

No. A05-2142

State of Minnesota
In Court of Appeals

THEODIS KENNEDY,

Relator,

vs.

AMERICAN PAPER RECYCLING CORP,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

I. LEGAL ISSUE 1

II. STATEMENT OF THE CASE 1

III. STATEMENT OF FACTS 2

IV. STANDARD OF REVIEW 2

V. ARGUMENT 2

VI. CONCLUSION 5

APPENDIX 6

TABLE OF AUTHORITIES

CASES

Christgau v. Fine, 223 Minn. 452, 463, 27 N.W. 2d 193 (1947)-----2

Harms v. Oak Meadows, 619 N.W. 2d 201 (Minn. 2000)-----2

Jackson v. Minnesota Dep't. of Manpower Servs., 201 N.W.2d 62 (1973)-----4

King v. University, 387 N.W. 2d 675 (Minn. App. 1986) -----4

Ress v. Abbott Northwestern Hosp. Inc., 448 N.W. 2d 519 (Minn. 1989) -----2

Semanko v. Department of Employment Services, 309 Minn. 425, 244 N.W. 2d
663 (1976)-----4

Smith v. Masterson Personnel, Inc., 483 N.W. 2d 111 (Minn. App. 1992)-----4

Stottler v. Meyers Printing, 602 N.W. 2d 916 (Minn. App. 1999) -----2

Ullman v. Lutz, 55 N.W. 2d 57 (Minn. 1952)-----3

Weckerling v. McNiven Land Co., 42 N.W. 2d 701 (Minn. 1950) -----3

STATUTES

Minn. Stat. § 268.035, subd. 17 (2004) -----3

Minn. Stat. § 268.101, subd. 2 (2004)-----5

Minn. Stat § 268.101, subd. 2(e)(2004) -----2

Minn. Stat. § 268.105, subd. 7(a) (2004 and Supp. 2005)-----1

RULES

Minn. R. Civ. App. P. 115 -----1

I. LEGAL ISSUE

Determinations of disqualification become final under the law if not appealed within 30 calendar days of mailing. Theodis Kennedy's determination of disqualification was mailed July 20, 2005, and he appealed August 20, 2005, 31 days later. Did the department unemployment law judge err in dismissing his appeal filed after the determination had become final?

II. STATEMENT OF THE CASE

Theodis Kennedy was sent a determination of disqualification on July 20, 2005. He appealed the determination on August 20, 2005, outside the statutory 30-day appeal period. Because the determination became final when it was not timely appealed, a department unemployment law judge determined that the department lacked jurisdiction to consider any appeal to Kennedy's initial determination and dismissed the appeal. (Appendix to Department's Brief, A3-A4)

Kennedy filed a request for reconsideration to the unemployment law judge, who issued an order affirming the initial order of dismissal. (Appendix, A1-A2) Effective June 25, 2005, the legislature eliminated the process of de novo review by the senior unemployment review judge, replacing it with a process of reconsideration by the unemployment law judge who considered the initial case.

This matter now comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Kennedy under Minn. Stat. §268.105, subd. 7(a) (2004 and Supp. 2005) and Minn. R. Civ. App. P. 115.

III. STATEMENT OF FACTS

Kennedy established an unemployment benefit account following separation from employment. (Return-1) Kennedy was sent a determination of disqualification, based on the adjudicator's decision that she was discharged for employment misconduct. (Return-1) The determination was mailed on July 20, 2005, and stated that it would become final unless it was appealed within 30 calendar days of the date it was mailed. (Return-1)

Kennedy appealed the determination on August 20, 2005. (Return-1)

IV. STANDARD OF REVIEW

When the final agency decision concludes that the department lacks jurisdiction to consider an appeal, the only question before the Court is whether the agency decision was correct in that respect. *Christgau v. Fine*, 223 Minn. 452, 463, 27 N.W. 2d 193, 199 (1947). The question of whether the agency erred in upholding the dismissal of an appeal for lack of jurisdiction is a question of law. *Stottler v. Meyers Printing*, 602 N.W. 2d 916, 918 (Minn. App. 1999). The Courts exercise independent judgment on issues of law. *Ress v. Abbott Northwestern Hosp. Inc.*, 448 N.W. 2d 519, 623 (Minn. 1989). Jurisdiction is a question of law that the Courts review de novo. *Harms v. Oak Meadows*, 619 N.W. 2d 201 (Minn. 2000).

