. Ironically, Godbout testified that he typically had “important” documents sent to his mother’s address in . Yet, he failed to provide that address to DEED or to leave that as a forwarding address at the post office prior to his incarceration. When Godbout was asked during the evidentiary hearing why he didn’t leave a forwarding address, he testified that he had nowhere to forward his mail, despite his statements to the contrary that he used his mother’s address to receive important mailings.⁵³

Godbout further argues that *Schulte v. Transportation Unlimited, Inc.* is applicable here. It is not. In *Schulte*, the issue was whether the notice provided to Schulte sufficiently notified him that a reversal of the decision awarding him unemployment benefits would result in a charge against his right to collect unemployment benefits in the future. In this case, Godbout makes no claim that the Notice of Overpayment mailed to him in April 2006 was in any way insufficient or a violation of his due process rights. Furthermore, Godbout’s references to the Minnesota Rules of Civil Procedure are inapplicable here because Minnesota law specifically provides that there is no common law or equitable entitlement to unemployment benefits.⁵⁴

In his brief, Godbout cites Minn. Stat. § 268.042, subd. 1(a) (2012), regarding employer registration which states, in part, that an “employer must

⁵³ T. 10.

⁵⁴ Minn. Stat. § 268.069, subd. 3.

provide all required information for registration, including the actual physical street and city address of the employer.” The actual physical street address is not required, as Godbout appears to assume in his brief, for unemployment insurance notification purposes. Were that the case, a post office box address would be sufficient. DEED encompasses a number of other programs in addition to unemployment insurance. As such, DEED is required to gather a multitude of information because that information is required by the United States Department of Labor to produce statistical information. Thus, the need for the actual physical street address. Minnesota law does not require that an employer continually update its address information. Unlike an applicant who is required to fill out an application and establish a new account each year, at which time address information would be requested, an employer registers its account only one time. In addition, each time an applicant files a continued request for unemployment benefits, he is asked if anything has changed. Although employers are required to file quarterly wage detail reports, these reports do not require current or updated address information.⁵⁵ Furthermore, most of the information required in a wage detail report is needed for federal statistical information purposes and not for unemployment insurance. Under the law, an applicant and an employer are treated

⁵⁵ Minn. Stat. § 268.044 (2012).

in essentially the same manner. For example, even after an employer terminates its operations, DEED may find that its former employees performed services in covered employment and tax those services for the four years preceding that determination.⁵⁶ These taxes remain collectable for at least an additional six years.⁵⁷ The notice requirement for those assessments is the same as for an applicant in that DEED must mail the notice to the employer's last known address.⁵⁸

In his brief, Godbout asserts that "DEED had sufficient evidence to determine that the 2006 notice was not reasonably calculated to reach" him and "apprise him of his overpayment claim."⁵⁹ Godbout provides no evidence in support, and nakedly asserts this claim. To the contrary, DEED had no way of knowing that Godbout was not residing at the address he had on record with DEED at the time the notice was mailed. Moreover, seven months is not an extensive period of time to have passed since Godbout last receiving unemployment benefits.

Godbout also suggests that DEED somehow failed because it did not undertake measures to ensure that Godbout was still residing at 233 Edmund Avenue when it mailed him the Determination of Overpayment. Again, Godbout cites no statutory or other authority requiring DEED to do so. While DEED may

⁵⁶ Minn. Stat. § 268.043, subd.(b) (2012).

⁵⁷ Minn. Stat. § 268.066, subd.(a) (2012)..

⁵⁸ Minn. Stat. § 268.032, subd.(b) (2012)..

⁵⁹ Relator's brief, p. 17.

be authorized under statute to share information with certain other government agencies in order to ascertain “the last known address,” DEED is under no obligation to contact other government agencies to determine if it possesses the actual address of an applicant’s current residence. Such a requirement would be an immeasurable burden upon DEED if imposed. In 2010, 348,780 applicants received a 1099 form from DEED as a result of receiving unemployment compensation. In 2011, 297,338 1099 forms were mailed to applicants. Godbout is suggesting that DEED should “ascertain” whether the last known mailing address of more than a quarter of a million people is reasonably likely to notify them of a claim.⁶⁰ In other words, he implies that DEED should make thousands, if not millions of calls, to other government agencies to check and see if the last known address on file for each applicant is correct. Such a requirement would be a costly and enormous undertaking. Again, DEED was required by statute to send the notice to Godbout’s last known address, which it undisputedly did in this case.

