



In the Missouri Court of Appeals Eastern District

DIVISION FIVE

EUGENE BINKLEY, JR.,)	No. ED94190
)	
Claimant/Appellant,)	
)	
vs.)	Appeal from the Labor and
)	Industrial Relations Commission
WICHELE BENFIELD, and DIVISION)	
OF EMPLOYMENT SECURITY,)	
)	
Respondents.)	Filed: March 9, 2010

Eugene Binkley, Jr. (Claimant) appeals the Labor and Industrial Relations Commission's (Commission) decision denying his application for unemployment benefits. We dismiss the appeal.

A deputy of the Division of Employment Security (Division) concluded that Claimant was eligible for unemployment benefits. His employer, Wichelle Benfield, appealed this decision to the Appeals Tribunal of the Division, which reversed the deputy's determination. Claimant then filed an application for review with the Commission, which issued an order affirming the Appeals Tribunal's decision.¹ Claimant 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.

¹ The Commission initially dismissed Claimant's application for review as untimely, but set aside this order for a hearing on the timeliness issue. The Commission later concluded Claimant's application for review was timely but issued an order affirming the Appeals Tribunal's decision to deny benefits.

A notice of appeal to this Court from a decision of the Commission must be filed within twenty days of the decision becoming final. Section 288.210, RSMo 2000. 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 December 1, 2009. Therefore, the notice of appeal to this Court was due on or before December 31, 2009. Sections 288.200.2, 288.210. Claimant filed his notice of appeal with the Commission on January 4, 2010. Under section 288.210, the notice of appeal is untimely.

The unemployment compensation statutes do not provide for the late filing of a notice of appeal to this Court and do not recognize any exceptions for filing out of time. 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. Gayfield v. Boston Market Corp., 291 S.W.3d 363, 364 (Mo. App. E.D. 2009).

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

KENNETH M. ROMINES, CHIEF JUDGE

NANNETTE A. BAKER, J. and
ROY L. RICHTER, J., concur.