



In the Missouri Court of Appeals
Eastern District

DIVISION THREE

KIMBERLY MORGAN,) No. ED95640
)
Claimant/Appellant,)
v.)
)
PSYCH CARE CONSULTANTS, LLC,) Appeal from the Labor and
) Industrial Relations Commission
Employer/Respondent,)
)
and)
)
DIVISION OF EMPLOYMENT)
SECURITY,) Filed: May 17, 2011
)
Respondent.)

Introduction

Kimberly Morgan (Employee) appeals from the decision of the Labor and Industrial Relations Commission (Commission) dismissing her application for review as untimely. We dismiss the appeal.

Factual and Procedural Background

Employee filed a claim for unemployment compensation with the Division of Employment Security (Division). A Division deputy found that Employee was disqualified from benefits because she left work with Psych Care Consultants, LLC (Employer) voluntarily without good cause attributable to her work or Employer on January 11, 2010.

Employee appealed the denial of benefits to the Division's Appeals Tribunal (Tribunal). On March 31, 2010, the Tribunal mailed its decision affirming the deputy's determination. On May 4, 2010, the Commission received Employee's application for review of the Tribunal's decision. The Commission remanded the matter to the Tribunal for a hearing to afford Employee the opportunity to prove that she filed a timely application for review.

At the hearing, Employee testified she understood she had thirty days to appeal the Tribunal's decision and she wrote a letter appealing the Tribunal's decision on April 18, 2010. On April 18 or 19, Employee attached the letter to her mailbox with a clothespin for her mail carrier to pick up. On May 4, 2010, Employee contacted the Division to inquire about her appeal and was advised that her application for review had not been received. Employee filed her application for review by facsimile that day.

Following the hearing, the Commission dismissed Employee's application for review as untimely pursuant to Section 288.200 RSMo 2006.¹ This appeal follows.

Points Relied On

In her first point, Employee argues the Commission erred in affirming the decision of the Tribunal denying her unemployment compensation benefits because Employer failed to attend the hearings and the facts do not support the denial of benefits.

In her second point, Employee argues the Commission erred in affirming the decision of the Tribunal because Employee left her employment due to a hostile work environment.

Discussion

¹ Section 288.200.1 provides that a party may file an application for review of the Tribunal's decision with the Commission within thirty days following the date of notification or mailing of the Tribunal's decision.

The Division has filed a motion to dismiss Employee’s appeal because Employee’s brief does not preserve any issue for appeal by failing to address the only issue before the Commission and for lack of jurisdiction. This motion was taken with the case.

On appeal, this Court may only address those issues determined by the Commission and may not consider any issues that were not before the Commission. Chase v. Baumann Property Co., 169 S.W.3d 891, 892 (Mo. App. E.D. 2005). “If an appellant does not file a brief on the issues pertaining to the appeal, then the appellant is deemed to have abandoned that appeal.” Id.

Employee’s points on appeal relate only to the merits of the Tribunal’s decision and do not address the only issue that was before the Commission, whether her appeal to the Commission was timely. As such, there is no issue presented to this Court for review. The Division’s motion to dismiss the appeal is granted on this basis.

Conclusion

Employee’s appeal is dismissed.

Sherri B. Sullivan, P. J.

Clifford H. Ahrens, J., and
Lawrence E. Mooney, J., concur.