

No. A11-1207
STATE OF MINNESOTA
IN COURT OF APPEALS

3

Eric Kangas,

Respondent,

vs.

Industrial Welders and Machinists, Inc.,

Relator,

and

**Department of Employment and Economic
Development, Respondent,**

Respondent.

RELATOR'S BRIEF AND APPENDIX

David L. Tilden
Attorney Registration No. 0388539
HANFT FRIDE,
A Professional Association
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094
218/722-4766

Attorneys for Relator

Eric Kangas
6001 North Tischer Road
Duluth, MN 55804-9709
218/590-3793
Respondent Pro Se

Lee B. Nelson
Attorney Registration No. 77999
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
612/259-7117
Attorneys for Respondent

Andrew P. Pierce
Attorney Registration No. 386965
306 West Superior Street #1200
Duluth, MN 55802
218/723-1990
*Last attorney of record
For Respondent Kangas*

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).

TABLE OF CONTENTS

Page

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIESii

LEGAL ISSUES 1

STATEMENT OF THE CASE AND FACTS 2

ARGUMENT..... 4

 I. STANDARD OF REVIEW 4

 II. THE UNEMPLOYMENT LAW JUDGE INCORRECTLY CONSIDERED
 RESPONDENT KANGAS’ APPEAL OF INELIGIBILITY BASED
 UPON EMPLOYMENT MISCONDUCT AS THE DETERMINATION
 WAS NEVER APPEALED..... 5

 A. Respondent Kangas failed to file an appeal of the ineligibility
 determination based upon employee misconduct..... 5

 B. The time limit for appealing a determination of ineligibility for
 unemployment-compensation is jurisdictional..... 8

TABLE OF AUTHORITIES

CASES:

	<u>Page</u>
<u>Davis v. Danielson</u> , 558 N.W.2d 286, 287 (Minn. App. 1997).....	7
<u>Hart-Wilke v. Aetna Life Ins.</u> , 550 N.W.2d 310, 313-14 (Minn. App. 1996).....	9
<u>In re Emmanuel Nursing Home</u> , 411 N.W.2d 511, 516 (Minn. App. 1987).....	8
<u>Kennedy v. Am. Paper Recycling Corp.</u> , 714 N.W.2d 738 (Minn. Ct. App. 2006).....	1, 9
<u>King v. Univ. of Minn.</u> , 387 N.W.2d 675, 677 (Minn. App. 1986)	1, 8
<u>McKee v. Ramsey County</u> , 310 Minn. 192, 195, 245 N.W.2d 460, 462 (1976).....	8
<u>Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n</u> , 369 N.W.2d 530, 534 (Minn. 1985)	8
<u>Ress v. Abbott Nw. Hosp., Inc.</u> , 448 N.W.2d 519, 523 (Minn. 1989)	5
<u>Rowe v. Dep't of Empl. & Econ. Dev.</u> , 704 N.W.2d 191, 194 (Minn. Ct. App. 2005)	5
<u>Semanko v. Department of Employment Services</u> , 309 Minn. 425 (Minn. 1976).....	1, 9
<u>State ex rel. Spurck v. Civil Serv. Bd.</u> , 226 Minn. 253, 32 N.W.2d 583 (1948).....	1, 8

STATUTES:

Minn. Stat. § 268.101.....	1, 8, 9
Minn. Stat. § 268.103.....	1, 6

LEGAL ISSUES

I. **DID THE UNEMPLOYMENT LAW JUDGE ERROR IN CONSIDERING AND RULING ON AN APPEAL OF RESPONDENT KANGAS' INELIGIBILITY DETERMINATION BASED UPON MISCONDUCT GIVEN THE FACT THAT IT WAS NOT APPEALED WITHIN THE STATUTORY TIMEFRAME?**

Answer: Yes. The time limit for appealing a determination of ineligibility for unemployment-compensation benefits is jurisdictional. Regardless of any mitigating circumstances, untimely appeals may not be heard.

