STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1178

In the Matter of: Diana Murack.

Filed March 8, 2021
Reversed and remanded
Segal, Chief Judge

Department of Employment and Economic Development
File No. 38102914-3

Thomas A. Krause, Southern Minnesota Regional Legal Services, Inc., Winona, Minnesota; and

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

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

Considered and decided by Segal, Chief Judge; Reyes, Judge; and Jesson, Judge.

SYLLABUS

Principles of statutory interpretation apply to the interpretation of executive orders issued under the authority of the Minnesota Emergency Management Act of 1996, Minn. Stat. §§ 12.01-.61 (2020).

OPINION

SEGAL, Chief Judge

This unemployment-benefits appeal raises the issue of whether an unemployment-law judge (ULJ) violated a provision of an executive order issued by the governor in conjunction with the COVID-19 peacetime emergency. The first operative paragraph of

that order suspended "strict compliance" with the Minnesota Unemployment Insurance Law (unemployment statute), Minn. Stat. §§ 268.001-.23 (2020). Without considering the impact of the executive order, the ULJ dismissed as untimely relator Diana Murack's appeal of an initial determination of ineligibility for unemployment benefits.

Murack asserts that strict compliance with the administrative appeal deadline was suspended by the executive order and that, consequently, the dismissal must be reversed. Respondent Minnesota Department of Employment and Economic Development (DEED), the agency that administers the unemployment statute, claims that the executive order is more limited in its scope.

We agree with Murack that the plain language of the first paragraph of the executive order suspended strict compliance with the administrative appeal deadline and reverse the dismissal. The suspension of strict compliance did not, however, eliminate the deadline. We therefore remand this case for consideration of the impact of the executive order and, specifically, whether relator was in substantial compliance with the deadline.

FACTS

On March 13, 2020, Governor Tim Walz declared a peacetime emergency in Minnesota because of the COVID-19 pandemic. *See* Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). The COVID-19 peacetime emergency has been extended multiple times and is currently in effect through March 15, 2021, subject to further order of the governor or termination by a majority vote of each house of the legislature. *See* Minn. Stat. § 12.31, subd. 2; Emerg. Exec. Order No. 21-08, *Extending*

the COVID-19 Peacetime Emergency Declared in Exec. Order No. 20-01 (Feb. 12, 2021). Since March 13, 2020, the governor has issued numerous additional emergency executive orders, requiring such things as the temporary closure of certain businesses and a suspension of most evictions and writs of recovery. *See, e.g.*, Emerg. Exec. Order No. 20-04, *Providing for Temporary Closure of Bars, Restaurants & Other Places of Public Accommodation* (Mar. 16, 2020); Emerg. Exec. Order No. 20-14, *Suspending Evictions & Writs of Recovery During the COVID-19 Peacetime Emergency* (Mar. 23, 2020). The legislature also enacted provisions in response to the pandemic, including a suspension of the statutes of limitation during the pendency of the peacetime emergency. *See* 2020 Minn. Laws ch. 74, art. 1, § 16; 2021 Minn. Laws ch. 3, § 1.

On March 16, 2020, the governor issued Emergency Executive Order No. 20-05, *Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency* (Mar. 16, 2020) (EEO 20-05 or the executive order). EEO 20-05 modified provisions of the unemployment statute to help mitigate the consequences of the COVID-19 pandemic on workers and employers.

During the COVID-19 peacetime emergency, DEED issued an initial determination that Murack was not eligible for unemployment benefits for reasons unrelated to this appeal. The determination stated that it would be final unless an administrative appeal was filed within 20 calendar days from the date of mailing, or by April 13, 2020.

According to Murack, she attempted to appeal online and believed that a telephonic hearing on her appeal was scheduled for June 19, 2020. Unbeknownst to Murack, she did not complete all online steps necessary to submit her appeal. After no telephonic hearing

was held on June 19, Murack filed an appeal online on June 22, 2020, this time successfully completing all necessary steps. The appeal, however, was dismissed by a ULJ as untimely because it was filed ten weeks after the April 13 deadline. Murack sought reconsideration, but the dismissal was affirmed.

Murack filed this certiorari appeal in which she contends that the ULJ erred by dismissing her administrative appeal because strict compliance with the 20-day statutory time period for filing an administrative appeal was suspended by EEO 20-05. On the parties' joint motion, we expedited scheduling of this appeal to address the time-sensitive issue of whether EEO 20-05 suspends strict compliance with the 20-day administrative appeal period during the COVID-19 peacetime emergency.[1]

ISSUE

Did the ULJ err by requiring strict compliance with the administrative appeal deadline?

