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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0524**

John Stergios,
Relator,

vs.

Entegeee, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 10, 2014
Affirmed in part and reversed in part
Smith, Judge**

Department of Employment and Economic Development
File No. 29636110-6

John Stergios, St. Petersburg, Florida (pro se relator)

Entegeee, Inc., c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent)

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

Considered and decided by Smith, Presiding Judge; Johnson, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

SMITH, Judge

In this certiorari appeal from the decision of an unemployment-law judge, we affirm in part, reverse in part, and hold that (1) the amended determination of ineligibility directing relator to repay \$9,225 in overpaid benefits was without legal effect, and (2) the initial determination of ineligibility directing relator to repay \$560 in overpaid benefits is respondent department's final decision in this matter.

FACTS

Relator John Stergios established a benefits account and applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED) in March 2011. On May 16, 2012, DEED issued a determination of ineligibility, finding Stergios ineligible for unemployment benefits and directing him to repay \$560 in overpaid benefits. The determination also stated that the order would become final unless appealed by June 5. On July 2, DEED issued an amended determination adjusting the overpayment to \$9,225. The amended determination also stated that it would become final unless appealed by July 23. On August 29, Stergios faxed a letter to DEED requesting "a hearing regarding a late appeal." The letter did not specify whether Stergios sought to appeal the initial determination or the amended determination.¹

¹ In a separate determination on May 1, 2012, Stergios was found ineligible for unemployment benefits on the ground that he had quit his employment. He appealed this determination and the ULJ found that this ground did not disqualify him from receiving unemployment benefits. The May 16 determination was made on a separate basis not

On October 9, 2012, an unemployment-law judge (ULJ) recognized the July 2 determination and summarily dismissed Stergios's appeal as untimely, concluding that the ULJ had no legal authority to consider the appeal because the determination had become final by operation of law. Stergios requested reconsideration and the ULJ ordered an evidentiary hearing, which occurred before a different ULJ on December 27. During the hearing, Stergios acknowledged that DEED mailed the initial and amended determinations to the correct address and that he received them. He testified that he first responded in August 2012. On January 2, 2013, the second ULJ concluded that the May 16 and July 2 determinations both became final before Stergios appealed, rejected Stergios's appeal as untimely, and found that Stergios must repay \$9,225 in overpaid benefits. Stergios again requested reconsideration. On March 1, the first ULJ affirmed the January 2 decision, including the repayment amount.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the ULJ's findings, inferences, conclusions, or decision are "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105,

impacted by the decision that quitting his employment did not make him ineligible for unemployment benefits.

subd. 7(d) (2012). An agency's decision to dismiss an appeal as untimely is a question of law, which we review de novo. *Godbout v. Dep't of Emp't & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013).

A determination of ineligibility for unemployment benefits is final "unless an appeal is filed by the applicant . . . within 20 calendar days" after the determination is mailed. Minn. Stat. § 268.101, subd. 2(f) (2010). When a DEED decision becomes final because the time for appeal has passed, DEED is deprived of jurisdiction to conduct further review. *Rowe v. Dep't of Emp't & Econ. Dev.*, 704 N.W.2d 191, 196 (Minn. App. 2005). An untimely appeal from an ineligibility 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 limit for filing an appeal is strictly construed. See *Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976) (holding that time limit for appeal is "absolute and unambiguous"); *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992) (observing that "there are no extensions or exceptions to the . . . appeal period."); *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 382 (Minn. App. 1986) (stating that the time for appeal from an agency determination "is absolute and there are no provisions for extensions or exceptions").

Stergios makes various arguments based on the merits of his case. We do not reach those arguments because (1) the merits are not within the scope of this appeal, and (2) even if they were, we conclude that his appeal was untimely. DEED's May 16, 2012 determination became final by operation of Minn. Stat. § 268.101, subd. 2(f) on June 5. The ULJ was therefore correct in deciding that Stergios's August appeal was untimely as

to the May 16 determination. DEED made the second determination on July 2, 2012. The July 2 determination was without legal effect for the same reason that Stergios's appeal was untimely: DEED was deprived of legal authority when the May 16 determination became final on June 5. *See Rowe*, 704 N.W.2d at 196.

In *Rowe*, a DEED adjudicator determined that Rowe was obligated to repay \$4,554 in benefits that were paid while he was ineligible; Rowe appealed to a ULJ. *Id.* at 193. The ULJ decided that Rowe's period of ineligibility was even longer, but misstated the relevant dates in a way that eliminated the repayment requirement rather than increasing it. *Id.* The ULJ later issued an amended decision correcting the dates, and DEED informed Rowe that he owed \$10,764. *Id.* at 194. We held that the ULJ's amended decision was without legal effect because it was issued after the appeal period for the first decision had run, and DEED was therefore bound by the terms of the first decision. *Id.* at 196–97. We effectively reversed the second decision and reinstated the first one. *Id.* at 197.

In this case, DEED issued the initial determination of ineligibility and required repayment of \$560 on May 16, 2012. On June 5, the 20-day appeal period ended, the May 16 determination became final by operation of law, Stergios lost the opportunity to appeal it, and DEED lost jurisdiction to amend it. Accordingly, we (1) affirm the ULJ's decision that Stergios's appeal was untimely; (2) reverse the ULJ as to the repayment amount; and (3) recognize DEED's May 16, 2012 determination of ineligibility as the final and controlling decision.

Affirmed in part and reversed in part.