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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2312**

Matthew Linn,
Relator,

vs.

Cook County Hospital District,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 21, 2013
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 29390933-5

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Cook County Hospital District, Grand Marais, Minnesota (respondent)

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Considered and decided by Worke, Presiding Judge; Johnson, Chief Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Matthew Linn challenges the dismissal of his 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

Linn was employed as a medical lab technician for the Cook County North Shore Hospital and Care Center until February 17, 2012, when he quit. Two days later, he applied for unemployment benefits with the department of employment and economic development.

On March 2, 2012, the department issued an initial determination of ineligibility under issue identification number 29390934 (hereinafter the ‘34 matter). The determination states that Linn is ineligible for unemployment benefits because he failed to show that he then was able to work by having his physician provide a statement. The notice states that the determination would “become final unless an appeal is filed by Thursday, March 22, 2012.”

On March 8, 2012, the department issued another initial determination of ineligibility under issue identification number 29390933 (hereinafter the ‘33 matter). This determination states that Linn is ineligible for unemployment benefits because he failed to show that it was medically necessary for him to quit his employment with the hospital. The notice states that the determination would “become final unless an appeal

is filed by Wednesday, March 28, 2012.” The ineligibility determination in the ‘33 matter is the determination at issue in the appeal to this court.

Also on March 8, 2012, Linn’s physician sent a statement to the department, indicating that Linn was “[t]otally unable to perform any type of work” beginning February 9, 2012, pending a further evaluation from the Mayo Clinic. On March 12, 2012, the department issued an amended determination of ineligibility in the ‘34 matter in which it acknowledged receipt of the physician’s statement and notified Linn that he was ineligible for unemployment benefits until he was able to work. On March 13, 2012, Linn’s physician sent another statement to the department, indicating this time that Linn had a limited ability to work from March 13, 2012, through March 23, 2012. On March 16, 2012, the department issued a second amended determination of ineligibility in the ‘34 matter, stating that Linn was ineligible for benefits from February 19, 2012, through March 12, 2012. On March 23, 2012, Linn’s physician completed a third statement, which said that Linn was able to work with restrictions from that date until June 30, 2012. The following day, Linn sent the March 23, 2012 statement to the department by U.S. mail.

On April 24, 2012, Linn submitted an administrative appeal of the initial determination of ineligibility in the ‘33 matter via the department’s web site. Linn submitted the administrative appeal 33 days after the deadline stated in the March 2, 2012 notice in the ‘34 matter and 27 days after the deadline stated in the March 8, 2012 notice in the ‘33 matter. An unemployment law judge (ULJ) dismissed the appeal as untimely. Linn requested reconsideration. On September 20, 2012, the ULJ conducted an

evidentiary hearing. The ULJ determined that the March 23, 2012 physician's statement that Linn mailed to the department on March 24, 2012, was related to the '34 matter. The ULJ also determined that the March 8 and 13, 2012 physician's statements did not relate to the '33 matter because they were sent by Linn's physician and, therefore, "cannot be interpreted to be a communication that Linn disagrees with the determination" of the '33 matter. The ULJ further noted that the March 23, 2012 physician's statement indicated that Linn was able to work and that there was "no indication Linn disagreed with the conclusion he quit" or "with the conclusion it was not medically necessary for the employment to end." The ULJ also explained that the March 23, 2012 physician's statement was not relevant to the time period during which Linn quit.

Accordingly, the ULJ concluded that Linn did not submit an administrative appeal in the '33 matter until April 24, 2012, after the deadline for an administrative appeal. The ULJ denied Linn's request for reconsideration. Linn appeals by way of a writ of certiorari.

DECISION

Linn argues that the ULJ erred by dismissing his administrative appeal in the '33 matter as untimely. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (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).

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 eligibility or determination of ineligibility is final unless an appeal is filed by the applicant or notified employer within 20 calendar days after sending. The determination must contain a prominent statement indicating the consequences of not appealing.” *Id.*, subd. 2(f).

The statutory requirement concerning the time for an administrative appeal is unforgiving. In *Semanko v. Department of Emp’t Servs.*, 309 Minn. 425, 244 N.W.2d 663 (1976), the supreme court concluded that an applicant’s appeal period (then 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 979-80. Although the length of the period for an administrative appeal has changed over time, the reasoning of *Semanko* and *Kennedy* continues to apply.

In this case, it is undisputed that the department issued an initial determination of ineligibility in the ‘33 matter on March 8, 2012. It also is undisputed that the initial determination informed Linn that he must file an administrative appeal by March 28,

2012. The ULJ found that Linn did not submit an administrative appeal in the ‘33 matter until April 24, 2012. If the ULJ is correct that Linn did not submit an administrative appeal in the ‘33 matter until April 24, 2012, his administrative appeal obviously would be untimely.

Linn attempts to avoid that conclusion by contending that the March 23, 2012 physician’s statement that he mailed to the department on March 24, 2012, constitutes a timely administrative appeal in the ‘33 matter. The legislature has specified the requirements of an administrative appeal: “A written statement delivered or mailed to the department that could reasonably be interpreted to mean that an involved applicant is in disagreement with a specific determination or decision is considered an appeal. No specific words need be used for the written statement to be considered an appeal.” Minn. Stat. § 268.103, subd. 2(b) (2012). In *Kangas v. Industrial Welders & Machinists, Inc.*, 814 N.W.2d 97 (Minn. App. 2012), this court interpreted that statute by holding that an administrative appeal to the department may be effective even if it is submitted in another matter, so long as the substance of the administrative appeal is directed to the ineligibility determination at issue and submitted in a timely manner. *Id.* at 99. Kangas had received two ineligibility determinations and intended to challenge one of them but submitted his administrative appeal in the wrong matter. *Id.* Because the substance of his submission made clear that he was challenging the other determination, and because the submission was timely with respect to the other determination, we reasoned that the submission was sufficient to constitute a “written statement delivered” pursuant to section 268.103, subdivision 2(b). *Id.* at 101.

As in *Kangas*, Linn submitted a document to the department via its web site in relation to a different matter before the deadline for an administrative appeal in the matter at issue on this appeal. But, unlike *Kangas*, the March 23, 2012 physician's statement was not submitted through the department's web site. More importantly, the statement did not indicate that Linn disagreed with the determination of ineligibility in the '33 matter, in which the department determined that Linn is ineligible because his resignation was not medically necessary. Rather, the March 23, 2012 physician's statement was relevant to the '34 matter, in which the department determined that Linn is ineligible because he failed to provide certification that he is able to work. On its face, the March 23, 2012 physician's statement speaks to the '34 matter by stating that Linn was able to work at that time; the statement is not relevant to the '33 matter because it says nothing about whether Linn was medically unable to work at the time of his resignation. The March 23, 2012 physician's statement was a follow-up to two prior statements, the first of which was sent on March 8, 2012, the very same day that the department issued its initial determination in the '33 matter. Furthermore, the March 23, 2012 physician's statement plainly was sent in response to the department's amended determination of ineligibility in the '34 matter. Moreover, Linn testified at the evidentiary hearing that he intended the March 23, 2012 physician's statement to show that he was available for work at that time so as to resolve the '34 matter.

Thus, the ULJ properly construed the March 23, 2012 physician's statement as a follow-up response to the determination of ineligibility in the '34 matter, not as an administrative appeal of the determination of ineligibility in the '33 matter. Accordingly,

the ULJ properly concluded that Linn did not submit an administrative appeal of the dismissal of the '33 matter within the 20-day deadline.

Affirmed.