

*This opinion is nonprecedential except as provided by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
A21-1364**

Roger Reyes Victoria,
Relator,

vs.

Long Prairie Packing Company Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 16, 2022
Reversed and remanded
Cochran, Judge**

Department of Employment and Economic Development
File No. 46550143-2

Roger Reyes Victoria, Long Prairie, Minnesota (pro se relator)

William Moody, Fitch, Johnson, Larson & Held, P.A., Roseville, Minnesota (for
respondent employer)

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

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and
Reyes, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he filed an untimely appeal of the denial of his unemployment benefits. We reverse and remand.

FACTS

In May 2021, relator Roger Reyes Victoria applied for unemployment benefits and created a benefit account with respondent Minnesota Department of Employment and Economic Development (DEED). On June 30, 2021, DEED mailed a determination of ineligibility to the address on file for Reyes Victoria. The mailing provided that the determination would become final unless Reyes Victoria filed an administrative appeal by July 20, 2021. On August 2, 2021, 13 days after the filing deadline, Reyes Victoria appealed the eligibility determination. The next day, a ULJ issued an order summarily dismissing Reyes Victoria's appeal as untimely because it was not filed by July 20.

Reyes Victoria filed a timely request for reconsideration. His request for reconsideration explained that he "do[es] not speak very good English an[d] needed assistance with the appeal and unfortunately was not able to get help until after the appeal date to file." In a written order, the ULJ denied the request for reconsideration and affirmed the dismissal of Reyes Victoria's appeal as untimely.

Reyes Victoria appeals by a writ of certiorari.

DECISION

Reyes Victoria challenges the ULJ's decision to dismiss his administrative appeal of DEED's ineligibility determination as untimely. In his informal brief, he relies on the

grounds asserted in his request for reconsideration, arguing that he was unable to file an administrative appeal before the deadline because he does not speak English well and it was hard for him to find a translator to help with the process. He also asserts for the first time on appeal that the ineligibility determination was sent to the wrong address and/or returned to sender, so he did not receive it “until after a while.” DEED argues that the ULJ did not err by dismissing the appeal as untimely because Reyes Victoria did not strictly or substantially comply with the appeal deadline.

A ULJ’s decision to dismiss an appeal as untimely raises a question of law, which we review de novo. *In re Murack*, 957 N.W.2d 124, 127 (Minn. App. 2021). We may reverse a ULJ’s decision if the substantial rights of the relator have been prejudiced because, among other things, the decision is affected by an error of law or is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2020).

“A determination of eligibility or determination of ineligibility 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). Generally, this 20-day timeline is “strictly construed, regardless of mitigating circumstances.” *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986), *rev. denied* (Minn. Aug. 13, 1986).

However, strict compliance with the 20-day appeal deadline set forth in Minn. Stat. § 268.101, subdivision 2(f), was suspended effective March 16, 2020, by Executive Order 20-05 (EEO 20-05). Emerg. Exec. Ord. No. 20-05, *Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency* (Mar. 16, 2020) (providing in relevant part that “strict compliance with Minnesota Statutes

2019, Chapter 268, Minnesota Unemployment Insurance Law is suspended”). The governor issued EEO 20-05 in response to the challenges faced by unemployed workers and employers alike from the ongoing pandemic. *Id.* As a result of EEO 20-05, an untimely appeal of a DEED ineligibility determination could proceed so long as the applicant “substantially complied” with the statutory appeal timeframe. *See Murack*, 957 N.W.2d at 131 (stating that, under EEO 20-05, relators need not strictly comply with the 20-day appeal period and remanding for a determination of whether the relator substantially complied with the statutory timeline). And, in *Murack*, this court specified that an applicant could show “substantial compliance” with the statute if the applicant “ha[d] a reasonable explanation for failing to strictly comply, ha[d] taken steps to comply with the statute, and ha[d] generally complied with the statute’s purpose; and there [was] reasonable notice and a lack of prejudice to other parties.” *Id.* at 130. On July 1, 2021, at 11:59 p.m., EEO 20-05 and its suspension of strict compliance expired. 2021 Minn. Laws 1st Spec. Sess. ch. 12, art. 2, § 23.

Here, the waiver of strict compliance under EEO 20-05 was in effect at the start of Reyes Victoria’s 20-day appeal period on June 30, 2021. *Murack* was also established precedent at that time, having been issued by this court on March 8, 2021. But the ULJ’s order dismissing Reyes Victoria’s appeal as untimely did not address whether Reyes Victoria had substantially complied with the statutory appeal period. And the ULJ’s subsequent order on reconsideration only briefly mentioned substantial compliance. The order stated only that Reyes Victoria “made no efforts to file an appeal within the 20-day

appeal period” and therefore “did not substantially comply with the deadline under [EEO] 20-05, which expired on July 1, 2021.”

For purposes of this nonprecedential opinion, we assume that Reyes Victoria was required to substantially, rather than strictly, comply with the 20-day appeal timeline because EEO 20-05 was in effect at the start of his appeal period. On that basis, we conclude that the ULJ applied an incorrect legal standard to determine whether Reyes Victoria substantially complied. In analyzing the question, the ULJ considered *only* whether Reyes Victoria substantially complied *within* the 20-day appeal period. In *Murack*, however, we recognized that “[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.” *Murack*, 957 N.W.2d at 130 (emphasis added). Our language in *Murack* does contemplate a showing of steps taken to comply with the statute, but the language does not require that the steps be taken within the 20-day appeal period. *See id.* Because the ULJ applied a stricter substantial-compliance standard than the standard set forth in *Murack*, the ULJ erred as a matter of law.

We next address whether the ULJ’s legal error prejudiced Reyes Victoria’s substantial rights. 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 legal error prejudiced Reyes Victoria’s substantial rights because the ULJ determined that Reyes Victoria’s appeal could not proceed based

on the ULJ's application of the erroneous legal standard. In addition, not only did the ULJ apply the incorrect legal standard regarding the steps that Reyes Victoria "ha[d] taken . . . to comply with the statute," but the ULJ also did not address any of the other substantial-compliance factors specified in *Murack*. See *Murack*, 957 N.W.2d at 130 (listing factors). As a result, the ULJ ignored relevant factual assertions made by Reyes Victoria including that he filed the appeal 13 days past the statutory deadline because he does not speak English well, needed assistance with the appeal, and was unable to obtain assistance until after the appeal deadline.¹ In doing so, the ULJ prejudiced Reyes Victoria's substantial rights.

Because the ULJ erred by applying a too-narrow legal standard and Reyes Victoria's substantial rights were prejudiced as a result, we reverse and remand with instructions for the ULJ to re-examine the substantial-compliance question based on a proper application of *Murack*. On remand, the ULJ is permitted to open the record and conduct a hearing. See Minn. Stat. § 268.105, subd. 1a(c) (2020).

Reversed and remanded.

¹ Reyes Victoria also asserts for the first time on appeal that the ineligibility determination was sent to the wrong address and/or returned to sender, so he did not timely receive it. Because he did not raise this as a basis for reconsideration before the ULJ, we do not consider it on appeal. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court "must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it" (quotation omitted)). Nothing in this opinion should be construed to preclude the ULJ from considering this argument and the related assertions on remand if the record is reopened.