



In the Missouri Court of Appeals Eastern District

DIVISION FIVE

TRAVIS L. BANDY,)	No. ED91956
)	
Claimant/Appellant,)	
)	
vs.)	Appeal from the Labor and
)	Industrial Relations Commission
DIVISION OF EMPLOYMENT SECURITY,)	
)	
Respondent.)	
)	FILED: November 18, 2008

Travis L. Bandy (Claimant) appeals the Labor and Industrial Relations Commission's (Commission) decision affirming the determination that he was overpaid unemployment benefits. We dismiss the appeal for lack of jurisdiction.

A deputy of the Division of Employment Security (Division) determined that Claimant had been overpaid unemployment benefits, because he earned wages during a period of receiving unemployment benefits. Claimant appealed this determination to the Appeals Tribunal, which affirmed the deputy. Claimant then sought review by the Commission, which also affirmed the determination. Claimant has now filed a notice of appeal to this Court.

The Division has filed a motion to dismiss Claimant's appeal, asserting it is untimely and thus, this Court lacks jurisdiction. Claimant has not filed a response to the motion.

Pursuant to section 288.210, RSMo 2000, an unemployment claimant must file the notice of appeal to this Court from the Commission's decision within twenty days of the decision becoming final. The Commission's decision becomes final ten days after it is mailed to the parties. Section 288.200.2, RSMo 2000. Here, the Commission mailed its decision to Claimant on August 14, 2008. Therefore, the notice of appeal was due on or before September 15, 2008. Sections 288.200.2, 288.210; Section 288.240, RSMo 2000. Claimant mailed his notice of appeal to the Commission on September 19, 2008, which under section 288.240 is considered the date of filing. Therefore, Claimant's notice of appeal is untimely under section 288.210.

Chapter 288 governing unemployment cases fails to provide for the filing of a late notice of appeal. McCuin Phillips v. Clean-Tech, 34 S.W.3d 854, 855 (Mo. App. E.D.2000). As a result, an untimely notice of appeal deprives this Court of jurisdiction to entertain the appeal and we must dismiss it. Flotron v. Information Solutions Design, 238 S.W.3d 745, 746 (Mo. App. E.D. 2007).

The Division's motion to dismiss is granted. The appeal is dismissed for lack of jurisdiction.

NANNETTE A. BAKER, CHIEF JUDGE

PATRICIA L. COHEN, J. and
KENNETH M. ROMINES, J. concur.