ANALYSIS

The only issue for our determination on this appeal is whether the ULJ erred by dismissing Murack's administrative appeal as untimely without considering the impact of the executive order. *See Christgau v. Fine*, 27 N.W.2d 193, 199 (Minn. 1947). A ULJ's decision to dismiss an appeal as untimely raises a jurisdictional question of law, which we

[1] Before oral argument, we provided an opportunity for input from the Office of the Minnesota Attorney General, which has the authority to enforce executive orders related to the current peacetime emergency. The Office of the Minnesota Attorney General submitted a letter indicating agreement with DEED's interpretation of EEO 20-05 and declining to provide further briefing on the issue.

review de novo. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

In analyzing this issue, we first provide an overview of the administrative appeal process and law related to the appeal deadline. We then address the threshold question of whether principles of statutory construction apply to interpreting emergency executive orders. Deciding that question in the affirmative, we apply those principles to conclude that the plain language of the executive order suspended strict compliance with the administrative appeal deadline and that the ULJ erred by failing to consider whether Murack was in "substantial compliance" with the appeal deadline.

Administrative Appeal Deadline

Under the unemployment statute, an applicant's eligibility for unemployment benefits is determined through a multi-stage administrative process. An applicant first applies for benefits and establishes a benefit account. *See* Minn. Stat. § 268.07. Once a benefit account is established, DEED issues initial determinations of eligibility or ineligibility. *See* Minn. Stat. § 268.101, subd. 2. An applicant may appeal an initial determination of ineligibility, but only if the applicant files the administrative appeal within 20 days of the date that the initial determination is mailed. *See* Minn. Stat. § 268.101, subd. 2(f). If the administrative appeal is timely, a ULJ will hold a hearing and issue a final administrative decision on the eligibility issue. *See* Minn. Stat. § 268.105. If the

applicant fails to timely appeal, the initial determination becomes final. *See* Minn. Stat. § 268.101, subd. 2(f).[2]

We have held that "[t]he statutory time for an appeal from a department determination is absolute." *Cole v. Holiday Inns, Inc.*, 347 N.W.2d 72, 73 (Minn. App. 1984) (construing predecessor statute with similar language to Minn. Stat. § 268.101, subd. 2(f)); *see also Semanko v. Dep't of Emp't Servs.*, 244 N.W.2d 663, 666 (Minn. 1976) (characterizing as "absolute and unambiguous" time period to challenge initial determination under predecessor statute). And we have repeatedly stated that when an appeal is not timely filed, it must be dismissed for lack of jurisdiction. *See Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012); *Kennedy*, 714 N.W.2d at 740.

Murack acknowledges these well-established principles regarding appeals from initial determinations, but she argues that the principles do not apply here because of EEO 20-05. More specifically, Murack relies on language in the executive order providing that "strict compliance" with the unemployment statute is "suspended" during the peacetime emergency.

[2] Likewise, an employer may appeal an initial determination of eligibility within 20 days, triggering a hearing before a ULJ who will make the final administrative decision. *See* Minn. Stat. §§ 268.101, subd. 2(f), .105.

Applicability of Principles of Statutory Interpretation to Executive Orders

The governor declared the COVID-19 peacetime emergency pursuant to his authority under the Minnesota Emergency Management Act of 1996, Minn. Stat. §§ 12.01-.61. Executive orders issued pursuant to this authority have "the full force and effect of law." Minn. Stat. § 12.32.

Although it appears to raise an issue of first impression for Minnesota courts, courts of other jurisdictions have applied principles of statutory interpretation in interpreting executive orders. *See, e.g.*, *Bassidji v. Goe*, 413 F.3d 928, 934 (9th Cir. 2005) ("As is true of interpretation of statutes, the interpretation of an Executive Order begins with its text."); *United States v. Abu Marzook*, 412 F. Supp. 2d 913, 922 (N.D. Ill. 2006) ("The Court interprets Executive Orders in the same manner that it interprets statutes."); *City of Morgan Hill v. Bay Area Air Quality Mgmt. Dist.*, 13 Cal. Rptr. 3d 420, 431 (Cal. Ct. App. 2004) ("The construction of an executive order presents an issue akin to an issue of statutory interpretation . . . ."). Relying on these cases, the parties have framed their arguments with reference to principles of statutory interpretation. Because the governor's emergency-executive orders have "the full force and effect of law," Minn. Stat. § 12.32, we agree that it is appropriate to apply statutory-interpretation principles in interpreting them. *Cf.* Minn. Stat. §§ 14.38, sud. 1 (providing that administrative rules filed with secretary of state have "force and effect of law"), 645.001 (providing that provisions of chapter 645 governing statutory interpretation apply to administrative rules) (2020).

