

*This opinion is nonprecedential except as provided by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
A21-1069**

Victor A. Thomas,
Relator,

vs.

Prime Pork LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 25, 2022
Reversed and remanded
Cleary, Judge***

Department of Employment and Economic Development
File No. 42273067-6

Charles H. Thomas, Law Offices of Southern Minnesota Regional Legal Services, Inc.,
St. Paul, Minnesota (for relator)

Prime Pork LLC, Windom, Minnesota (for respondent employer)

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

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Cleary,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CLEARY, Judge

Relator Victor A. Thomas challenges an unemployment-law judge's (ULJ's) dismissal as untimely of his administrative appeal of the determination that he was ineligible for unemployment benefits. Relator argues that (1) the ULJ misinterpreted and misapplied the substantial-compliance standard set out in *In re Murack*, 957 N.W.2d 124 (Minn. App. 2021); (2) the ULJ erroneously concluded that relator's requalification argument was outside the scope of the issue presented; and (3) respondent Minnesota Department of Employment and Economic Development (DEED) inappropriately withheld records from him. Because relator substantially complied with Minn. Stat. § 268.101 (2020), the statute setting out the requirements for an administrative appeal, we reverse and remand.

FACTS

After Prime Pork LLC discharged relator, he applied for unemployment benefits and established a benefits account in August 2020. On September 14, 2020, DEED sent relator a determination of ineligibility stating that the determination would be final unless appealed within 20 days, or by October 5, 2020. Relator submitted his appeal 15 days after the deadline on October 20, 2020, and a ULJ determined that his appeal was untimely.

Relator requested reconsideration, and the ULJ affirmed the ineligibility determination. Relator then petitioned this court for a writ of certiorari. We stayed relator's case pending the outcome of *Murack*. And after we released our opinion in

Murack, we remanded relator's case for further proceedings on whether relator's appeal was timely in light of *Murack*'s substantial-compliance standard.

In April 2021, a ULJ held a hearing on remand. Relator testified that he had no computer and had trouble securing transportation. He testified that when he called DEED, the representative told him that "there was nothing [he] could do," so he did not appeal. He thought that he called DEED multiple times but did not recall when he placed the calls. He later contacted a legal aid organization but did not recall when he did so. An attorney with the organization testified that he returned relator's call on October 14, 2020, and that he helped relator complete his appeal on October 20, 2020.

In May 2021, the ULJ issued a decision concluding that relator's appeal was still untimely under the substantial-compliance standard. The ULJ found that relator presented no evidence showing that he took steps to file an appeal within the 20-day appeal period and therefore did not substantially comply with the filing requirements set out in Minn. Stat. § 268.101.

Relator requested reconsideration as well as additional records from DEED, including data about phone calls between relator and DEED. DEED initially rejected relator's request for records but nevertheless provided some of the requested information to relator in mid-July 2021. However, neither relator nor DEED submitted the records DEED provided as evidence.

Relator submitted his written argument regarding reconsideration on July 22, 2021. In his memorandum, relator also argued that he substantially complied with ineligibility-requalification requirements under Minn. Stat. § 268.095, subd. 10(a) (2020).

The ULJ affirmed the May 2021 determination that relator’s appeal was untimely. The ULJ also concluded that relator’s requalification argument was outside the scope of the issue presented. Relator appeals by writ of certiorari.

DECISION

We review de novo whether a ULJ properly dismissed an appeal as untimely. *Murack*, 957 N.W.2d at 127. We may reverse, remand, or modify a ULJ’s decision if it reflects an error of law and prejudices an applicant’s substantial rights. Minn. Stat. § 268.105, subd. 7(d) (2020). We review the ULJ’s factual findings to determine if the record reasonably supports them. *Fay v. Dep’t of Emp. & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015).

Relator first argues that the ULJ based its decision on relator’s failure to take steps to comply with the appeal deadline within the 20-day appeal period. He asserts that the ULJ thereby misinterpreted the substantial-compliance standard. We agree.

A determination of ineligibility is final unless appealed within 20 calendar days after DEED sends the determination. Minn. Stat. § 268.101, subd. 2(f). This deadline is usually absolute. *Murack*, 957 N.W.2d at 127. But in *Murack*, we held that Governor Tim Walz’s March 16, 2020, executive order suspended strict compliance with the 20-day deadline. *Id.* at 131 (citing Emerg. Exec. Order No. 20-05, *Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency* (Mar. 13, 2020) (EEO 20-05)). Instead, an applicant was required to substantially comply with the deadline. *Id.* at 130. An applicant substantially complied if the applicant (1) “ha[d] a reasonable explanation for failing to strictly comply,” (2) “ha[d] taken steps to comply with the

statute,” (3) “ha[d] generally complied with the statute’s purpose,” and (4) “there [was] reasonable notice and a lack of prejudice to other parties.” *Id.*

Here, the ULJ stated that relator provided no evidence “that he took any actions towards filing an appeal *during the appeal period*.” (Emphasis added.) But our decision in *Murack* does not require that the steps taken to comply have to have occurred during the appeal period. *Id.*; see also *In re Moose*, No. A21-0881, 2022 WL 433340, at *2 (Minn. App. Feb. 14, 2022) (“We never stated in *Murack* that to demonstrate ‘substantial compliance’ a relator had to demonstrate that she made efforts to file the appeal *within the 20-day appeal period*.”).¹ By basing its decision on relator’s failure to take steps to comply within the 20-day appeal period, the ULJ erred as a matter of law.

