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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-195**

Sandra Weinert,  
Relator,

vs.

Abbey Care Home Health Agency, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed December 5, 2011  
Affirmed  
Bjorkman, Judge**

Department of Employment and Economic Development  
File No. 257571786-5

Sandra Weinert, Sauk Rapids, Minnesota (pro se relator)

Abbey Care Home Health Care Agency, Inc., St. Paul, Minnesota (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and  
Collins, Judge.\*

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\* 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## **UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Relator challenges the unemployment-law judge's (ULJ) dismissal of her appeal as untimely. Because relator filed the appeal after the deadline, we affirm.

### **FACTS**

Relator Sandra Weinert applied for unemployment benefits after respondent Abbey Care Home Health Care Agency, Inc. discharged her from employment. On August 20, 2010, respondent Minnesota Department of Employment and Economic Development (DEED) mailed a determination of ineligibility to Weinert, finding Weinert was discharged for employment misconduct. The notice stated that the determination of ineligibility would become final unless an appeal was filed by September 9, 2010.

Prior to that date, Weinert attempted to file an appeal online. After entering the requested information into the DEED website, Weinert received a potential hearing date and time. The webpage stated, "You must select confirm to file your appeal." Weinert never clicked "confirm," and, as a result, the appeal was not filed. When Weinert did not receive paperwork for the hearing, she called DEED and learned that the appeal was never filed. Weinert then filed an appeal on September 14, 2010.

The ULJ dismissed the appeal as untimely, and Weinert requested reconsideration. The ULJ set aside the decision and conducted an evidentiary hearing on the timeliness of the appeal. After the hearing, the ULJ again found the appeal untimely and dismissed it. On reconsideration, the ULJ affirmed. This appeal follows.

## DECISION

A determination of ineligibility is final unless the applicant files an appeal “within 20 calendar days” after the notice is mailed. Minn. Stat. § 268.101, subd. 2(f) (2010). The time to appeal is absolute, with no exceptions for mitigating circumstances. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739-40 (Minn. App. 2006); *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). An untimely appeal of an ineligibility determination must be dismissed for lack of jurisdiction. *Kennedy*, 714 N.W.2d at 740. Dismissal of an appeal as untimely presents a question of law, which we review de novo. *Id.* at 739.

On September 9, 2010, Weinert’s appeal period expired. Although Weinert believed she filed an appeal before that date, the ULJ determined, after a hearing, that she did not file her appeal until DEED received it on September 14, outside of the appeal period. *See* Minn. Stat. § 268.035, subd. 17 (2010) (stating that an appeal submitted electronically is “considered filed on the day received by the department”). Because the record supports the ULJ’s fact finding and the law provides no authority to alter the statutory appeal period, we conclude that the ULJ properly dismissed Weinert’s appeal as untimely.

**Affirmed.**