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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2098**

Shawn O'Toole,
Relator,

vs.

Wings Financial Credit Union,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 29, 2020
Affirmed
Jesson, Judge**

Department of Employment and Economic Development
File No. 37599510-3

Shawn O'Toole, St. Paul, Minnesota (pro se relator)

Wings Financial Credit Union c/o TALX UCM Services, Inc., St. Louis, Missouri
(respondent employer)

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

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Relator Shawn O'Toole applied for unemployment benefits from respondent Department of Employment and Economic Development. After the department notified O'Toole that he was ineligible, he appealed that determination. But his appeal was filed ten days too late and dismissed. Because the statutory deadline is absolute, we affirm.

FACTS

In September 2019, relator Shawn O'Toole applied for unemployment benefits through respondent Department of Employment and Economic Development (DEED). O'Toole had been working at Wings Financial Credit Union as a loan officer until July 19, 2019. On September 24, 2019, DEED mailed a determination of ineligibility to O'Toole. The mailed notice included a warning that the “determination will become final unless an appeal is filed by Monday, October 14, 2019.”¹

On October 24, 2019—ten days after the deadline—O'Toole submitted a request online to appeal his ineligibility determination. He explained his delay in filing the appeal, writing: “I didn’t realize I was deemed ineligible until today. I am on the verge of financial ruin and have been filing for benefits without any warnings or outstanding tasks. I didn’t know.” The next day, an unemployment-law judge (ULJ) dismissed his appeal because he filed it after the 20-day statutory deadline had passed.

¹ O'Toole did not change his address or provide any other mailing address during the relevant time period. O'Toole does not contest that the notice was mailed to his correct address.

A little over a week later, O'Toole timely requested reconsideration of the dismissal. He explained that he "was out of town when the [mailed] notice was delivered," and he saw no notice about a deadline on the website. He also recounted issues he had with his former boss that led up to his "choice to quit" and his financial struggles as a result of losing his income. About a month later, the ULJ affirmed the earlier order dismissing O'Toole's appeal as untimely. This certiorari appeal follows.

D E C I S I O N

O'Toole challenges the ULJ's dismissal of his appeal as untimely. According to O'Toole, he did not receive actual notice of his ineligibility determination before the statutory deadline, and he had a good reason for accepting the offered severance package from his employer. The ULJ concluded that O'Toole's appeal was untimely and that the statutory time period is absolute, regardless of any alleged mitigating circumstances.

On review, we "may affirm the decision [of the ULJ], 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). We review de novo whether the ULJ properly dismissed an appeal as untimely. *Godbout v. Dep't of Emp't & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013). And we "will rely on findings that are substantially supported by the record" and review "findings of fact in the light most favorable to the ULJ's decision." *Fay v. Dep't of Emp't & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015) (quotations omitted). But when a ULJ dismisses an appeal as untimely—as is the case here—the *only* question before this court is whether the ULJ erred in dismissing the appeal, and this court

cannot address the merits of the appeal. *See Christgau v. Fine*, 27 N.W.2d 193, 199 (Minn. 1947).

The procedure for an applicant to apply for unemployment benefits is set forth in the statute. After an applicant has submitted a request for benefits, DEED must issue a determination that the applicant is either eligible or ineligible. Minn. Stat. § 268.101, subd. 2 (2018). Once DEED sends the determination, the applicant has 20 calendar days to appeal. *Id.*, subd. 2(f). If the applicant fails to appeal within 20 days, the determination becomes final. *Id.* The statute also requires the ULJ to “issue a decision dismissing the appeal as untimely if the judge decides the appeal was not filed within 20 calendar days after the sending of the determination.” Minn. Stat. § 268.105, subd. 1a(c) (2018).

Minnesota caselaw reflects the statutory mandate that any appeal filed after the 20-day window is untimely and must be dismissed by the ULJ for lack of jurisdiction. *See Cole v. Holiday Inns, Inc.*, 347 N.W.2d 72, 73 (Minn. App. 1984); *see also Dep’t of Emp’t Sec. v. Minn. Drug Prods., Inc.*, 104 N.W.2d 640, 643 (Minn. 1960). “The statutory time for an appeal from a department determination is absolute.” *Cole*, 347 N.W.2d at 73.

Here, DEED mailed O’Toole a determination of ineligibility on September 24, 2019. The notice also included a warning about the 20-day appeal period, explaining that the decision would be final unless he timely appealed. And O’Toole appealed on October 24, 2019. O’Toole does not contest any of these dates in this appeal. Because O’Toole’s appeal was submitted after the 20-day deadline, under the statute, the ULJ was *required* to dismiss it as untimely. *See Cole*, 347 N.W.2d at 73.

Still, O'Toole asserts that the ULJ erred by dismissing his appeal. The crux of O'Toole's argument is that he lacked *actual notice* of the determination of ineligibility before the statutory deadline.² But Minnesota courts have repeatedly held that actual notice is not required. See *Grewe v. Comm'r of Econ. Sec.*, 385 N.W.2d 894, 895 (Minn. App. 1986) ("The statute does not require that a claimant have actual notice of the determination for the appeal period to run."); see *Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 382 (Minn. App. 1986) ("The statute does not require actual notice for the appeal period to run."). And while O'Toole contends that he did not get the mailed notice because he was not home at the time and the post office did not deliver his mail, the statute provides no "good cause" exception to excuse a filing delay. See *Jackson v. Minn. Dep't of Manpower Servs.*, 207 N.W.2d 62, 63 (Minn. 1973); see also *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 740 (Minn. App. 2006) ("[T]here are no statutory provisions for extensions or exceptions to the appeal period."). The time period for the appeal started when the determination was mailed, regardless of when it was received. See *Stassen*, 814 N.W.2d at 29.

² O'Toole also asserts that he thought he was eligible for benefits based on what he was told when he initially called DEED, suggesting that he was not looking for a denial letter. But there is no process in the statute to permit verbal communication of eligibility determinations, and the statute is clear that equitable remedies, like promissory estoppel, do not apply to unemployment benefits. See Minn. Stat. § 268.069, subd. 3 (2018) ("There is no equitable or common law denial or allowance of unemployment benefits.").

In sum, while the circumstances for O'Toole may be unfortunate, the statute provides no exception or extension to the appeal period. *See Cole*, 347 N.W.2d at 73. Because O'Toole's appeal was untimely, the ULJ's dismissal was not erroneous.³

Affirmed.

³ The remainder of O'Toole's arguments focus on the substance of his unemployment-benefits claim, including his alleged discrimination at work, why he quit, and his financial situation. But these alleged facts are not relevant to whether his appeal was timely filed. And when an appeal is dismissed as untimely, the only question this court considers on appeal is whether the ULJ erred by dismissing the appeal. *See Christgau*, 27 N.W.2d at 199.