



# In the Missouri Court of Appeals Eastern District

## DIVISION ONE

|                                     |   |                                 |
|-------------------------------------|---|---------------------------------|
| GLENDON NETTLES,                    | ) | No. ED95929                     |
|                                     | ) |                                 |
| Claimant/Appellant,                 | ) |                                 |
|                                     | ) |                                 |
| vs.                                 | ) | Appeal from the Labor and       |
|                                     | ) | Industrial Relations Commission |
| BARNES-JEWISH HOSPITAL and DIVISION | ) |                                 |
| OF EMPLOYMENT SECURITY,             | ) |                                 |
|                                     | ) | FILED: February 15, 2011        |
| Respondents.                        | ) |                                 |

Glendon Nettles ("Claimant") has filed a notice of appeal from 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 disqualified from receiving unemployment benefits. This decision was affirmed by the Appeals Tribunal of the Division. Claimant then filed an application for review with the Commission. On October 27, 2010, the Commission issued its decision affirming the Appeals Tribunal's decision. 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.

A notice of appeal to this Court in an unemployment matter is due within twenty days of the Commission's 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 October 27, 2010. Therefore, the notice of appeal to this Court was due on or before Friday, November 26, 2010. Sections 288.200.2, 288.210.<sup>1</sup> The secretary of the Commission certified that Claimant filed his notice of appeal by fax on November 29, 2010, which is untimely.

The unemployment statutes provide no exceptions for filing a late notice of appeal. McCuin Phillips v. Clean-Tech, 34 S.W.3d 854, 855 (Mo. App. E.D. 2000). Because unemployment benefits are solely a creature of statutory provision, this Court cannot create an exception where none exists. See, Martinez v. Lea-Ed, Inc., 155 S.W.3d 809, 810 (Mo. App. E.D. 2005).

The Division's motion to dismiss is granted. The appeal is dismissed.

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ROY L. RICHTER, CHIEF JUDGE

KURT S. ODENWALD, J. and  
GARY M. GAERTNER, JR., J., concur

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<sup>1</sup> While in the past the Governor has declared all state offices to be closed on the day after Thanksgiving, this year all executive branch departments were open. As such there was no "legal holiday" on Friday, November 26, 2010 for purposes of filing a notice of appeal in an unemployment security matter. See, section 288.240, RSMo 2000.