Apposite Authority:

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

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

Semanko v. Department of Employment Services, 309 Minn. 425 (Minn. 1976)

State ex rel. Spurck v. Civil Serv. Bd., 226 Minn. 253, 32 N.W.2d 583 (1948)

Minn. Stat. § 268.101

Minn. Stat. § 268.103

STATEMENT OF THE CASE AND FACTS

As the sole issue before the Court is whether the ineligibility determination for misconduct was properly appealed, the specifics of Respondent Kangas' discharge are not relevant to the issue at hand. On February 27, 2011, Respondent Kangas filed for unemployment benefits. (Relator's Appendix "RA" 1). On March 10, 2011, Respondent Kangas was sent an ineligibility determination based upon employee misconduct. (RA 87). The deadline to file an appeal for the misconduct determination was March 30, 2011. (RA 87). On March 25, 2011, Respondent Kangas was sent an additional ineligibility determination based upon availability-actively seeking. (RA 89). The deadline for filing the availability actively seeking determination was April 14, 2011. (RA 89).

On March 28, 2011, Respondent Kangas logged onto the Minnesota Unemployment Insurance website and appealed the availability-actively seeking determination (RA 91). Although the unemployment website is not officially part of the record, Relator would ask that the Court take judicial notice of its contents. The website provides specific instruction on how to file an electronic appeal. When Respondent Kangas logged in with his username, he was able to see that there were two ineligibility determinations pending. Each ineligibility determination had a button which would allow Respondent Kangas to individually appeal the determination. For whatever reason, Respondent Kangas only appealed the availability-actively seeking determination despite the clear presence of the misconduct determination on the same page. A screen capture from April 5, 2011, conclusively shows that the misconduct determination was never

appealed within the statutory timeframe. (RA 92).

On March 29, 2011, Relator Industrial Weldors was sent a Notice of Appeal. (RA 91). The Notice stated that “[o]n Monday, March 28, 2011, Eric S Kangas appealed the Ability-Availability-Actively Seeking determination.” (RA 91). A hearing was set for April 8, 2011. (RA 91). The notice stated that “[i]ssues to be Considered at this Hearing: The Ability-Availability-Actively Seeking issue.” (RA 91).

By the time of the hearing, Respondent Kangas’ appeal deadline for the misconduct determination had run. At the start of the telephonic hearing, the question of which ineligibility determination was properly before the Unemployment Law Judge was discussed:

JUDGE HUBER: Okay, let’s see first before we can any further I just want to point out to everyone that what has been appealed here, the actual issue that was appealed was whether Mr. Kangas is available to accept and actively seeking suitable employment as of February 7, 2011. Now the appeal appears to have been filed on March 28 and there is a determination of ineligibility for the discharge, and I noticed that that was mailed on March 10, so it does look like the appeal would have been within the deadline for that particular discharge issue. So we can go forward and discuss either or both issues today. And just given the documents that are in front of me and the number of witnesses by the employer, I’m assuming that the employer is prepared to go forward to discuss the discharge issue as well, is that correct.

MR. TILDEN: Yes judge. I would like to note for the record however, that it’s our position that the misconduct ineligibility determination was not formally appealed and therefore, is not properly before us today and we would not raise that argument.

JUDGE HUBER: Okay, okay, and with that before the applicant, as far as...as far as you intended, did you intend to appeal the availability-actively seeking issue or the discharge issues or both.

MR. PIERCE: We planned to appeal both Your Honor. Our position is that I think technically Mr. Kangas's paper work indicated the one issue, whether he was physically able to return to work. However, when you look at the documents that he submitted and the reasons for his request, he talks about both issues. He's talking about the fact that you know they're saying he was discharged for misconduct. And moreover, at the time this misconduct---had come up, he had already put in an appeal and at the time he was pro se. So for all of those reasons I think the court has a very good jurisdiction and we should continue with the entire appeal.

JUDGE HUBER: All right, and just so, I was actually just asking because I did get from that particular document that the primary, it looked like the main concern and the reason for the appeal was actually the discharge, not, it was the first thing discussed. I'm noting that it was within the appeal deadline. We do take a rather liberal approach to what constitutes an appeal request.

(RA 5-6).

The Unemployment Law Judge overturned both the misconduct and availability-actively seeking determinations. Relator Industrial Weldors sought reconsideration of the misconduct determination. The Unemployment Law Judge upheld his ruling. This appeal followed.