Interpretation of EEO 20-05

The goal of statutory interpretation is to effectuate the intent of the legislature. *Svihel Vegetable Farm, Inc. v. Dep't of Emp't & Econ. Dev.*, 929 N.W.2d 391, 394 (Minn. 2019); *see also* Minn. Stat. § 645.16 (2020). When the language of a statute is clear, this court will enforce that plain language without looking further. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015); *see also* Minn. Stat. § 645.18 (2020). Words and phrases should be construed "according to rules of grammar and according to their common and approved usage." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (quoting Minn. Stat. § 645.08(1) (2018)). And "[a] statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted); *see also* Minn. Stat. § 645.17 (2020) (stating presumption that legislature "intends the entire statute to be effective and certain"); *Engfer*, 869 N.W.2d at 300.

The executive order begins with the recognition that

> [e]conomic insecurity because of involuntary unemployment of workers in Minnesota is a subject of general concern. The public good is promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist unemployed workers to become reemployed. Providing a temporary partial wage replacement to assist unemployed workers allows these workers to access basic necessities and safeguard the health of themselves, their families, and other Minnesotans. Current law and regulations prevent the Minnesota Unemployment Insurance Program from providing immediate relief to employers and unemployed workers during the COVID-19 pandemic.

EEO 20-05, at 1. The executive order then provides:

> For these reasons, I [Governor Walz] order as follows:
>
> 1. Effective immediately, strict compliance with Minnesota Statutes 2019, Chapter 268, Minnesota Unemployment Insurance Law is suspended.
>
> 2. For unemployment insurance benefit accounts established between March 1, 2020 and December 31, 2020, I am suspending the nonpayable week requirement under Minnesota Statutes 2019, section 268.085, subdivision 1, clause 6, which will allow workers to become eligible for unemployment benefits as quickly as possible.
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> 3. To further ensure that unemployment benefits are available for workers who are not able to work directly or indirectly as a result of COVID-19, I order that suitable employment under Minnesota Statutes 2019, section 268.035, subdivisions 23a (a) and (b) does not include employment that puts the health and safety of the applicant at risk or employment that puts the health and safety of other workers and the general public at risk.
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> 4. To further ensure that unemployment benefits are available for workers who are not able to work directly or indirectly as a result of COVID-19, I order that a leave of absence will be presumed to be involuntary in accordance with Minnesota Statutes 2019, section 268.085, subdivision 13a [under certain enumerated COVID-19-related circumstances].
>
> 5. Notwithstanding Minnesota Statutes 2019, section 268.047, I order that the Minnesota Unemployment Insurance Program not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer. This will provide immediate relief to employers impacted by the COVID-19 pandemic and will better allow their employees to access unemployment benefits.
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> 6. Notwithstanding Minnesota Statutes 2019, section 268.085, subdivision 9, I order that the Minnesota Unemployment Insurance Program waive enforcement of the five-week benefit limitation for business owners.

> 7. Because strict compliance with Minnesota Statutes 2019, Chapter 268 and Minnesota Rules 2019, part 3310, will prevent, hinder, or delay necessary action under this Executive Order, those provisions, and any other provisions in Minnesota Statutes or Rules that are inconsistent with this Executive Order, are waived and suspended during the peacetime emergency declared in Executive Order 20-01.[3]

Id. at 1-3.

Murack argues that the language of the first numbered paragraph of the executive order (paragraph 1) suspends strict compliance not just with the specific sections identified in paragraphs two through six of the order, but with other provisions of chapter 268, such as the administrative appeal deadline. In support of her argument, she claims that paragraph 1 would be superfluous if it did not mean something different from the paragraphs that follow. DEED's interpretation is that paragraph 1 is just an introductory passage for the subsequent paragraphs and has no independent significance.

In determining the correct interpretation, we turn first to the plain language of paragraph 1, which literally states that strict compliance is being suspended for chapter 268—the unemployment statute.[4] We further note that paragraph 1 contains no qualifying

[3] EEO 20-05 has twice been amended by subsequent executive orders to add additional, specific departures from the strict requirements of chapter 268. *See* Emerg. Exec. Order No. 20-29, *Amending Executive Order 20-05 to Expedite State Unemployment Insurance Benefits During the COVID-19 Peacetime Emergency* (Apr. 6, 2020) (EEO 20-29); Emerg. Exec. Order No. 20-102, *Amending Executive Order 20-05 to Ensure Timely Unemployment Insurance Benefits During the COVID-19 Peacetime Emergency* (Dec. 14, 2020) (EEO 20-102).

[4] When a statute is ambiguous, we will defer to a reasonable interpretation by an agency charged with administering the statute. *A.A.A. v. Minn. Dep't of Human Servs.*, 832 N.W.2d 816, 823 (Minn. 2013); *Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812,

clause tying it to the subsequent paragraphs, such as stating that strict compliance with chapter 268 is suspended "as provided below." And paragraphs two through six of the order reference specific sections of chapter 268 and contain clear instructions to waive or disregard certain requirements in each identified section. The paragraphs stand independently and do not require any reference to paragraph 1 to be understood. Thus, in order to give meaning to all paragraphs of the order, paragraph 1 must have a broader meaning than just as an introductory passage. *See* Minn. Stat. § 645.17; *Engfer*, 869 N.W.2d at 300.

