STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2078

Jordan Carroll,
Relator,

vs.

Minnesota Apartments, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 14, 2020
Vacated
Ross, Judge

Department of Employment and Economic Development
File No. 37501391-4

Erik F. Hansen, Rachel K. Tack, Burns & Hansen, P.A., Minneapolis, Minnesota (for relator)

Thomas E. Glennon, Thomas E. Glennon, P.A., Minneapolis, Minnesota (for respondent Minnesota Apartments, LLC)

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

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

An unemployment-law judge found that Jordan Carroll quit his job with Minnesota Apartments LLC, and that judge later purported to amend some details of the decision after Carroll's reconsideration-request deadline had expired. Carroll unsuccessfully sought reconsideration, and he now appeals from the decision denying his request to reconsider. Because the unemployment-law judge's jurisdiction terminated when Carroll's reconsideration-request deadline expired, neither of the judge's decisions after that date has any effect. We therefore vacate both the amended decision and the reconsideration decision, leaving intact the original post-hearing decision.

FACTS

Relator Jordan Carroll applied for unemployment-insurance benefits after his employment as a maintenance technician with respondent Minnesota Apartments LLC ended in December 2018. Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that Carroll was eligible for benefits, but Minnesota Apartments appealed that determination, arguing that Carroll had quit work without good reason.

An unemployment-law judge (ULJ) conducted an evidentiary hearing to decide Carroll's eligibility. After hearing conflicting evidence about how Carroll's employment ended, the ULJ issued a decision on August 16, 2019, finding that Carroll quit without good reason caused by Minnesota Apartments and determining the amount that Carroll had been overpaid in benefits. The ULJ accompanied the decision with a notice informing

Carroll that the decision would "be final unless a request for reconsideration is filed with the unemployment[-]law judge on or before Thursday, September 5, 2019," consistent with the 20-day period allowed under Minnesota Statutes section 268.105, subdivision 2(a) (2018).

The September 5 deadline passed and Carroll had not submitted a request to reconsider. But on September 10, 2019, the ULJ issued a purportedly amended decision, again determining that Carroll was ineligible but reducing the overpayment amount. Carroll immediately asked the ULJ to reconsider and requested the ULJ to conduct another hearing. The ULJ denied Carroll's hearing request and then affirmed himself when Carroll asked him to reconsider.

Carroll appeals by certiorari.

D E C I S I O N

Carroll appeals the ULJ's decision on reconsideration, arguing that the ULJ erred either by determining that he quit or by determining that he lacked good reason to quit caused by his employer. DEED urges us to dismiss Carroll's appeal, contending that the ULJ lacked subject-matter jurisdiction and that this court therefore lacks subject-matter jurisdiction to review the ULJ's decision on reconsideration. We review de novo questions of subject-matter jurisdiction, *Williams v. Smith*, 820 N.W.2d 807, 813 (Minn. 2012), timeliness, *Rowe v. Dep't of Emp't & Econ. Dev.*, 704 N.W.2d 191, 194 (Minn. App. 2005), and statutory construction, *Eischen Cabinet Co. v. Hildebrandt*, 683 N.W.2d 813, 815 (Minn. 2004). We strictly construe the statutory deadlines governing unemployment-benefit-eligibility appeals. *See Semanko v. Dep't of Emp't Servs.*,

244 N.W.2d 663, 666 (Minn. 1976); *Rowe*, 704 N.W.2d at 195–96. For the following reasons, we conclude that the ULJ lacked subject-matter jurisdiction when he amended the August 16, 2019 decision, rendering the amended decision and decision on reconsideration ineffectual.

Our jurisdictional decision arises from the timing of the key procedural events. The ULJ issued his primary decision on August 16, 2019, his amended decision on September 10, 2019, and his decision on reconsideration on November 25, 2019. On a timely appeal from an initial eligibility determination, a ULJ must conduct a de novo hearing and issue a decision. Minn. Stat. § 268.105, subds. 1, 1a(a) (2018). That decision "is final unless a request for reconsideration is filed." *Id.*, subd. 1a(a). The parties and DEED's commissioner may seek the ULJ's review by filing a request for reconsideration "within 20 calendar days of the sending of the unemployment[-]law judge's decision." *Id.*, subd. 2(a). The deadline to request reconsideration of the ULJ's August 16 decision was therefore September 5, 2019.

Carroll has described the circumstances of his failure to request reconsideration within the statutory period. He asserts that he received a notification dated August 23, 2019, prompting him to telephone DEED. His call occurred within the 20-day reconsideration period. He says that DEED representatives advised him that the ULJ would be issuing an amended decision and that he should therefore wait to file any request for reconsideration until after the ULJ issued the amended decision, indicating that his request would be considered timely. For the purposes of this appeal, we accept as true Carroll's description of those circumstances.

We addressed somewhat similar circumstances in *Rowe v. Department of Employment & Economic Development*, 704 N.W.2d at 195–97. Rowe had appealed determinations of ineligibility on two accounts, and the reviewing ULJ issued separate decisions on June 11, 2004, modifying one determination and preserving the other. *Id.* at 193. Rowe believed one determination of overpayment was no longer in effect when he received a bill from the department in August 2004, so he contacted DEED. *Id.* at 193–94. The ULJ issued an amended decision on August 18, 2004. *Id.* at 194. Rowe appealed the decision to the senior unemployment-review judge (SURJ), who dismissed Rowe's appeal as untimely. *Id.* Applying statutory language similar to the current statute to a 30-day deadline to appeal a ULJ's decision, we reasoned that the ULJ had the implied authority to correct a decision within the 30-day appeal period, but that the ULJ "lacked jurisdiction to consider the matter" when he amended the decision after that period expired, "38 days after the decision became final." *Id.* at 195–96. We emphasized that the statute "specifically provides . . . that[] if an appeal is *not* filed within the 30 days, the ULJ's decision becomes the final decision of the department." *Id.* at 195. Based on that reasoning, we held that the ULJ's August 18 amended decision was void, and we reinstated the June 11 decision. *Id.* at 196–97.