ARGUMENT

I. STANDARD OF REVIEW

The issue before the Court is purely a legal one. While the Court of Appeals will

defer to the factual findings of an unemployment law judge if they are reasonably supported by evidence in the record; the Court of Appeals exercises independent judgment with respect to questions of law. Ress v. Abbott Nw. Hosp., Inc., 448 N.W.2d 519, 523 (Minn. 1989). The timeliness of an appeal presents a question of law, which is review de novo. Rowe v. Dep't of Empl. & Econ. Dev., 704 N.W.2d 191, 194 (Minn. Ct. App. 2005).

II. THE UNEMPLOYMENT LAW JUDGE INCORRECTLY CONSIDERED RESPONDENT KANGAS' APPEAL OF INELIGIBILITY BASED UPON EMPLOYEE MISCONDUCT AS THE MATTER WAS NEVER APPEALED.

The sole issue before the Court is an extremely narrow one. That is, did Respondent Kangas' admitted failure to appeal the misconduct determination bar the Unemployment Law Judge from considering the issue at the hearing after the appeal period had run? Respondent Kangas availed himself of the online filing system for unemployment appeals. By doing so, Respondent Kangas was bound by the procedural rules for filing appeals electronically. The Unemployment Law Judge had no authority to hear and decide the misconduct appeal after the statutory appeal period had run.

A. Respondent Kangas failed to file an appeal of the ineligibility determination based upon employee misconduct.

Respondent Kangas received two distinct and separately mailed determinations of ineligibility. The first was based upon employment misconduct, while the second was based on availability-actively seeking. Respondent Kangas timely filed an appeal of the ineligibility determination based upon availability-actively seeking via electronic means on March 28, 2011. It is undisputed that Respondent Kangas never filed an appeal of the

ineligibility determination by electronic means or otherwise. (RA 94). Minn. Stat. § 268.103 governs the methods by which an individual may appeal an ineligibility determination to the Department of Employment and Economic Development. Minn. Stat. § 268.103 provides in relevant part that:

Subdivision 1. In commissioner's discretion.

(a) The commissioner may allow an appeal to be filed by electronic transmission. If the commissioner allows an appeal to be filed by electronic transmission, that must be clearly set out on the determination or decision subject to appeal.

(b) The commissioner may restrict the manner and format under which an appeal by electronic transmission may be filed. Restrictions to a specific telephone number or electronic address must be clearly set out on the determination or decision subject to appeal.

(c) 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.

(d) Subject to subdivision 2, this section applies to requests for reconsideration under section 268.105, subdivision 2.

As noted in subdivision 1(a), the Commissioner has the discretion to allow appeal by electronic format. Minn. Stat. § 268.103. The Commissioner may also restrict the manner and format under which an appeal by electronic transmission may be filed. Id. at subd. 1(b). When logging on to file electronically, Respondent Kangas received the following instructions in regard to electronic filing of an appeal:

Applicants:

Step-by-step instructions to file an appeal using the Applicant Self-Service online System:

1. After logging in to your account, on *My Home Page*, select View and Maintain My Account.
2. Click on Determination and Issue Summary.
3. Under the heading 'Determination of Eligibility and Decisions', click on the Issue Identification Number of the determination that makes you ineligible.
4. Under the heading 'Determination of Eligibility', next to the appeal by date, click on File.

While Respondent Kangas followed these instructions in regard to the availability actively seeking ineligibility determination, he failed to do so in relation to the misconduct ineligibility determination. By filing electronically, Respondent Kangas was bound by the "manner and format" set forth by the Commissioner. Minn. Stat. § 268.103 subd. 1(c) states that "information requested by the commissioner when an appeal is filed by electronic transmission must be supplied or the communication *does not constitute an appeal. . .*" In the present case, not only did Respondent Kangas fail to provide requested information, he failed to actually file an electronic appeal of the ineligibility determination based upon misconduct. Indeed, even the Notice of Appeal issued to Relator and other interested parties specifically limited the issue to be considered at the hearing to the availability-actively seeking determination.

