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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1064**

Judith A. Kramer,  
Relator,

vs.

Oracle America, Inc.,  
Respondent,

Department of Employment  
and Economic Development,  
Respondent.

**Filed February 3, 2014  
Affirmed  
Johnson, Judge**

Department of Employment and Economic Development  
File No. 30546785-3

Daniel S. Listug, Listug Law Office, P.L.L.C., Anoka, Minnesota (for relator)

Oracle America, Inc., Redwood Shores, California (respondent)

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

Considered and decided by Kirk, Presiding Judge; Johnson, Judge; and Toussaint,  
Judge.\*

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\*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**JOHNSON**, Judge

Judith A. Kramer challenges the dismissal of her administrative appeal of an initial determination of ineligibility for unemployment benefits. We conclude that the administrative appeal was properly dismissed because it was not filed within the applicable 20-day period. Therefore, we affirm.

### FACTS

Kramer was employed by Oracle America, Inc., until November 2012, when she quit. On November 25, 2012, she applied for unemployment benefits with the department of employment and economic development.

On December 20, 2012, the department issued an initial determination under issue identification number 30546785-1 (the ‘85 matter). The initial determination in the ‘85 matter states that Kramer is ineligible for benefits because she quit her employment without a good reason caused by her employer. The notice also states that the determination “will become final unless an appeal is filed by Wednesday, January 9, 2013.” The notice explains that the “filed date” is “the postmark date, if mailed, or the date received by the Unemployment Insurance Program, if sent by fax or internet.” The notice further states that the “recommended method for filing an appeal is by internet” but explains how to file by any of three methods: internet, fax, and mail.

On December 21, 2012, the department issued an initial determination of ineligibility under issue identification number 30546786-1 (the ‘86 matter). The initial determination in the ‘86 matter states that any benefits to which Kramer might be entitled

would be delayed by her receipt of severance payments. The notice in the '86 matter also contains instructions on filing an administrative appeal and provided an appeal deadline of January 10, 2013.

On March 26, 2013, Kramer filed an administrative appeal of the determination of ineligibility in the '85 matter by submitting it to the department's website. She explained in her on-line submission that she quit her job because her supervisor was unethical, harassing, retaliatory, uncommunicative, and unfair. In her submission, Kramer included the following explanation for why she was filing the appeal more than three months late: "I misunderstood the notice. I thought it was denied because of my severance. Not because of my situation. I thought I would get benefits once my severance ran out."

On March 27, 2013, an unemployment law judge (ULJ) dismissed Kramer's administrative appeal as untimely. Two days later, Kramer submitted a letter to the ULJ requesting reconsideration of the dismissal and providing details concerning her supervisor's behavior. On April 4, 2013, Kramer submitted a request for reconsideration to the department's website and referred to her March 29 letter. On April 18, 2013, Kramer submitted another letter to the ULJ to explain that she did not earlier file an administrative appeal because she misunderstood the reasons for her ineligibility and believed that she would start to receive benefits after her severance payments were discontinued. On May 17, 2013, the ULJ affirmed the dismissal of Kramer's administrative appeal. Kramer now appeals to this court by way of a writ of certiorari.

## DECISION

Kramer argues that the ULJ erred by dismissing her administrative appeal as untimely.

If a person is determined to be ineligible for unemployment benefits, the department must notify the employer and the applicant by mail or electronic transmission. Minn. Stat. § 268.101, subd. 2(a) (2012). “A determination of . . . ineligibility is final unless an appeal is filed by the applicant . . . within 20 calendar days after sending.” *Id.*, subd. 2(f). “An untimely appeal from a determination must be dismissed for lack of jurisdiction.” *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012). We apply a *de novo* standard of review to a ULJ’s decision to dismiss an administrative appeal as untimely. *Kennedy v. American Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

