STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2051

Ryan Mackedanz,
Relator,

vs.

Chas A Bernick, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 3, 2013
Affirmed
Hooten, Judge

Department of Employment and Economic Development
File No. 29120890-5

Ryan Mackedanz, Sartell, Minnesota (pro se relator)

Chas A Bernick, Inc., St. Cloud, Minnesota (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Kalitowski, Judge; and Willis, Judge.*

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

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Relator challenges the decision of an unemployment law judge (ULJ) dismissing his appeal from a determination of ineligibility as untimely, arguing that he never received the determination. Because the statute limiting the time to appeal an ineligibility determination is predicated on the sending of the determination rather than its receipt, we affirm.

FACTS

Relator Ryan Mackedanz worked for respondent Chas A. Bernick, Inc. until he was terminated on December 16, 2011. Relator initiated a benefits account on January 1, 2012. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that relator was ineligible, and sent him a determination of ineligibility dated January 19, 2012. This determination was mailed to relator at his residence, but relator indicated that he never received it. On June 18, 2012, relator faxed a letter "appealing this determination [of January 19, 2012] because it was just recently brought to [his] attention."

A telephonic hearing was held, during which relator testified that he resided at the address listed on the determination of ineligibility throughout the relevant time period and that he could receive mail at that address. However, relator testified that he did not receive the determination of ineligibility, and had "no idea" why he would not have received it. Relator further testified that he did not have internet access at that time and thus used DEED's telephone system to request benefits.

Relator testified that he first became aware of the determination of ineligibility around June 18, when he called DEED and talked to someone who "was going through all the files with [him] and she said that there's a letter here that's been returned." During the hearing, the ULJ noted that the record contained a copy of an envelope, postmarked May 9, 2012, which was addressed to relator but returned to DEED. Relator indicated that he had not received the determination of ineligibility and could not think of any reason why he did not receive it. Relator testified that he first received a copy of the determination when it was mailed to him, at the same address, after his conversation with the DEED representative in June.

In addition to relator's testimony, the ULJ also considered an affidavit from an office-services supervisor at DEED. The affidavit stated that there are procedures in place to ensure that mail to applicants is sent on the date listed on the documents, and that documents that are damaged or destroyed during the mailing process are regenerated the same day. The supervisor stated that, "[t]o the best of [her] knowledge," procedures for ensuring mail is sent on the date of the documents "were used to serve the Determination of Ineligibility on January 19, 2012, in [this] matter upon the parties, and there is no indication that the equipment malfunctioned on this date."

The ULJ found that DEED "mailed a determination of ineligibility to [relator] on January 19, 2012" at relator's address. Because relator did not appeal the determination of ineligibility within the designated timeframe, the ULJ decided that relator did not make a timely appeal, that the determination of ineligibility became final, and that the ULJ was therefore without "jurisdiction to hold a hearing on the merits." Relator

requested reconsideration, and the ULJ affirmed the determination that DEED mailed the determination and that relator's appeal was therefore untimely because the "statutory time periods [for appeal] are absolute." This certiorari appeal follows.

D E C I S I O N

"When reviewing a ULJ's decision, we may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012). A ULJ's decision to dismiss an appeal as untimely is a question of law, which this court reviews de novo. *Id.* However, the mailing of a determination of ineligibility is a "factual issue." *Mgmt. Five, Inc. v. Comm'r of Jobs & Training*, 485 N.W.2d 323, 325 (Minn. App. 1992). "A ULJ's factual findings are viewed in the light most favorable to the decision and will not be disturbed on appeal if there is substantial evidence to sustain those findings." *Godbout v. Dep't of Emp't & Econ. Dev.*, 827 N.W.2d 799, 801 (Minn. App. 2013).

"A determination of eligibility or determination of ineligibility is final unless an appeal is filed by the applicant or notified employer within 20 calendar days after sending." Minn. Stat. § 268.101, subd. 2(f) (2012). "The statute does not require actual notice for the appeal period to run." *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 382 (Minn. App. 1986). An untimely appeal from a determination must be dismissed for lack of jurisdiction. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 740 (Minn. App. 2006). The statutory time period "is absolute and unambiguous," *Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976), and "there are no

statutory provisions for extensions or exceptions to the appeal period." *Kennedy*, 714 N.W.2d at 740.

This court has previously held that, in the face of a factual challenge to the mailing of a determination from which appeal must be taken, a ULJ must "conduct[] a factual inquiry to distinguish the meritorious claims from the frivolous." *Mgmt. Five, Inc.*, 485 N.W.2d at 325. Such an inquiry was conducted in this case, and the ULJ found that the determination of ineligibility was correctly addressed to relator's home and mailed on January 19, 2012. These findings are supported by the letter itself and the affidavit from a DEED supervisor that, as a matter of routine practice and procedure, a determination of eligibility is mailed on the same date as listed on the document. Based upon this record, there is substantial evidence supporting the ULJ's finding that a determination of ineligibility was mailed to relator's address on January 19, 2012.

Relator argues that there is also substantial evidence, in the form of the "Mail Return" stamp on the determination of ineligibility and relator's testimony, that the determination was never received by relator. Consistent with relator's testimony that mail was not being delivered to him, relator notes that another unrelated, but correctly addressed, envelope from DEED which was mailed in May 2012 was also returned as undelivered. Thus, while there is substantial evidence supporting the ULJ's finding that the determination was properly mailed, there is also evidence that relator did not receive the determination.

The relevant statute starts the appeal period on the "sending" of the determination of ineligibility. Minn. Stat. § 268.101, subd. 2(f). This court has long stated that "[t]he

date of the notice's mailing, not its receipt, generally commences the appeal time period." *Stassen*, 814 N.W.2d at 29; *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992). Indeed, this rule applies even when the applicant did not receive an appealable document because of a delay caused by the post office. *Smith*, 483 N.W.2d at 112 (rejecting applicant's argument that the ULJ failed to consider a post office delay). We defer to the ULJ's finding of fact as to whether the determination of ineligibility was mailed on January 19, 2012, and the law clearly requires that an appeal be filed within 20 days of that mailing. As a result, the ULJ did not err in dismissing relator's appeal from the determination of ineligibility as untimely.

We note the unfairness of placing the burden of an error by the post office on the applicant.[1] But, "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2012). This court has "a strong interest in respecting the legislature's power to determine how to address competing interests." *Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 569 (Minn. App. 2012). In light of these considerations, we cannot conclude that the ULJ erred, though we encourage DEED, and perhaps the legislature, to take steps to alleviate the unfairness inherent in this result.

Affirmed.

[1] We also note that relator did not make a due process challenge to this result. *See Godbout*, 827 N.W.2d at 802–03 (examining a due process claim with respect to an appeal from a notice of overpayment of unemployment benefits).