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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1679**

Kimmeko Franklin,  
Relator,

vs.

Break-Thru Home Care Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 6, 2010  
Affirmed  
Johnson, Judge**

Department of Employment and Economic Development  
File No. 22452134-3

Kimmeko Franklin, St. Paul, Minnesota (pro se relator)

Break-Thru Home Care Inc., Minneapolis, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department)

Considered and decided by Johnson, Presiding Judge; Hudson, Judge; and  
Connolly, Judge.

## UNPUBLISHED OPINION

**JOHNSON**, Judge

Kimmeko Franklin challenges an unemployment law judge's (ULJ) dismissal of her administrative appeal of an initial determination that she is ineligible for unemployment benefits. We conclude that the ULJ properly dismissed the administrative appeal because it was not filed within the 20-day appeal period and, therefore, affirm.

### FACTS

Franklin quit her job at Break-Thru Home Care in early March 2009. She sought unemployment benefits in April 2009. The Department of Employment and Economic Development (DEED) made an initial determination that she is ineligible for benefits because she did not have a good reason for quitting caused by her employer. *See* Minn. Stat. § 268.095, subd. 3 (2008). DEED mailed notice of the initial determination of ineligibility to Franklin on May 6, 2009.

The document that DEED sent to Franklin stated why she is ineligible and also explained her right to an administrative appeal. The document stated that DEED's initial determination "will become final unless an appeal is filed by Tuesday, May 26, 2009," which is 20 days after the initial determination. It also explained that the "'filed' date is the postmark date" or the date an appeal is received electronically, via fax or Internet. The document further explained how an applicant may file an appeal online.

Despite the information provided by DEED, Franklin did not file an administrative appeal until June 8, 2009, which was 33 days after the initial determination. On June 10, 2009, a ULJ issued an order dismissing the appeal as untimely. Franklin requested

reconsideration of the dismissal but did not address the question whether her administrative appeal was timely filed. The ULJ affirmed the dismissal. Franklin appeals to this court by way of a writ of certiorari.

## D E C I S I O N

In her *pro se* letter brief, Franklin argues that she was justified in quitting her job because her employer had not paid her for her work. She does not, however, address the question whether her administrative appeal was timely filed. But that is the issue we must address due to the fact that the ULJ dismissed Franklin's administrative appeal on the ground that it was untimely. We apply a *de novo* standard of review to an agency's decision to dismiss an administrative appeal for untimeliness. *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, DEED must send notice of the determination to the employer and to the applicant by mail or electronic transmission. Minn. Stat. § 268.101, subd. 2(a) (2008). "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) (2008).

The statutory requirement concerning the time for an administrative appeal is unforgiving. In *Semanko v. Department of Employment 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, 430, 244 N.W.2d at 665, 666; *see also Jackson v. Department 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 our opinion in *Kennedy*, the legislature amended the statute to establish a 20-day appeal period. 2007 Minn. Laws. ch. 128, art. 5, § 7, at 979-80. Regardless of the length of the period for an administrative appeal, the reasoning of *Semanko* and *Kennedy* continues to apply.

In this case, it is undisputed that DEED mailed the determination of ineligibility to Franklin on May 6, 2009. As stated in the determination itself, Franklin’s time for filing an administrative appeal expired on May 26, 2009. Franklin did not file her administrative appeal until June 8, 2009. Thus, her administrative appeal was untimely. *See Semanko*, 309 Minn. at 430, 244 N.W.2d at 666; *Kennedy*, 714 N.W.2d at 739-40. Accordingly, the ULJ did not err by dismissing Franklin’s administrative appeal. Therefore, we do not reach the merits of the ULJ’s ineligibility determination.

**Affirmed.**