DEED cites to several nonprecedential opinions of this court to support its argument that steps must be taken within the appeal period. But none of those cases stand for that proposition. Instead, those cases note that applicants failed to take steps within the appeal period *or within the time up until the applicants submitted their appeals*. See *Green v. Hazelden Found.*, No. A21-0316, 2021 WL 4428901, at *2 (Minn. App. Sept. 27, 2021) (stating applicant did not take steps during statutory period or the 109 days it took for her to appeal); *Sawatzky v. Harris Rochester, Inc.*, No. A21-0269, 2021 WL 3027277, at *2 (Minn. App. July 19, 2021) (addressing whether relator “took steps to comply *with the statute*” generally, as opposed to with the deadline specifically (emphasis added));

¹ We cite *Moose* for its persuasive value because it directly addresses the same issue we address here. Minn. R. Civ. App. P. 136.01(c) (stating that nonprecedential opinions of this court may be cited for persuasive value).

Hinnenkamp v. Minneapolis Special Sch. Dist. #001, No. A21-0102, 2021 WL 3278024, at *2 (Minn. App. Aug. 2, 2021) (noting that applicant failed to substantially comply with the appeal period when “he failed to appeal the determination for about two months” after receiving notice).

We further note that DEED’s interpretation that steps must be taken during the appeal period is contrary to public policy, specifically the policy expressed in EEO 20-05. EEO 20-05 sought to alleviate economic insecurity and provide “immediate relief to employers and unemployed workers” during the pandemic. EEO 20-05 at 1. It is possible that an applicant might receive a determination of ineligibility, become hospitalized with the COVID-19 virus the following day, and remain in the hospital, unable to take steps to appeal the ineligibility determination—let alone complete that appeal—for the entire appeal period. Requiring steps to be taken during the appeal period resembles the strict compliance in place before the pandemic and does little to alleviate the economic insecurity of unemployed workers. In sum, the ULJ erred by considering only actions that the relator took (or failed to take) before the 20-day deadline in determining whether relator took steps to comply with the statute.

We next address whether the ULJ’s error in misinterpreting the substantial-compliance standard requires reversal and remand. Reversal and remand is not warranted unless the error prejudiced relator’s substantial rights. Minn. Stat. § 268.105, subd. 7(d). We conclude that the ULJ’s decision here prejudiced relator’s substantial rights.

The ULJ acknowledged that relator “faced transportation issues” and “did not have computer access” during the appeal period. But the ULJ reasoned that relator could have

appealed either online or by mail, and that relator did not present evidence showing that he could not appeal via mail. The ULJ also determined that relator's testimony regarding his call or calls to DEED changed and therefore found that testimony not credible. Finally, the ULJ did not address the third and fourth substantial-compliance factors: whether relator "generally complied with the statute's purpose" or whether the other parties had reasonable notice or would be prejudiced. *Murack*, 957 N.W.2d at 130.

We conclude that the record does not support the ULJ's determination here and further conclude that relator's substantial rights were prejudiced as a result. Relator stated that he has no computer; thus, he could not easily appeal online. And he had trouble accessing transportation, giving rise to an inference that he could not access facilities or materials to mail an appeal. And he testified that he called DEED and was told there was nothing he could do. As such, he provided a reasonable explanation for failing to strictly comply with the appeal deadline.

Additionally, although the ULJ found relator's testimony regarding when and how many times he called DEED not credible, relator's testimony was consistent and undisputed that he called DEED at least once about appealing the determination of ineligibility. Relator also sought an attorney to assist with his appeal. And he then appealed within 15 days of the deadline. We conclude that he took steps to comply with the statute.

Finally, the record is clear as to the remaining substantial-compliance factors: relator complied with the purposes of the statute by calling DEED to inquire about his case and attempting to appeal in a timely manner; DEED and Prime Pork had adequate notice

of relator's appeal; and we discern no prejudice to DEED or Prime Pork in allowing relator's appeal to go forward. *See Robbinsdale Clinic, P.A. v. Pro-Life Action Ministries*, 515 N.W.2d 88, 90 (Minn. App. 1994) (resolving issue for first time on appeal to avoid further litigation on the matter) (citing *Mitchell v. Morten*, 54 N.W.2d 333, 337 (Minn. 1952) (stating that issues may be resolved on appeal when relevant parts of record are clear and doing so is in the interests of judicial economy)), *rev. denied* (Minn. June 15, 1994).

Because we reverse and remand for further proceedings consistent with this decision, we need not address relator's requalification or access-to-records arguments, and we express no opinion as to the merits of those arguments.

Reversed and remanded.