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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1635**

Peter Sickeler,
Relator,

vs.

Hedberg Aggregates Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 1, 2010
Affirmed
Harten, Judge*
Concurring specially, Minge**

Department of Employment and Economic Development
Agency File No. 21949032

Peter F. Sickeler, Minneapolis, Minnesota (pro se relator)

Hedberg Aggregates Inc., Plymouth, Minnesota (respondent employer)

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

Considered and decided by Toussaint, Chief Judge; Minge, Judge; and Harten,
Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that she lacked jurisdiction over relator's appeal from the decision of respondent Department of Employment and Economic Development (DEED) that relator was ineligible for unemployment benefits and had been overpaid. We conclude that the ULJ had no jurisdiction over relator's appeal because it was untimely; accordingly, we affirm the ULJ's determination.

FACTS

Relator Peter Sickeler received unemployment benefits between November 2007, when he was laid off, and February 2008, when he returned to work. In June 2008, a medical condition prevented him from working, and he has been receiving long-term disability insurance benefits that exceed his unemployment benefits since August 2008.

Relator reapplied for unemployment benefits in February 2009, when he inadvertently and erroneously gave August 2007, not August 2008, as the date his disability benefits began. DEED therefore determined that relator had been ineligible for benefits between November 2007 and February 2008 and had been overpaid \$1,391.

Relator had until 11 March 2009 to appeal from this determination, but he did not appeal until 8 April. On 10 April, a ULJ dismissed the appeal as untimely. Relator requested reconsideration. On 19 May, the ULJ affirmed the dismissal, but concluded that relator was entitled to a hearing on his eligibility for benefits after 8 April.

On 11 June 2009, another ULJ conducted a telephone hearing. She also concluded that, because relator's appeal was untimely, she did not have jurisdiction over the determination that he had been ineligible and was overpaid benefits from November 2007 to February 2008.¹

DECISION

The ULJ's conclusion that she did not have jurisdiction over an untimely appeal was mandated by relevant law. *See* Minn. Stat. § 268.101, subd. 2(f) (2008) (providing that DEED determination is final unless appeal is filed within 20 days); *see also Semanko v. Dep't of Employment Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976) (appeal period is "absolute"); *King v. Univ. of Minn.*, 387 N.W.2d 675, 667 (Minn. App. 1986) (time periods should be strictly construed regardless of mitigating circumstances), *review denied* (Minn. 13 Aug. 1986); *Cole v. Holiday Inns, Inc.*, 347 N.W.2d 72, 73 (Minn. App. 1984) (no exceptions to statutory time period for appeal).

Relator offers no legal support for his suggestion that the appropriate resolution of this conflict is to ignore the untimeliness of his appeal and consider it on the merits. Any untimeliness of an appeal deprives a ULJ of jurisdiction.

Affirmed.

¹ Relator does not challenge the ULJ's determination that he was ineligible after 8 April 2009.

MINGE, Judge (concurring specially)

I join in the opinion, but write separately to note the acknowledgement by DEED that the \$1,391 overpayment determination is based on a mistake, that the amount is not properly due, and that DEED will not take any steps to collect this amount.