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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2282**

James Kmecik,
Relator,

vs.

Navy,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 6, 2010
Affirmed
Muehlberg, Judge***

Department of Employment and Economic Development
File No. 22877081-3

James Kmecik, Proctor, Minnesota (pro se relator)

Navy, Millington, Tennessee (respondent employer)

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

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and
Muehlberg, Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

Relator challenges the decision of the unemployment law judge (ULJ) to dismiss his request for reconsideration. Because relator's request for reconsideration was untimely, we affirm.

FACTS

Relator James Kmecik was employed by respondent Navy on a full-time basis from October 30, 1989 through April 30, 2009. In May 2009, after his separation from employment, relator applied for unemployment benefits and established a benefit account with respondent Department of Employment and Economic Development (DEED). DEED issued a determination of ineligibility, and relator appealed.

In a decision issued on July 24, 2009, the ULJ found that relator was receiving monthly retirement payments from the Navy and monthly disability payments from the U.S. Department of Veterans Affairs. The ULJ determined that the monthly retirement payments were deductible from relator's unemployment benefits, resulting in an overpayment of \$1,644. The notice of the decision stated that the deadline to request reconsideration was August 13, 2009.

Relator filed a request for reconsideration on October 27, 2009, and the ULJ dismissed relator's request as untimely. This certiorari appeal follows.

DECISION

Relator challenges the ULJ's dismissal of his request for reconsideration. When reviewing a ULJ's decision, we may affirm the decision, remand it for further

proceedings, or reverse or modify it if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, 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, subd. 7(d) (2008). The existence of jurisdiction is a question of law, which we review de novo. *Harms v. Oak Meadows*, 619 N.W.2d 201, 202 (Minn. 2000).

Relator concedes that his request for reconsideration, filed 95 days after the ULJ’s decision, was untimely. *See* Minn. Stat. § 268.105, subd. 2(a) (2008) (stating that an applicant has 20 days to file a request for reconsideration). Relator argues that the delay in filing his request is attributable to DEED employees not advising him as to how military retirement benefits affect unemployment benefits. According to relator, he researched the issue himself and found relevant information on the Internet on August 27, 2009. Relator does not claim that he failed to receive the notice of the decision, which informed him of the deadline to file a request for reconsideration.

The ULJ’s decision became final on August 13, 2009, when the time to file a request for reconsideration expired. *See id.*, subd. 1(c) (2008). Relator’s request for reconsideration was filed more than two months later, and there are no exceptions to the statutes designating the time to appeal a DEED decision. *See Smith v. Masterson Personnel, Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992) (“[T]here are no extensions or exceptions . . . to the appeal period.”); *King v. Univ. of Minn.*, 387 N.W.2d 675, 677

(Minn. App. 1986) (“[S]tatutes 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). Because relator’s request for reconsideration was untimely, the ULJ properly dismissed the matter.

Affirmed.