

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0927**

Matthew J. Miller,
Relator,

vs.

Hollenback & Nelson, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 15, 2021
Affirmed
Johnson, Judge**

Department of Employment and Economic Development
File No. 37660238-3

Matthew J. Miller, St. Cloud, Minnesota (*pro se* relator)

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

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Matthew J. Miller challenges the denial of his application for unemployment benefits. We conclude that the unemployment-law judge properly dismissed Miller's

request for reconsideration of an adverse decision because Miller filed the request for reconsideration after the applicable 20-day deadline. Therefore, we affirm.

FACTS

Miller was employed by Hollenback & Nelson, Inc., a commercial concrete contractor, from June 2016 until September 2019, as a block tender at a wage of \$35.41 per hour. Unfortunately, in April 2018, Miller sustained an on-the-job injury that prevented him from performing that job. As a result, the employer assigned him to light-duty work, which paid a lower wage, though he supplemented his wages with workers' compensation benefits. In September 2019, Miller's physician determined that he likely would be unable to return to his former position of block tender. Shortly thereafter, Miller and the employer entered into a settlement agreement to resolve his workers' compensation claim. The settlement agreement states that Miller's employment ended on or about September 16, 2019, the date on which he signed the agreement.

Miller applied to the department of employment and economic development for unemployment benefits. On November 8, 2019, the department issued an initial determination that Miller is ineligible for benefits on the ground that he quit his job without a medical necessity. *See* Minn. Stat. § 268.095, subd. 1, 1(7)(i) (2020). The notice of the determination states that it "will become final unless an appeal is filed by Monday, December 2, 2019."

Miller filed a timely administrative appeal. On December 23, 2019, an unemployment-law judge (ULJ) issued a written decision upholding the initial determination of ineligibility. The decision states that it "will be final unless a request for

reconsideration is filed with the unemployment law judge on or before Monday, January 13, 2020.”

Miller filed a request for reconsideration on March 17, 2020, more than two months after the January 13, 2020 deadline. On April 24, 2020, the ULJ issued an order dismissing the request for reconsideration on the ground that it was untimely. Miller appeals.

DECISION

Miller argues that the ULJ erred in her December 23, 2019, decision by upholding the initial determination that he is ineligible for unemployment benefits. In response, the department argues that this court may not consider the merits of the ULJ’s December 23, 2019 decision because Miller did not file a timely request for reconsideration. Miller has not filed a reply brief.

After the department has made an initial determination of ineligibility, *see* Minn. Stat. § 268.101, subd. 2 (2020), an applicant may file an administrative appeal, *id.*, subd. 2(f); Minn. Stat. § 268.103 (2020). If the administrative appeal is timely, it must be heard by a ULJ, who must issue a written decision. Minn. Stat. § 268.105, subds. 1, 1a (2020). But if the administrative appeal is untimely, a different consequence is prescribed by statute: “The unemployment law judge must 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.” *Id.*, subd. 1a(c).

After the ULJ has issued a decision in a timely administrative appeal, any party or the commissioner “may within 20 calendar days of the sending of the unemployment law judge’s decision . . . file a request for reconsideration asking the judge to reconsider that

decision.” *Id.*, subd. 2(a). Again, if the request for reconsideration is untimely, the consequence is prescribed by statute: “The unemployment law judge must issue a decision dismissing the request for reconsideration as untimely if the judge decides the request for reconsideration was not filed within 20 calendar days after the sending of the decision” *Id.*, subd. 2(f).

The department contends in its responsive brief that, because the ULJ dismissed the request for reconsideration on the ground that it was untimely, “the only question before the court in this matter is whether the ULJ’s decision to dismiss Miller’s request for reconsideration as untimely was correct.” In support of this contention, the department cites opinions in which appellate courts have declined to review the merits of an applicant’s claim of eligibility after the applicant failed to file a timely administrative appeal. *See, e.g., Semanko v. Department of Emp’t Servs.*, 244 N.W.2d 663, 666 (Minn. 1976); *Kennedy v. American Paper Recycling Corp.*, 714 N.W.2d 738, 739-40 (Minn. App. 2006); *see also Jackson v. Minnesota Department of Manpower Servs.*, 207 N.W.2d 62, 63 (Minn. 1973). Those cases generally adhere to the principle that the deadline for an administrative appeal is “absolute and unambiguous” and that an applicant’s failure to meet the deadline forfeits judicial review of the merits of the agency’s initial determination of ineligibility. *Semanko*, 244 N.W.2d at 666.

The department has not cited any authority for the proposition that an applicant’s failure to file a timely request for reconsideration of a ULJ’s adverse decision on administrative appeal limits the scope of this court’s review of the ULJ’s earlier decision. We are not aware of any such authority. We note, however, that the statutory language

applicable to the two stages of agency proceedings is nearly identical. *Compare* Minn. Stat. § 268.105, subds. 1a(c) *with* Minn. Stat. § 268.105, subd. 2(f). In either situation, an applicant's untimeliness prevents the ULJ from considering the merits of the applicant's argument for eligibility at that stage of the agency proceedings. In the absence of a contrary rule, we apply the rule concerning untimely administrative appeals to Miller's untimely request for reconsideration. Thus, our review is limited to the question whether Miller's request for reconsideration was timely.

Miller does not dispute that he filed his request for reconsideration 65 days after the deadline. Thus, his request for reconsideration was untimely. Therefore, the ULJ did not err by dismissing the request for reconsideration. In light of that conclusion, we may not consider the merits of Miller's argument that the ULJ erred in her December 23, 2019 decision by upholding the initial determination that he is ineligible for unemployment benefits. *See Semanko*, 244 N.W.2d at 666; *Jackson*, 207 N.W.2d at 63; *Kennedy*, 714 N.W.2d at 739.

Affirmed.

A handwritten signature in dark ink, appearing to read "Matthew Johnson". The signature is fluid and cursive, with the first name "Matthew" written in a larger, more prominent script than the last name "Johnson".