V. ARGUMENT

Kennedy did not appeal the determination of disqualification within the time period prescribed by statute. Minn. Stat § 268.101, subd. 2(e) (2004) states:

A determination of disqualification * * * shall be final unless an appeal is filed by the applicant * * * within 30 calendar days after sending. * * *.

Id.

In his brief to the Court, Kennedy argues only the merits of his case, and he does not address the jurisdictional issue on which the case was dismissed. In his request for reconsideration to the unemployment law judge, he claimed to have sent the appeal letter prior to August 20 to the Department's old address on Robert Street.¹ (Return-3) However, the determination clearly states that an appeal by mail is to be made to the post office box indicated. (Return-1) Under Minn. Stat. § 268.035, subd. 17, Kennedy's claimed mailing was not a proper filing. Under that subdivision, filing by mail requires "the depositing of the document in the United States mail properly addressed to the department with postage prepaid." Assuming that what he says is correct, Kennedy did not address the appeal letter "properly" to the department address listed on the determination. That post office box address has remained the same for more than five years.

In any event, in 1950, the Court stated that: "[i]t is a general rule that is well established in other jurisdictions as well as our own," that the statutory time for appeal "cannot be extended by mere judicial fiat, * * *." *Weckerling v. McNiven Land Co.*, 42 N.W. 2d 701, 704 (Minn. 1950). *See also Ullman v. Lutz*,

¹Department headquarters moved to 332 Minnesota Street in late September and early October 2004.

55 N.W. 2d 57 (Minn. 1952). (appellate court may not extend time for an appeal, except as specifically authorized by law).

In *Semanko v. Department of Employment Services*, 309 Minn. 425, 244 N.W. 2d 663, 666 (1976), the Supreme Court, in upholding the commissioner's dismissal of an appeal filed on the eighth day of the then seven day appeal time period, stated that the statutory time period for appeal was "absolute and unambiguous." In *King v. University*, 387 N.W. 2d 675, 677 (Minn. App. 1986), the court stated:

In numerous instances, the courts of this jurisdiction have held that statutes designating the time for appeal from decisions of all levels of the department should be strictly construed, regardless of mitigating circumstances.

(citations omitted)

Courts of this jurisdiction have repeatedly held that the date of mailing of the determination commences the time period for appeal. *Smith v. Masterson Personnel, Inc.*, 483 N.W. 2d 111, 112 (Minn. App. 1992); *Jackson v. Minnesota Dep't. of Manpower Servs.*, 201 N.W.2d 62, 63 (1973). There is no dispute that the determination was mailed on July 20, 2005. The statute, as interpreted in extensive case law, does not allow the department to exercise jurisdiction over his appeal.

Because no appeal to the determination was filed with the department prior to the expiration of the appeal period, the unemployment law judge had no

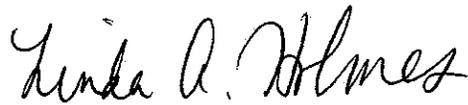
alternative but to dismiss Kennedy's appeal for lack of jurisdiction under Minn. Stat. §268.101, subd. 2 (2004) and the controlling case law.

VI. CONCLUSION

The unemployment law judge did not err in dismissing Kennedy's appeal filed 31 calendar days after the mailing of the initial determination.

The Department respectfully asks the Court to affirm the final agency decision.

Dated this 30th day of December, 2005.



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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) (with amendments effective July 1, 2007).