DEED acknowledges that the language of the executive order is not ambiguous, but argues that ambiguity arises in determining how to apply the language. We recognize this concern, but that does not allow DEED to simply ignore paragraph 1 of the executive order. As the agency tasked with administering the unemployment statute, DEED must apply the provisions of the executive order and make these assessments during this peacetime emergency.

DEED further argues that interpreting paragraph 1 as having independent meaning would have the effect of suspending all requirements of the unemployment statute and

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815 (Minn. App. 2008). But, "[w]here an agency's interpretation contravenes the plain language of the statute, it is not entitled to judicial deference." *In re Application of Minn. Power for Auth. to Increase Rates*, 929 N.W.2d 1, 10 (Minn. App. 2019), *review denied* (Minn. Aug. 6, 2019). Because our holding in this case is based on the plain language of the executive order, we do not defer to DEED's interpretation. *See Abdi*, 749 N.W.2d at 815 (explaining that "if we conclude that the [statute] and regulations are clear and unambiguous with respect to the issue before us, DEED's interpretation is entitled to no deference").

would render the unemployment-benefits system nonfunctional and in violation of federal law. This argument, however, goes well beyond any reasonable interpretation of paragraph 1.

Paragraph 1 of the order suspends "strict compliance," but not all compliance. "Strict compliance" is a legal term that is generally understood to mean that a party must exactly comply with a statute's requirements. *Drews v. Fed. Nat'l Mortg. Ass'n*, 850 N.W.2d 738, 742 (Minn. App. 2014). In the absence of strict compliance with a statutory provision, there must still be a showing of at least "substantial compliance." *See, e.g.*, *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 608 (Minn. 2016) ("We have . . . required strict or substantial compliance, depending on the circumstances, with the unambiguous requirements of a statute or rule."); *Manco of Fairmont, Inc. v. Town Bd. of Rock Dell Twp.*, 583 N.W.2d 293, 295 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998). A party may be said to have substantially complied with a statute where she has a reasonable explanation for failing to strictly comply, has taken steps to comply with the statute, and has generally complied with the statute's purpose; and there is reasonable notice and a lack of prejudice to other parties. *See State by Spannaus v. Dangers*, 368 N.W.2d 384, 385 (Minn. App. 1985), *review denied* (Minn. Aug. 20, 1985). These requirements for "substantial compliance" provide constraints to avoid the concerns expressed by DEED.

With regard to DEED's claim that applying paragraph 1 to the administrative appeal deadline could result in Minnesota being out of compliance with federal unemployment-law requirements, DEED has failed to identify any such federal requirements. We also

note that unemployment laws from other states allow extensions of appeal deadlines for reasons such as "good cause" or in the event of "circumstances beyond the claimant's control." *See, e.g.*, Mich. Comp. L. § 421.32a(1)-(2) (2020) (appeal deadline of 30 days may be extended up to one year with good cause); Conn. Gen. Stat. § 31-248(a) (appeal filed after the 21-day deadline may be considered to be timely filed if the filing party shows good cause); West's Alas. Stat. Ann. § 23.20.340(e) (reasonable extensions of 30-day appeal deadline for circumstances beyond the applicant's control).

DEED's final argument is that our interpretation of paragraph 1 is contrary to the purpose of the executive order because it would further increase its workload. DEED asserts that the volume of unemployment claims during the pandemic has increased such that there is already a delay in scheduling hearings and that having to consider additional cases would be contrary to the executive order's purpose of providing "immediate relief to employers and unemployed workers." DEED essentially argues that we should factor its staff resources into our interpretation of the executive order. Considerations such as agency resources are outside the scope of proper statutory interpretation, particularly when interpreting unambiguous language.

We thus conclude that paragraph 1 suspended "strict compliance" with the 20-day deadline for administrative appeals set out in Minn. Stat. § 268.101, subd. 2(f).[5] The ULJ

[5] Murack appears to also argue that paragraph 7 of the executive order suspends strict enforcement of the 20-day deadline for administrative appeals during the COVID-19 peacetime emergency. Because we conclude that strict compliance with the administrative appeal deadline is suspended under paragraph 1, we need not reach Murack's arguments regarding paragraph 7.

therefore erred by dismissing the appeal as untimely without first determining whether Murack had "substantially complied" with the deadline. In reaching this conclusion, we offer no opinion on whether Murack was in substantial compliance.

DECISION

Because EEO 20-05 suspends strict compliance with Minn. Stat. § 268.101, subd. 2(f), the ULJ erred by determining that he lacked jurisdiction to hear Murack's appeal without considering whether Murack was in substantial compliance with the administrative appeal deadline. We reverse and remand for further proceedings consistent with this decision.

Reversed and remanded.