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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1167**

Kathleen Conway,
Relator,

vs.

Zachary Vex Effects, Ltd.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 25, 2013
Affirmed
Chutich, Judge**

Department of Employment and Economic Development
File No. 27606382-5

Kathleen Conway, Brooklyn, New York (pro se relator)

Zachary Vex Effects, Ltd., Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Relator Kathleen Conway challenges the unemployment-law judge's dismissal of her appeal from an ineligibility determination as untimely arguing that she never received the notice of ineligibility. Because Conway's appeal was untimely, we affirm.

FACTS

In August 2010, relator Kathleen Conway applied for unemployment benefits and established a benefit account with respondent Department of Employment and Economic Development (the department) after her employment with the United States Census Bureau ended. While receiving unemployment benefits, Conway continued to work part-time at Zachary Vex Effects, Ltd (Zachary Vex) for one to two hours every two weeks as a janitor. Conway quit her employment at Zachary Vex on December 7, 2010, and relocated to New York.

In 2011, Zachary Vex notified the department that Conway quit her employment with the company. The department issued a Determination of Ineligibility, finding Conway ineligible for benefits beginning December 12, 2010, which resulted in an overpayment of benefits totaling \$2,754. On May 2, 2011, the department mailed the determination to the address on record with the department, Conway's Minneapolis address. The determination stated that it would be final unless Conway appealed by May 23, 2011.

Conway filed an appeal on January 17, 2012, which was dismissed as untimely. Conway requested reconsideration, contending that she never received the ineligibility determination.

The unemployment-law judge conducted a telephone hearing to determine whether Conway's appeal was timely. Conway testified that, before she moved to New York, she forwarded her mail from her Minneapolis address to her parents' address in Savage, but her parents never received the ineligibility notice from the department. Conway further testified that she did not notify the department that she had moved and changed her address until December 2011, after she received a Notice of Revenue Recapture. The department submitted an affidavit from a supervisor explaining the department's mailing procedures and stating that those procedures were followed in mailing Conway's ineligibility determination.

The unemployment-law judge concluded that Conway did not appeal within the required time period and dismissed the appeal as untimely. Conway requested reconsideration, and the judge affirmed its order. Conway now appeals.

DECISION

An unemployment-law judge's 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).

Minn. Stat. § 268.101, subd. 2(f) (2012) provides that a "determination of ineligibility is final unless an appeal is filed by the applicant . . . within 20 calendar days." Here, the unemployment-law judge found that the department mailed Conway the

determination of ineligibility on May 2, 2011. *See Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012) (“The date of the notice’s mailing, not its receipt, generally commences the appeal time period.”). Substantial evidence in the record supports this finding. Accordingly, Conway needed to appeal by May 23, 2011, but she did not do so until January 17, 2012. Neither party disputes that Conway’s appeal was not within the 20-day statutory period.

Conway argues that this court should excuse her untimely appeal because she never received the ineligibility determination due to an error by the post office or the department. Although Conway offers reasons why her appeal was untimely, the deadline for appealing an ineligibility determination is “absolute and unambiguous.” *Semanko v. Dep’t of Emp’t Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976). While this rule is harsh, especially in this case where the alleged overpayment is not reviewable, the law provides no extensions or exceptions. *See Kennedy*, 714 N.W.2d at 739–40 (concluding that an appeal filed one day late was untimely). “When an appeal from a disqualification determination is untimely, it must be dismissed for lack of jurisdiction.” *Id.* at 740.

Because Conway failed to file an appeal by May 23, 2011, her determination of ineligibility became final. The unemployment-law judge properly dismissed her appeal.

Affirmed.