The statutory requirement concerning the time for an administrative appeal is “strictly construed against the relator.” *Rowe v. Dep’t of Emp’t & Econ. Dev.*, 704 N.W.2d 191, 196 (Minn. App. 2005). In *Semanko v. Dep’t of Emp’t Servs.*, 309 Minn. 425, 244 N.W.2d 663 (1976), the supreme court concluded that an applicant’s period for an administrative appeal (which then was seven days) was “absolute and unambiguous” such that the applicant was not entitled to a hearing to show “compelling good cause” for his late appeal. *Id.* at 428-30, 244 N.W.2d at 665-66; *see also Jackson v. Minnesota Dep’t of Manpower Servs.*, 296 Minn. 500, 501, 207 N.W.2d 62, 63 (1973) (holding that administrative appeal mailed one day late was untimely). This court came to the same conclusion in *Kennedy*, holding that the rule of *Semanko* applied to the then-existing 30-

day appeal period. 714 N.W.2d at 739-40. After this court's opinion in *Kennedy*, the legislature amended the statute to establish a 20-day period for an administrative appeal. 2007 Minn. Laws. ch. 128, art. 5, § 7, at 979 (codified at Minn. Stat. § 268.101, subd. 2(f)). Although the length of the period for an administrative appeal has changed over time, the reasoning of *Semanko* and *Kennedy* continues to apply. See *Kangas v. Industrial Welders & Machinists, Inc.*, 814 N.W.2d 97, 100 (Minn. App. 2012) (citing *Kennedy*, 714 N.W.2d at 739-40).

In this case, it is undisputed that the department issued an initial determination of ineligibility in the '85 matter on December 20, 2012. It also is undisputed that the department's notice informed Kramer that she must file an administrative appeal by January 9, 2013. The ULJ determined that Kramer did not file an administrative appeal until her submission to the department's website on March 26, 2013. Kramer concedes that her on-line submission was not a timely administrative appeal. Given those facts, Kramer's administrative appeal must be considered untimely. See *Semanko*, 309 Minn. at 430, 244 N.W.2d at 666; *Kangas*, 814 N.W.2d at 100; *Kennedy*, 714 N.W.2d at 739-40.

Kramer attempts to avoid this conclusion by contending that she submitted a timely administrative appeal to the department by telephone. She contends that, on or about January 4, 2013, she contacted an unemployment specialist at the department by telephone to inquire about the status of her benefits. She further contends that the specialist told her that she had one issue pending and that she would begin to receive unemployment benefits after March 9, 2013, when her severance payments would be

discontinued. She asserts that she relied on the specialist's representations. She also asserts that the specialist never informed her of her appeal rights or the proper method to file an appeal. Kramer contends that this telephone call constitutes a timely administrative appeal.

Kramer's argument is without merit for two reasons. First, her argument is inconsistent with the statute governing administrative appeals. A person seeking unemployment benefits may submit an administrative appeal by telephone only if the department has clearly stated in an initial determination that such a method is permissible. Minn. Stat. §§ 268.035, subd. 12d, .103, subd. 1 (2012); *see also Waletich Corp. v. Commissioner of Emp't & Econ. Dev.*, 682 N.W.2d 663, 666 (Minn. App. 2004) (applying Minn. Stat. § 268.103 (2002)). In this case, however, the notice of the department's initial determination sets forth only three permissible methods of filing an administrative appeal: on-line, by fax, or by mail. The notice does not state that the telephone is an acceptable means by which to file an administrative appeal. Thus, the telephone call to which Kramer refers cannot constitute an administrative appeal.

Second, even if Kramer could have submitted an administrative appeal by telephone, the agency record in this case indicates that she did not actually do so. In the on-line administrative appeal she submitted on March 26, 2013, Kramer responded to a question concerning the reason why her administrative appeal was untimely by stating that she misunderstood the written notices that she received from the department. She did not respond by stating that she previously had submitted an administrative appeal by telephone. Similarly, when she requested reconsideration of the ULJ's dismissal of her

March 26, 2013 on-line administrative appeal, she again stated that she “didn’t file an appeal in a timely fashion” because she misunderstood the notices she had received from the department. She refers to her January 4, 2013 telephone call, but she does not state that she called the department on that date for the purpose of appealing the initial determination of ineligibility. That contention is being made for the first time to this court. We must reject Kramer’s attempt to recharacterize the procedural history of this matter because her appellate brief is inconsistent with the statements she made to the department while seeking unemployment benefits.

Thus, the unemployment law judge properly dismissed Kramer’s administrative appeal because Kramer did not submit an administrative appeal by the proper means within the 20-day deadline.

**Affirmed.**