Finally, the fact that Respondent Kangas filed the online appeal form *pro se*, does not excuse his failure to follow procedural rules. Although *pro se* litigants are given some leeway by the court system, all litigants, whether represented or *pro se*, are required to

follow procedural rules. Davis v. Danielson, 558 N.W.2d 286, 287 (Minn. App. 1997).¹

B. The time limit for appealing a determination of ineligibility for unemployment-compensation is jurisdictional.

If Respondent Kangas did not appeal the determination of ineligibility based upon misconduct, then the Unemployment Law Judge lacked the authority to consider the issue. An administrative agency's jurisdiction depends entirely on the statute under which it operates. State ex rel. Spurck v. Civil Serv. Bd., 226 Minn. 253, 259, 32 N.W.2d 583, 586 (1948). The Unemployment Law Judge did not have the authority to enlarge the statutory timeframe for Respondent Kangas to appeal his misconduct determination. Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n, 369 N.W.2d 530, 534 (Minn. 1985). Where an agency acts without statutory authority, such action is void. McKee v. Ramsey County, 310 Minn. 192, 195, 245 N.W.2d 460, 462 (1976).

In the present case, Respondent Kangas had twenty (20) days, or until March 30, 2011, to appeal his misconduct determination. Minn. Stat. § 268.101, subd. 2(f). It is undisputed that he did not do so. If an applicant for unemployment-compensation benefits does not appeal a determination of benefit ineligibility within 20 days after it is sent, the determination becomes final. Id.; King v. Univ. of Minn., 387 N.W.2d 675, 677 (Minn. App. 1986) (stating that “the time for appeal from decisions of all levels of the department [of employment and economic development] should be strictly construed”). When a decision becomes final, the department is deprived of jurisdiction to conduct

¹ It should also be noted that Respondent Kangas' online appeal form indicates that an attorney would be representing him at the hearing. Presumably, that same attorney was available for advice in regard to determining whether the appeal was properly filed.

further review. In re Emmanuel Nursing Home, 411 N.W.2d 511, 516 (Minn. App. 1987).

There is no “good faith” exception to the timing rules nor are mitigating circumstances to be considered. “The time limitation provided in [the unemployment-insurance statute] is absolute and unambiguous.” Semanko v. Dep’t of Emp’t Servs., 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976) (discussing then-applicable appeal period). The time limit for appealing a determination of ineligibility for unemployment-compensation benefits is jurisdictional. See Kennedy v. Am. Paper Recycling Corp., 714 N.W.2d 738 (Minn. App. 2006). (stating that “[w]hen an appeal from [an ineligibility] determination is untimely, it must be dismissed for lack of jurisdiction”). Regardless of any good faith efforts to appeal or any alleged mitigating circumstances, untimely appeals must be dismissed. See, e.g., Hart-Wilke v. Aetna Life Ins., 550 N.W.2d 310, 313-14 (Minn. App. 1996) (concluding that claim that overpayment determination was mailed to relator's old address was not a defense to untimely appeal of that determination).

It is undisputed that Respondent Kangas failed to electronically, or otherwise, appeal the ineligibility determination based upon misconduct. The Unemployment Law Judge’s authority is based solely upon the statutory powers granted by the state. Minn. Stat. § 268.101, subd. 2(f) specifically requires that ineligibility determinations be appealed within twenty (20) days or they become final. Respondent Kangas never appealed his misconduct determination. By the time the hearing occurred on April 8,

2011, the misconduct determination had become final and the Unemployment Law Judge lacked the statutory authority to hear the misconduct appeal.

CONCLUSION

Based on the foregoing arguments, Relator respectfully requests that this Court reverse the Unemployment Law Judge's reversal of Respondent Kangas' determination of ineligibility based upon employee misconduct.

Dated: October 7, 2011.

HANFT FRIDE,
A Professional Association

By David Tilden

David L. Tilden
Attorney Registration No. 388539
Attorneys for Relator
1000 U.S. Bank Place
130 West Superior Street
Duluth, Minnesota 55802-2094
(218) 722-4766

NO. A11-1207
STATE OF MINNESOTA
IN COURT OF APPEALS

Eric Kangas,

Respondent,

vs.

**CERTIFICATION OF
BRIEF LENGTH**

Industrial Welders and Machinists, Inc.

Relator,

and

Department of Employment and Economic
Development,

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with proportional font. The length of this brief is 2,253 words. This brief was prepared using Microsoft Word 2003. The word processing program has been applied specifically to include all text, including headings, footnotes and quotations.

Dated: October 7, 2011.

HANFT FRIDE,
A Professional Association

By 

David L. Tilden
Attorney Registration No. 388539
Attorneys for Relator
1000 U.S. Bank Place
130 West Superior Street
Duluth, Minnesota 55802-2094
(218) 722-4766