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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2179**

Peter Mattson,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed July 27, 2010
Affirmed in part and remanded
Minge, Judge**

Department of Employment and Economic Development
File No. 23158703-3

Peter Mattson, Burnsville, Minnesota (pro se relator)

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

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

UNPUBLISHED OPINION

MINGE, Judge

Relator employee brings this certiorari appeal from the decision of the
unemployment law judge (ULJ). The ULJ ruled that relator's appeal from the

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

determination of ineligibility for the period from July 26 to August 1, 2009 was untimely and that his application for benefits now presents a new issue that is appropriate for separate consideration and initial determination by Minnesota Department of Employment and Economic Development (DEED). We affirm in part and remand.

FACTS

Relator first applied for unemployment benefits on February 1, 2009. On August 4, 2009, DEED staff issued a determination that relator was ineligible to receive benefits from July 26 to August 1, 2009, and advised that the determination would become final unless relator filed an appeal to a ULJ by August 24, 2009. Relator filed an appeal on August 27, 2009, raising an issue of his eligibility for benefits from February 10 to May 2, 2009. The ULJ dismissed the appeal as untimely. Relator requested reconsideration, again raising the issue of earlier eligibility. On reconsideration, the ULJ affirmed his dismissal of the appeal as untimely. But the ULJ also stated the following:

Because [relator] was not given an opportunity to explain why he did not request benefits during this period [from February 10 to May 2, 2009], a new issue has been created on his failure to request benefits, which will provide [him] with this opportunity.

This certiorari appeal followed.

DECISION

When reviewing an unemployment benefits decision by a ULJ, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the decision was affected by error of law, unsupported by substantial evidence, or arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2008). Whether an appeal was properly dismissed for lack of jurisdiction because it was untimely raises a question of law that we review de novo. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

In the present certiorari appeal, relator does not challenge the untimeliness of his appeal to the ULJ. A determination of eligibility by DEED staff becomes the final decision of the commissioner unless there is an appeal to a ULJ within 20 days. Minn. Stat. § 268.101, subd. 2(f) (2008). Because relator's appeal was filed more than 20 days after the determination of benefits, it was untimely and the ULJ properly dismissed it for lack of jurisdiction. *Kennedy*, 714 N.W.2d at 740.

Relator, however, argues that he was not given the opportunity to explain why he did not request benefits from February 10 to May 2, 2009, and he seeks unemployment benefits that he claims he should have received for this period. As to this point, the ULJ ruled that relator is entitled to "an opportunity to explain why he did not request benefits during this period." See Minn. Stat. § 268.086, subd. 8 (2008) (allowing a relator to show good cause for failing to file continued requests for unemployment benefits). We cannot address relator's arguments regarding his eligibility for benefits from February 10 to May 2, 2009, because the ULJ has not addressed this issue. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that, generally, an appellate court can only review issues that were presented to and considered by the decision maker in deciding the matter before it).

Finally, although DEED asserts that further proceedings have occurred on this additional issue, we have no information in the record showing this to be the case and thus cannot address the nature or effect of such proceedings. *See* Minn. R. Civ. App. P. 110.01 (providing that record on appeal consists of papers filed in district court, exhibits and transcript), 115.04, subd. 1 (applying rule 110 to certiorari appeals). Accordingly, we remand for such further DEED proceedings as necessary and appropriate on the new issue identified by the ULJ.

Affirmed in part and remanded.

Dated: