

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

Eric Kangas,

Respondent,

vs.

Industrial Welders and Machinists, Inc.,

Relator,

and

Department of Employment and Economic
Development,

Respondent.

RELATOR'S REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
LEGAL ISSUES	1
ARGUMENT	2
CONCLUSION.....	3

TABLE OF AUTHORITIES

STATUTES:

Minn. Stat. § 268.103, Subd. 1(c).....	2
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ARGUMENT

In its Brief, Respondent Department of Employment concedes that if the Respondent Kangas' misconduct ineligibility determination was not properly appealed, then the Unemployment Law Judge lacked the jurisdiction to adjudicate the matter. The sole issue of dispute between the parties is whether the misconduct determination was properly appealed.

Respondent Department of Employment asserts that an appeal of an unemployment determination is properly perfected by the submission of a written statement setting forth the grounds for the appeal. Further, Respondent Department of Employment alleges that this standard applies to both online and mailed appeals. This argument fails for several reasons. First, Respondent's argument fails to take into account that there were two pending determinations, only one of which was appealed. Second, it is undisputed that Respondent Kangas failed to properly appeal the misconduct determination online.

There is no dispute over the fact that Respondent Kangas had *two* ineligibility determinations: one for misconduct and one for availability-actively-seeking. If there had been only one ineligibility determination, then the present appeal would not be necessary. Respondent Kangas, however, only appealed the availability-actively-seeking determination. This is supported by the notice received by Relator on March 29, 2011. 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). At no time, did Relator ever receive notice that the misconduct determination was being appealed. If Department of Employment’s interpretation of the unemployment statutes were to be followed, Relator would be robbed of notice as to the true basis of Respondent Kangas’ appeal.

In accordance with a statutory mandate, the Department set forth procedures and regulations for appealing unemployment determinations through an electronic portal. As discussed in Relator’s initial brief, unemployment applicants are provided with detailed instructions both on the paper ineligibility determinations as well as online as to how to properly make an appeal. The instructions indicate that each individual determination must be appealed. Nonetheless, Respondent Kangas failed to follow the procedures for properly appealing online by failing to actually appeal the misconduct determination. Minn. Stat. § 268.103 subd. 1(c) clearly 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. Such an omission constitutes a failure to properly appeal the misconduct determination under the controlling statutory framework.

This issue appears to be a matter of first impression before the Minnesota

Court of Appeals. That is, what impact does the existence of multiple ineligibility determinations have upon the appeal process? Respondent Department of Employment seems to assert that even if there are five separate ineligibility determinations based upon widely differing theories, a single brief statement addressing only one of the ineligibility determinations, when mailed or electronically submitted, properly perfects an appeal on all five ineligibility determinations. If this is the case, why did the Notice mailed to Relator reference only the availability-actively-seeking determination?

Relator respectfully submits that a plain reading of the rules cited by both Respondent Department of Employment as well as Relator requires that in cases where two or more ineligibility determinations are present, a brief statement as to one of the ineligibly determinations cannot be construed to properly perfect an appeal of all ineligibility determinations.

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: November 22, 2011.

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**CERTIFICATION OF
BRIEF LENGTH**

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, subds. 1 and 3, for a brief produced with proportional font. The length of this brief is 655 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: November 22, 2011.

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