

*This opinion is nonprecedential except as provided by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
A21-0269**

Matthew Sawatzky,
Relator,

vs.

Harris Rochester, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 19, 2021
Affirmed
Florey, Judge**

Department of Employment and Economic Development
File No. 39783913-3

Matthew Sawatzky, Montgomery, Minnesota (pro se relator)

Harris Rochester, Inc., St. Paul, Minnesota (respondent employer)

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

Considered and decided by Florey, Presiding Judge; Jesson, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Relator challenges a decision by an unemployment-law judge (ULJ) dismissing as
untimely relator's administrative appeal from a determination that he is ineligible for

unemployment benefits because he quit his employment. Because the record could not support a finding that relator substantially complied with the deadline to appeal the initial determination, we affirm.

FACTS

Relator Matthew Sawatzky was employed at Harris Rochester, Inc., as a union sheet-metal worker from October 1, 2018 to January 5, 2019. On January 6, 2019, Sawatzky applied for unemployment benefits with the Minnesota Department of Employment and Economic Development (DEED), indicating that he was laid off from his employment at Harris, and began receiving unemployment benefits.

Sometime after that, Harris raised the issue of whether Sawatzky quit his employment. DEED directed that Harris and Sawatzky complete questionnaires to determine whether Sawatzky was eligible to receive unemployment benefits.

On June 25, 2020, DEED issued a determination of ineligibility, stating that Sawatzky had quit his employment and was therefore ineligible to receive benefits. The letter stated that Sawatzky had received an overpayment of \$11,452.00. Under the heading “Right of Appeal, the letter informed Sawatzky of the following:

This determination will become final unless an appeal is filed by Wednesday, July 15, 2020. The ‘filed’ date is the postmark date, if mailed, or the date received by the Unemployment Insurance Program, if sent by fax or internet. The recommended method for filing an appeal is by internet. You can do so by logging in to your account at www.uimn.org/uimn/ and following the prompts. If filing by fax or mail please send this determination, or a photocopy, along with a short statement explaining why you are filing the appeal to the fax number or address listed below.

Sawatzky did not appeal until October 6, 2020, and the ULJ summarily dismissed his appeal as untimely. On October 15, Sawatzky timely filed a request with the ULJ to reconsider his appeal. He explained that he did not file his appeal within the appeal period “because of my misplacement of my letter that was mailed out to me on June 25, 2020.” He also explained that during that time, he experienced “unforeseen family hardships.” In addition, Sawatzky submitted documents related to the merits of the underlying issue of how his employment was terminated, arguing that Harris incorrectly reported that he had quit.

Applying the procedure explained in Minn. Stat. § 268.105, subd. 2 (2020), which states an applicant must appeal a determination of ineligibility within 20 calendar days, the ULJ determined the dismissal was factually and legally correct and affirmed the dismissal. The ULJ explained that after the June 25, 2020 determination became final, “the [ULJ] has no legal authority to address the case on its merits.”

On appeal, in addition to requesting that this court reconsider the ULJ’s dismissal on timeliness grounds, Sawatzky argues that Harris inaccurately reported that he voluntarily quit, alleging instead that he was laid off due to a reduction of work force. He points to an email sent by Harris’s director of field operations on October 19, 2020, stating that “[Sawatzky] was released for lack of work” as evidence that he was laid off.

DECISION

A determination of ineligibility for unemployment benefits “is final unless an appeal is filed by the applicant or employer within 20 calendar days after sending.” Minn. Stat. § 268.101, subd. 2(f) (2020). “The date of mailing commences the time for appeal.” *Smith*

v. Masterson Pers., Inc., 483 N.W.2d 111, 112 (Minn. App. 1992). “A ULJ’s decision to dismiss an appeal as untimely raises a jurisdictional question of law, which we review de novo.” *In re Murack*, 957 N.W.2d 124, 127 (Minn. App. 2021).

The ULJ must dismiss untimely appeals for lack of jurisdiction. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012); accord Minn. Stat. § 268.105, subd. 1a(c) (2020) (“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.”). The statutory time period “is absolute and unambiguous,” *Semanko v. Dep’t of Emp’t Servs.*, 244 N.W.2d 663, 666 (Minn. 1976), and generally “there are no statutory provisions for extensions or exceptions to the appeal period,” *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 740 (Minn. App. 2006).

But in *Murack*, this court determined that an executive order in response to the COVID-19 peacetime emergency suspended the requirement of strict compliance with the 20-day administrative appeal period and instituted instead a requirement for substantial compliance with the deadline. 975 N.W.2d at 131. Therefore, the proper question for the ULJ to consider was “whether [relator] was in substantial compliance with the administrative appeal deadline.” *Id.* at 131. The court stated:

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.

Id. at 130.

The ULJ dismissed this appeal before *Murack* was decided, and thus did not apply the “substantial compliance” standard. In some circumstances, it may be appropriate to remand for the ULJ to consider the facts in light of that standard. But here, the record could not support a finding of substantial compliance, and therefore, we affirm.

The 20-day appeal period began on June 25, 2020, when DEED’s determination was mailed to Sawatzky at the address he provided, and expired on July 15, 2020. The letter clearly explained the requirements and procedure to appeal. Sawatzky did not file an appeal until October 6, 2020. Sawatzky explained that he missed the deadline because of an “unforeseen family hardship” and because he misplaced DEED’s letter stating the deadline. Even applying the less stringent “substantial compliance” standard, Sawatzky has failed to provide a reasonable explanation for failing to appeal DEED’s ineligibility determination until approximately three months after the 20-day deadline. Sawatzky has also failed to show that he took “steps to comply with the statute.” *See Her v. FGT Cabinetry, LLC*, A20-1024, 2021 WL 1247956, at *2-3, (Minn App. April 5, 2021) (unpublished) (finding relator’s late appeal failed to substantially comply with the appeal period when relator provided a nonexistent address and relator’s excuse was that he did not know how to apply); *Miller v. Hollenback & Nelson, Inc.*, No. A20-0927, 2021 WL 955937, at *2 (Minn. App. March 15, 2021) (unpublished) (affirming the dismissal of a late request for reconsideration where the relator did not provide any reason for filing late).¹

¹ Nonprecedential opinions are not binding authority, *see* Minn. R. Civ. App. P. 136.01(c), but because of the time-limited application of the pandemic emergency executive order, they have persuasive authority.

For these reasons, the record could not support a finding that Sawatzky substantially complied with the administrative appeal period, and we affirm the ULJ's dismissal of his appeal.

Sawatzky also asserts that he did not quit his employment with Harris, but rather that he was laid off due to a reduction in workforce. When a ULJ dismisses an appeal as untimely, the only question before this court is whether the ULJ erred in dismissing the appeal, and this court does not have authority to address the merits of the appeal. See *Murack*, 957 N.W2d at 127 (stating that “the statutory time for appeal is absolute” and “if an appeal is not timely filed, it must be dismissed for lack of jurisdiction”). Therefore, we decline to review this issue.

Affirmed.