

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1808**

Youa C. Kue,
Relator,

vs.

Tyco Healthcare Group LP,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 12, 2014
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 31232077-3

Charles H. Thomas, Southern Minnesota Regional Legal Services, St. Paul, Minnesota
(for relator)

Tyco Healthcare Group, LP, c/o TALX UCM Services, Inc., St. Louis, Missouri
(respondent)

Lee B. Nelson, Sasha E. Mackin, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent DEED)

Considered and decided by Stauber, Presiding Judge; Hudson, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Relator Youa C. Kue challenges an order affirming the dismissal of her administrative appeal as untimely. We affirm.

FACTS

Relator's native language is Hmong and she understands, speaks, and reads only minimal English. Relator was fired from her job at respondent Tyco Healthcare Group, LP in early May 2013. With help from her son, relator applied for unemployment benefits with the Minnesota Department of Employment and Economic Development (DEED) using the online application process in mid-May. On June 7, DEED issued a determination of ineligibility because relator was discharged for employment misconduct. The determination specifically stated that "[t]his determination will become final unless an appeal is filed by Thursday, June 27, 2013." The determination was accompanied by a language block, including language in Hmong, that relator understood to direct her to "find someone to read the papers to [her]."

Relator claims (and DEED does not dispute) that she called DEED's telephone number after she received the determination, seeking to speak with a Hmong interpreter. Relator entered the personal information requested by the recorded telephone message, and waited for seven to nine minutes before being instructed to enter the information again. She "press[ed] the numbers two or three times, but [the message] kept repeating and no live person ever came on the line." Relator also tried to contact other organizations for help, but was unsuccessful. Eventually, relator's son read the

determination and explained to relator that she needed to file an appeal. With help from her son, relator filed an appeal online on July 9, and requested a hearing.

The next day, an unemployment law judge (ULJ) issued an order dismissing relator's appeal as untimely. The ULJ concluded that, because relator did not file her appeal "within the time period required by law," the ULJ had "no legal authority to hear and consider the appeal." The ULJ's order noted that it would become final unless relator filed a request for reconsideration "on or before Tuesday, July 30, 2013."

On July 19, relator filed a timely request for reconsideration online. In an affidavit submitted in support of her request for reconsideration, relator explained her attempts to understand the determination of ineligibility and to contact a DEED interpreter by telephone. While in her attorney's office on August 1, relator again tried to reach a Hmong interpreter through DEED's phone number. But, when the automated recording stated that she would be connected to an interpreter, she was instead disconnected.

Relator concluded:

I do not feel that the DEED system is accessible to me because I have tried and been unable to reach a live person to talk to. I asked my son to help me because I could not understand what to type on the computer. I could understand, if there was an office to go to and I did not go or was late, that would be my fault. But I could not find any office to go to and I did my best to respond to these notices.

On August 23, 2013, the ULJ affirmed the dismissal of relator's appeal. The ULJ noted that "[relator] does not dispute that she received the determination and failed to file a timely appeal." And the ULJ went on to state that "[relator's] claim that she was unable to obtain assistance from the Department is not credible because the Department offers

Hmong interpretive services via telephone from Monday through Friday from 8:00 a.m. to 4:30 p.m.” This certiorari appeal followed.

D E C I S I O N

“When reviewing a ULJ’s decision, we may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced.” *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012) (citing Minn. Stat. § 268.105, subd. 7(d) (2010)). We will not disturb a ULJ’s factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d)(5) (2012). But a decision to dismiss an appeal as untimely raises a question of law, which we review de novo. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

“A determination of . . . ineligibility is final unless an appeal is filed by the applicant . . . within 20 calendar days after sending.” Minn. Stat. § 268.101, subd. 2(f) (2012). “An untimely appeal from a determination must be dismissed for lack of jurisdiction.” *Stassen*, 814 N.W.2d at 29.

Relator argues that our previous caselaw strictly construing the 20-day appeal period must be revisited in light of a 2009 amendment to the unemployment insurance statutes, which provides:

This chapter is remedial in nature and must be applied in favor of awarding unemployment benefits. Any legal conclusion that results in an applicant being ineligible for unemployment benefits must be fully supported by the facts. In determining eligibility or ineligibility for benefits, any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.

2009 Minn. Laws ch. 78, art. 4, § 1 (codified at Minn. Stat. § 268.031, subd. 2 (2012)). Relator argues that the statutory presumption in favor of awarding unemployment benefits precludes a strict construction of the 20-day appeal period. Specifically, relator challenges DEED's citation to *Semanko v. Dep't of Emp't Servs.*, and its statement that the limited appeal period "is absolute and unambiguous." 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976).