Carroll unconvincingly urges us to distinguish *Rowe*. He highlights that the event triggering the ULJ's amendment in Rowe's case occurred only after the deadline to appeal had expired, *see id.* at 193, while the ULJ here had begun contemplating amending his decision before the 20-day deadline expired. We reject Carroll's implied assertion that the ULJ could extend his inherent authority to amend a decision by merely committing himself

to amend the decision. The assertion contradicts our reasoning in *Rowe*, where we clarified that the ULJ's authority to *actually amend* the decision existed only during the period to seek reconsideration:

> Because a relator has 30 days to appeal a decision of the ULJ, the ULJ's implied power to correct an erroneous decision arguably exists for the same 30-day period. Section 268.105 specifically provides, however, that, if an appeal is *not* filed within the 30 days, the ULJ's decision becomes the final decision of the department. . . . Once the ULJ's decision became final, the entire department—including the ULJ and the SURJ—lacked jurisdiction to consider the matter further. Without jurisdiction, the ULJ lacked the legal authority *to correct* an erroneous decision.

Id. at 195–96 (emphasis added) (citations omitted). The ULJ's implicit "legal authority to correct" the prior decision within the statutory period is not tolled by the ULJ's merely contemplating a correction or even deciding that he should (or will) make a correction. Not only does Carroll's notion extend far beyond *Rowe*'s reasoning, it implies the untenable possibility that a ULJ might, within the 20-day reconsideration period and without notice to any party, privately decide that he will amend the original decision and thereby hold open his jurisdiction over the case until he finally issues the amended order, say, perhaps eight or nine weeks (or months, or *years*) later. The inherent authority we recognized in *Rowe* follows logically and consistently from the statute, but extending ULJ jurisdiction beyond the reconsideration deadline does not.

Regardless of when the ULJ began contemplating amending the August 16 decision, *Rowe*'s guidance and the lack of any request for reconsideration within the 20-day period lead us to conclude that the ULJ's subject-matter jurisdiction to amend the August 16

decision terminated immediately after September 5, and the ULJ lacked subject-matter jurisdiction when he purportedly *sua sponte* amended the decision and later entered his decision on reconsideration. Carroll presents five arguments urging a different outcome, some of which he raised in opposition to an earlier motion to dismiss this appeal and which we address now. None prevail.

First, Carroll argues that DEED forfeited the jurisdictional challenge by not acting sooner. We reject the argument because "[s]ubject[-]matter jurisdiction cannot be conferred by consent of the parties, it cannot be [forfeited], and it can be raised at any time . . . ." *Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426, 430 (Minn. 2005).

Second, Carroll similarly contends that the issue is not properly before us because the ULJ did not find that Carroll's request was untimely. But the statute he relies on fails to make the case. *See* Minn. Stat. § 268.105, subd. 2(f) (2018) (requiring ULJ to "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*" (emphasis added)). And although we typically do not review issues raised for the first time on appeal, *see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), our consideration of issues on undisputed facts is proper if there is no advantage or disadvantage to the parties based on the lack of a determination below, *see Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687 (Minn. 1997).

Third, we decline to follow Carroll's suggestion that we remand the case for a hearing over facts related to the jurisdictional question. We have accepted as true Carroll's

allegations about those facts, and no party disputes the timing of any of the key events, making the analysis purely legal rather than factual. *See Rowe*, 704 N.W.2d at 194.

Fourth, Carroll contends alternatively that the ULJ "arguably" deemed his request timely. This is not so. The ULJ's decision on reconsideration clarifies that he believed that Carroll was asking him to reconsider the September 10 amended decision. The November 25 decision recounted issuing "findings of fact and [a] decision" on September 10 and stated that Carroll "filed a request for reconsideration asking the unemployment[-]law judge to reconsider *that* decision" (emphasis added), identifying the *amended* decision.

Fifth, Carroll also raises several issues emphasizing DEED's misadvice. He implies that he should not be held accountable for DEED's representatives' mistakes, that the parties recognized that the reduced overpayment amount in the amended decision was accurate, and that reinstating the August 16 decision would contravene the spirit and purpose of Minnesota's unemployment-insurance program. He also suggests that he might be entitled to "some leeway" because he was self-represented during the underlying proceedings. Jurisdiction, which naturally tends toward harsh results, does not extend based on these sentiments. And in this case, the (immaterial) concerns about staff mistakes and severity are lessened by the fact that the ULJ accompanied his August 16 decision with an advisory informing Carroll unambiguously, "Under Minnesota Statute[s section] 268.105, subdivision 2, this decision will be final unless a request for reconsideration is filed with the unemployment[-]law judge on or before Thursday, September 5, 2019."

We briefly address DEED's contention that the jurisdictional defect deprives this court of subject-matter jurisdiction. We rejected the argument when we denied DEED's earlier motion to dismiss this appeal, and we reject it again. We have jurisdiction to review a decision on reconsideration provided that a petition for a writ of certiorari is filed and served within 30 days after the decision was sent. Minn. Stat. § 268.105, subd. 7 (2018). Carroll timely appealed the November 25 decision on reconsideration, and we trace our appellate jurisdiction to that decision notwithstanding the jurisdictional infirmity underlying it.

The ULJ lacked subject-matter jurisdiction after September 5, 2019, and so his amended decision and his decision on reconsideration are ineffectual. We vacate those decisions, clarifying that the August 16 decision remains in effect because no request for reconsideration of that decision was filed within 20 days.

Vacated.