Godbout also argues that DEED has the “inherent authority” to correct the decision in this case because, he asserts, it is erroneous.⁶¹ DEED has no such authority here. The power of an administrative agency to correct a decision “remains in effect until jurisdiction is lost by appeal or until a reasonable time has run. Such reasonable time would at least be coextensive with the time allotted by

⁶⁰ Relator’s brief, p. 14.

⁶¹ Relator’s brief, p. 17.

statute for review.”⁶² An administrative agency’s jurisdiction depends entirely on the statute under which it is operating.⁶³ The applicable statute in this case provides that an appeal to a fraud determination of overpayment must be filed within 30 calendar days.⁶⁴ The Supreme Court, over 30 years ago, said in *Semanko v. Department of Employment Services*, that the law on timeliness of an appeal is “absolute.”⁶⁵ Time periods for appeal must be “strictly construed, regardless of mitigating circumstances.”⁶⁶ Again, as stated above, Godbout does not argue that Notice of Overpayment was not properly mailed to his last known address on April 26, 2006. Furthermore, he does not claim that he did not file a timely appeal to that determination. Thus, as already explained in detail, DEED does not have jurisdiction or authority to reopen this case for a hearing on the merits, regardless if, as Godbout asserts, the underlying determination is erroneous.

The overwhelming evidence in this case shows, as the ULJ found, that DEED properly mailed Godbout the Determination of Overpayment in April 2006, at his last known address in St. Paul. Thus, there is no legal basis for Godbout’s

⁶² *Rowe v. Dept. of Employ. & Econ. Devel.*, 704 N.W.2d 191, 195 (Minn. App. 2005); *citing Anchor Cas. Co. v. Bongards Coop. Creamery Ass’n.*, 253 Minn. 101, 104, 91 N.W.2d 122, 124 (1958).

⁶³ *Id.* at 194, *citing State ex rel. Spurck v. Civil Serv. Bd.*, 226 Minn. 253, 259, 32 N.W.2d. 583, 586 (1948).

⁶⁴ Minn. Stat. § 268.18, subd. 2(b).

⁶⁵ 309 Minn. 425, 244 N.W. 2d 663 (1976) (upholding the dismissal of an appeal filed on the eighth day of the then seven-day appeal period).

⁶⁶ *King v. Univ. of Minnesota*, 387 N.W. 2d 675, 677 (Minn. App. 1986).

untimely appeal to be decided on the merits, and there is no equitable entitlement to unemployment benefits.⁶⁷ As this Court has held in the past, there are no exceptions to the statutory time period for appeal.⁶⁸ Because Godbout filed an untimely appeal, the ULJ was “required” to refrain from deciding his case on the merits for lack of jurisdiction.⁶⁹

Conclusion

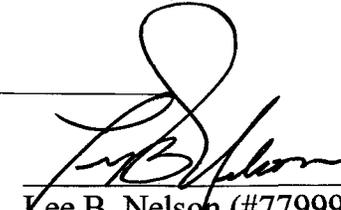
ULJ Richard Mandell correctly applied the law in dismissing Godbout’s appeal as untimely, and ULJ Christine Steffen similarly applied the law correctly when she found that she lacked jurisdiction to consider Godbout’s appeal on the merits. DEED requests that the Court of Appeals affirm the ULJ’s order of dismissal.

⁶⁷ Minn. Stat. §268.069, subd. 3.

⁶⁸ *Cole v. Holiday Inns, Inc.*, 347 N.W. 2d 71 (Minn. App. 1984).

⁶⁹ *Kennedy v. Am. Paper Recycling, Corp.*, 714 N.W. 2d 738, 740 (Minn. App. 2006).

Dated this 26th day of November, 2012.



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