Despite the 2009 amendment, we have continued to hold that there are no exceptions to the 20-day appeal deadline because it is jurisdictional. *See, e.g., Kangas v. Indus. Welders & Machinists, Inc.*, 814 N.W.2d 97, 100 (Minn. App. 2012) (emphasizing that the "20-day [appeal] deadline is absolute and unambiguous" (quotation omitted)); *Stassen*, 814 N.W.2d at 29 ("An untimely appeal from a determination must be dismissed for lack of jurisdiction."). And the legislature has not provided for any exceptions to the 20-day deadline. *See* Minn. Stat. §§ 268.069, subd. 3 (stating that "[t]here is no equitable or common law denial or allowance of unemployment benefits"), .101, subd. 2(f) (including no exceptions to the 20-day deadline) (2012). The 2009 statutory presumption applies only to determinations of eligibility for unemployment benefits, not to determinations that a ULJ lacks jurisdiction over an untimely appeal. *See Stassen*, 814 N.W.2d at 29.

Relator argues that remand is necessary for the ULJ to hold an evidentiary hearing regarding the reason for relator's untimely appeal. Relator compares her situation to *Schulte* and *Godbout*, two cases wherein violations of the relators' due process rights

mandated a hearing on the merits. In *Schulte v. Transp. Unlimited, Inc.*, the relator was provided notice of a hearing to challenge his eligibility for unemployment benefits but the notice did not inform him of the consequences of a decision reversing his award of benefits. 354 N.W.2d 830, 831-32 (Minn. 1984). As a result, the relator “saw no need to attend” the hearing. *Id.* at 831. The supreme court determined that the notice was “affirmatively misleading and result[ed] in a denial of due process under both the state and federal constitutions” and remanded for a hearing on the merits. *Id.* at 835. In *Godbout v. Dep’t of Emp’t & Econ. Dev.*, the relator did not notify DEED when he moved after the period in which he received unemployment benefits. 827 N.W.2d 799, 800 (Minn. App. 2013). As a result, he did not receive a copy of DEED’s later determination of overpayment by fraud. *Id.* at 801. We remanded for a hearing on the merits because the relator’s failure to file a timely appeal was caused by insufficient notice of the “potential consequences of failing to maintain a current mailing address with DEED,” which violated the relator’s due process rights. *Id.* at 803.

Here, relator argues that, as in *Schulte* and *Godbout*, she was “a victim of inadequate notice that caused her to miss the appeal time.” We disagree. Relator acknowledges that she received the determination of ineligibility and that it included notification in Hmong that she understood to mean that she should “find someone to read the papers to [her.]” And the determination of ineligibility explained the consequences for failing to file a timely appeal. There was no violation of relator’s due process rights.

This case is also distinguishable from *Kangas*, wherein the relator filled out an electronic form and failed to click a box to indicate that he was appealing a determination

of ineligibility, but explained in type his intention to appeal one basis for the determination. 814 N.W.2d at 99. We concluded in *Kangas* that the relator's typed statement manifested his intention to appeal that determination and his failure to click a corresponding box did not waive an issue clearly raised by the form considered as a whole. *Id.* at 101. Importantly, the relator in *Kangas* provided his written statement to appeal within the 20-day deadline. *Id.* We did not allow consideration of a late appeal in *Kangas*. Instead, we affirmed the ULJ's exercise of jurisdiction over a timely appeal. *Id.* And *Kangas* does not require a ULJ to consider an appeal that occurred after the 20-day deadline.

Although we are mindful of the mitigating circumstances here because relator was unable to reach a Hmong interpreter through DEED's language-assistance service,¹ "there are no statutory provisions for extensions or exceptions to the appeal period." See *Kennedy*, 714 N.W.2d at 740. We note that relator eventually filed her appeal online without having received assistance from DEED's interpretive services by doing what the original denial notice recommended: seeking assistance concerning the notice of her initial ineligibility determination. Relator could have filed her appeal within the 20-day deadline. She was not misled. In the context of a person who speaks and reads only limited English because it is her second language, the 20-day appeal period can have a

¹ We agree that federal and state laws prohibit DEED from discriminating on the basis of national origin. 42 U.S.C. § 2000d (2012); Minn. Stat. § 363A.12, subd. 1 (2012). But whether DEED failed to comply with these nondiscrimination statutes by providing ineffective language assistance is not at issue in this appeal. See *Christgau v. Fine*, 223 Minn. 452, 463-64, 27 N.W.2d 193, 199 (1947) (explaining that when a decisionmaker concludes that he or she lacks jurisdiction to consider an appeal, the only question before us is whether the decision he or she made was correct in that respect).

harsh result. But because “the task of extending existing law falls to the supreme court or the legislature,” we are constrained to affirm the ULJ’s dismissal of relator’s appeal as untimely. See *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

Relator also argues that the ULJ made an improper credibility determination when he stated that her “claim that she was unable to obtain assistance from the Department is not credible because the Department offers Hmong interpretive services via telephone from Monday through Friday from 8:00 a.m. to 4:30 p.m.” But the ULJ’s credibility determination was entirely unnecessary to resolve the jurisdictional question. The appeal was properly dismissed because it was untimely, not because of the ULJ’s unnecessary (and factually unsupported) credibility determination.

Affirmed.