



In the Missouri Court of Appeals Eastern District

DIVISION FIVE

JAMES MAGEE,)	No. ED92415
)	
Claimant/Appellant,)	
)	
vs.)	Appeal from the Labor and
)	Industrial Relations Commission
DIVISION OF EMPLOYMENT SECURITY,)	
)	FILED: March 10, 2009
Respondent.)	

James Magee (Claimant) appeals the Labor and Industrial Relations Commission's (Commission) decision determining he had been overpaid unemployment benefits. We dismiss the appeal.

The Division of Employment Security (Division) concluded that Claimant had been overpaid unemployment benefits, because he failed to report all of his earnings. Claimant appealed to the Appeals Tribunal, which affirmed this determination. Claimant then filed an application for review with the Commission, which affirmed the Appeals Tribunal. 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. 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 September 15, 2008. Therefore, the notice of appeal to this Court was due on or before October 15, 2008. Sections 288.200.2, 288.210. Claimant filed his notice of appeal with the Commission on January 7, 2009, which 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.