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Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A14-1321

A14-1325

Kari Robinson,
Relator,

vs.

The Schuett Companies, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed February 17, 2015

Affirmed

Johnson, Judge

Department of Employment and Economic Development
File No. 30963525-3

Kari Robinson, South St. Paul, Minnesota (pro se relator)

The Schuett Companies, Inc., Golden Valley, Minnesota (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Kari Robinson challenges an unemployment law judge's dismissal of her administrative appeal of two initial determinations. We conclude that the ULJ properly dismissed the administrative appeal because it was not filed within the 20-day appeal period. Therefore, we affirm.

FACTS

In late 2012, Robinson was receiving unemployment benefits, for reasons that are not explained by the appellate record in this case. The Schuett Companies hired Robinson on November 12, 2012. She continued to receive unemployment benefits for the first four weeks of her employment with Schuett because she did not immediately inform the Department of Employment and Economic Development (DEED) of her new job and her earnings.

DEED eventually learned about the overpayment after receiving payroll information from Schuett. In April 2013, DEED issued two initial determinations. The first stated that Robinson was ineligible for unemployment benefits because she was employed; the second stated that Robinson had been overpaid through fraud. *See* Minn. Stat. §§ 268.085, subd. 5, .18, subd. 2 (2014). DEED mailed notices of the initial determinations to Robinson on April 11, 2013. Each notice explained her right to an administrative appeal. Each notice stated that DEED's initial determination would become final unless an appeal was filed by Wednesday, May 1, 2013, which was 20 days

after the initial determination. Robinson received the notices within the 20-day appeal period.

On April 21, 2014, more than one year after the initial determinations were issued, Robinson filed a single administrative appeal of the initial determinations. On May 12, 2014, an unemployment law judge (ULJ) issued two orders that dismissed the administrative appeal as untimely. Robinson requested reconsideration of the orders, stating that she had no intent to commit fraud and had been confused about her start date with Schuett. The ULJ affirmed the earlier orders. Robinson appeals to this court by way of a writ of certiorari.

DECISION

In her *pro se* brief, Robinson challenges the merits of the initial determinations but does not challenge the ULJ's determinations that her administrative appeal was untimely. The only question for this court is whether the administrative appeal was timely filed because the ULJ's decisions are concerned solely with the untimeliness of Robinson's administrative appeal. *See Christgau v. Fine*, 223 Minn. 452, 463, 27 N.W.2d 193, 199 (1947). We apply a *de novo* standard of review to an agency's decision to dismiss an administrative appeal for untimeliness. *Kennedy v. American Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

If a person is determined to be ineligible for unemployment benefits, DEED must send notice of the determination to the employer and to the applicant by mail or electronic transmission. Minn. Stat. § 268.101, subd. 2(a) (2014). "A determination of eligibility or determination of ineligibility is final unless an appeal is filed by the

applicant or notified employer within 20 calendar days after sending. The determination must contain a prominent statement indicating the consequences of not appealing.” *Id.*, subd. 2(f). Similarly, after a determination of overpayment by fraud, the applicant must file an administrative appeal “within 20 calendar days after the sending of the determination.” Minn. Stat. § 268.18, subd. 2(b).

The statutory requirement concerning the time for an administrative appeal is unforgiving. In *Semanko v. Department of Employment Services*, the supreme court concluded that an applicant’s appeal period (then seven days) was “absolute and unambiguous” such that the applicant was not entitled to a hearing to show “compelling good cause” for his late appeal. 309 Minn. 425, 428, 430, 244 N.W.2d 663, 665-66 (1976); *see also Jackson v. Minnesota Dep’t of Manpower Servs.*, 296 Minn. 500, 501, 207 N.W.2d 62, 63 (1973) (holding that administrative appeal mailed one day late was untimely). This court came to the same conclusion in *Kennedy*, holding that the rule of *Semanko* applied to the then-existing 30-day appeal period. 714 N.W.2d at 739-40. After our opinion in *Kennedy*, the legislature amended the statute to establish a 20-day period for an administrative appeal. 2007 Minn. Laws. ch. 128, art. 5, § 7, at 979 (codified at Minn. Stat. § 268.101, subd. 2(f)). Although the length of the period for an administrative appeal has changed over time, the reasoning of *Semanko* and *Kennedy* continues to apply. *See Kangas v. Industrial Welders & Machinists, Inc.*, 814 N.W.2d 97, 100 (Minn. App. 2012). The reasoning of *Semanko* and *Kennedy* also applies to the 20-day deadline for administrative appeals of an initial determination of overpayment by

fraud. *Godbout v. Department of Emp't & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013).

In this case, it is undisputed that DEED mailed the initial determinations to Robinson on April 11, 2013, and that Robinson's time for filing an administrative appeal expired on May 1, 2013. But Robinson did not file an administrative appeal until April 21, 2014, almost a year after the deadline. Her administrative appeal plainly was untimely. *See Semanko*, 309 Minn. at 430, 244 N.W.2d at 666; *Godbout*, 827 N.W.2d at 802. Thus, the ULJ did not err by dismissing Robinson's administrative appeal.

Affirmed.