STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1392

Derek Browen,
Relator,

vs.

Thompson Construction of Princeton,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 19, 2014
Affirmed
Toussaint, Judge[*]

Department of Employment and Economic Development
File No. 31300979-2

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

Thompson Construction of Princeton, Princeton, Minnesota (respondent)

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

Considered and decided by Johnson, Presiding Judge; Smith, Judge; and Toussaint, 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

TOUSSAINT, Judge

Relator Derek Browen challenges the decision of the unemployment-law judge (ULJ) dismissing his request for reconsideration as untimely. Because Browen did not file his request within the 20-day period, the ULJ properly dismissed the appeal and we affirm.[1]

D E C I S I O N

Browen began collecting unemployment benefits in October 2012. In the spring of 2013, Browen's employer sought the discontinuation of benefits alleging that Browen had refused an offer of suitable employment when it had offered Browen his old job back, which Browen refused. *See* Minn. Stat. § 268.085, subd. 13c(a) (2012) (disqualifying an applicant from unemployment benefits for eight weeks if the applicant refuses an offer of suitable employment without good cause). At the telephone hearing on the suitable-employment issue, the ULJ raised sua sponte the issue of whether Browen had quit his employment. Both parties waived their right to notice and agreed that the ULJ could determine both issues.

[1] Relator also challenges the ULJ's determination that he refused an offer of suitable employment. DEED concedes that the ULJ erred in its determination on this issue. Browen did not accept reemployment due to his union activities. *See* Minn. Stat. § 268.035, subd. 23a(g)(3) (2012) (stating that "suitable employment" is not employment that would require an applicant to resign from his or her labor organization). However, because we have affirmed the ULJ's determination that Browen quit his employment and was not entitled to benefits in the first place, the suitable-employment issue is moot and we will not address it.

The ULJ issued two separate orders. The first order, released on June 4, 2013, determined that Browen had quit employment without good cause. It contained a paragraph entitled "Request for Reconsideration," which stated: "this decision will be final unless a request for reconsideration is filed with the [ULJ] on or before Monday, June 24, 2013." The ULJ issued its second order on June 5, 2013, ruling that Browen had failed to accept an offer of suitable employment. It contained a similar paragraph notifying Browen that his request for reconsideration on this issue must be filed by June 25, 2013. Browen timely filed his request for reconsideration on the suitable-employment issue on June 6, 2013. But his second request for reconsideration on the quit-issue was not filed until July 9, 2013. The ULJ dismissed Browen's appeal on the quit-issue as untimely. As a result, the ULJ's determination that Browen was not entitled to unemployment benefits was affirmed, resulting in overpayment of $8,786 in benefits.

This court may reverse or modify a ULJ's decision if a petitioner's substantial rights were prejudiced because the ULJ's decision was made upon unlawful procedure or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(3), (4) (2012). "An agency decision to dismiss an appeal as untimely is a question of law, which we review de novo." *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

Appellant argues that the text of his June 6th appeal could reasonably be interpreted to challenge the ULJ's determination on both the quit and suitable-employment issues. *See Kangas v. Ind. Welders & Machinists, Inc.*, 814 N.W.2d 97, 101 (Minn. App. 2012) (holding that "all that is necessary to perfect an appeal is a

challenger's statement that can 'reasonably be interpreted to mean' that the relator is appealing a particular determination"). The text of appellant's June 6th appeal states:

> I am a local 563 member i [sic] start at norhtland [sic] concrete and mansonry [sic] june [sic] 12, 2013. This was set in stone during the last hearing. My union does not allow me to work outside of my union. I never refused employment from Thompson construction.

This statement cannot reasonably be interpreted to mean that Browen was challenging the ULJ's determination that he quit his employment in October 2012. The plain text of the statement indicates that he was only in disagreement with the suitable-employment issue, which specifically dealt with his union activities.

Alternatively, Browen argues that the procedure in which the ULJ raised the quit-issue at the hearing warrants reversal. At the hearing, Browen waived his right to notice and agreed that the ULJ could determine the quit issue. He received the ULJ's determination on the matter, which clearly indicated that the deadline to file an appeal was on June 24. Browen did not file his appeal on this issue until July 9, 2013. This was well past the 20-day deadline. The dismissal of Browen's untimely appeal was mandated by statute and by caselaw. *See* Minn. Stat. § 268.105, subds. 1(c), 2(a) (2012) (providing that the ULJ's decision will become final unless a request for reconsideration is filed with the ULJ "within 20 calendar days of the sending of the [ULJ's] decision"); *Kennedy*, 714 N.W.2d at 739-40 (stating that statutory appeal period for challenging an eligibility determination is "absolute and unambiguous" and an untimely appeal "must be dismissed for lack of jurisdiction"); *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App.

1986), *review denied* (Minn. Aug. 13, 1986) (holding that the time for appeal "should be strictly construed, regardless of mitigating circumstances").

There was no error in the ULJ's dismissal of Browen's appeal. Therefore, we affirm the ULJ's decision on reconsideration dismissing Browen's appeal as untimely without reaching the merits.

Affirmed.