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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0439**

Mark Modjeski,
Relator,

vs.

Winona Mechanical, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 26, 2013
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 30524109-3

Mark R. Modjeski, Rollingstone, Minnesota (pro se relator)

Winona Mechanical, Inc., Winona, Minnesota (respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and
Smith, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Relator appeals an unemployment law judge's order affirming the dismissal of relator's administrative appeal as untimely, arguing that there were extenuating medical circumstances that should excuse his untimely appeal. We affirm.

FACTS

Relator Mark Modjeski ended his employment with Winona Mechanical in mid-April 2012 for medical reasons. Relator established a benefits account with the Department of Employment and Economic Development (DEED), and on December 17, 2012, DEED issued a determination letter to him. The determination letter explained that relator was ineligible for unemployment benefits, that he had been overpaid benefits in the amount of \$11,480.00, and that "[t]his determination will become final unless an appeal is filed by Monday, January 7, 2013."

Relator submitted an appeal online on January 10, three days after the appeal deadline. In his appeal application, relator explained that he filed late because "I was confused as I thought my benefits were exhausted so [I] no longer thought I qualified." A telephonic hearing was set with an unemployment law judge (ULJ) for January 24.

On January 11, the ULJ issued an order dismissing relator's appeal as untimely. The ULJ found that the determination of ineligibility sent by DEED to relator in December "clearly stated that it would be **final** unless an appeal was filed within 20 calendar days from the date of mailing" and that relator's appeal, filed on January 10, "was not filed within the time period required by law."

On January 15, relator requested reconsideration. He argued that “[t]here was some confusion on my part on which issue this appeal involved.” Relator claimed that he mistakenly thought the issue to be appealed was whether he had earned sufficient wages to open a benefits account and that he believed filing an appeal was pointless because he knew he had not made enough money. Relator further explained that he now realized that the correct issue was whether he quit his employment for medical reasons, and he asserted for the first time on reconsideration that he had requested medical accommodation from his former employer, and that, because the accommodation was refused, he quit.

On February 20, the ULJ issued an order affirming the dismissal. 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) (citing Minn. Stat. § 268.105, subd. 7(d) (2010)). A decision to dismiss an appeal as untimely raises a question of law, which we review de novo. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006). We will not disturb a ULJ’s factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d) (2012).

“A determination of . . . ineligibility is final unless an appeal is filed by the applicant . . . within 20 calendar days after sending.” Minn. Stat. § 268.101, subd. 2(f)

(2012). The statutory appeal period of ULJ decisions is “strictly construed against the relator.” *See Rowe v. Dep’t of Emp’t & Econ. Dev.*, 704 N.W.2d 191, 196 (Minn. App. 2005) (regarding what was then a 30-day appeal period under Minn. Stat. § 268.105, subd. 2(a) (2004)). “An untimely appeal from a determination must be dismissed for lack of jurisdiction.” *Stassen*, 814 N.W.2d at 29.

Relator argues that this court should reverse the ULJ’s decision despite his having missed the appeal deadline because (1) the initial ineligibility determination was erroneous and (2) there were extenuating circumstances for missing the deadline.

Because relator’s appeal was dismissed as untimely, whether the initial determination was erroneous is not at issue in this appeal. *Christgau v. Fine*, 223 Minn. 452, 463, 27 N.W.2d 193, 199 (1947) (providing that when a ULJ concludes that he lacks jurisdiction to consider an appeal, the only question before this court is whether the ULJ’s decision was correct in that respect). Similarly, the ULJ properly did not consider relator’s arguments regarding extenuating circumstances and his alleged requests for medical accommodations when reconsidering whether the initial appeal was properly dismissed for lack of jurisdiction. *See* Minn. Stat. § 268.105, subd. 2(c) (2012) (providing that when deciding a request for reconsideration, a ULJ “must not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted” during the initial appeal).

Relator’s appeal was untimely. The determination of ineligibility sent to relator by DEED clearly identified the date by which an appeal was required to be filed. While it appears that relator was faced with frightening medical conditions that could have

caused confusion, distress, and distraction, there are simply no exceptions to the 20-day appeal deadline. *See Kangas v. Indus. Welders & Machinists, Inc.*, 814 N.W.2d 97, 100 (Minn. App. 2012) (emphasizing that the “20-day [appeal] deadline is absolute and unambiguous”) (quotation omitted); *Kennedy*, 714 N.W.2d at 738–40 (concluding that because “there are no statutory provisions for extensions or exceptions to the appeal period,” an appeal filed one day late was untimely and properly dismissed); *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986) (stating that “statutes designating the time for appeal from decisions of all levels of [DEED] should be strictly construed, regardless of mitigating circumstances”), *review denied* (Minn. Aug. 13, 1986); *see also* Minn. Stat. §§ 268.101, subd. 2(f) (including no exceptions to the 20-day deadline), .069, subd. 3 (stating that “[t]here is no equitable or common law denial or allowance of unemployment benefits”) (2012).

Affirmed.