



In the Missouri Court of Appeals
Eastern District
DIVISION FIVE

SHANTAY SMITH,)	No. ED97363
)	
Claimant/Appellant,)	
)	
vs.)	Appeal from the Labor and
)	Industrial Relations Commission
MERITORIOUS CARE, INC., and)	
DIVISION OF EMPLOYMENT SECURITY,)	
)	FILED: December 6, 2011
Respondents.)	

Claimant, Shantay Smith, has filed a notice of appeal from the Labor and Industrial Relations Commission's (Commission) decision concerning her claim for unemployment benefits. We dismiss the appeal.

Claimant filed a claim for unemployment benefits and a deputy of the Division of Employment Security (Division) concluded that Claimant was ineligible for benefits. She then filed an appeal to the Appeals Tribunal of the Division, which affirmed the deputy's finding of ineligibility. She then filed an application for review by the Commission. The Commission also concluded that Claimant was disqualified for unemployment benefits. The Commission mailed this decision to Claimant on July 11, 2011. Claimant filed a notice of appeal to this Court on September 19, 2011. The Division has filed a motion to dismiss Claimant's appeal, asserting it is untimely. Claimant has filed a response to the motion.

The Commission's decision becomes final ten days after it is mailed to the parties. Section 288.200.2, RSMo 2000. After it becomes final, an aggrieved party has twenty days to file a notice of appeal to the Court of Appeals. Section 288.210, RSMo 2000.

Here, the Commission mailed its decision to Claimant on July 11, 2011. Therefore, Claimant's notice of appeal to this Court was due on or before August 10, 2011. Sections 288.200.2, 288.210. Claimant mailed her notice of appeal to the Commission and the envelope in which it was contained was postmarked September 19, 2011. Therefore, under section 288.240, RSMo 2000, the notice of appeal is considered filed on September 19, 2011. Claimant's notice of appeal is untimely under section 288.210.

In her response, Claimant contends that she did not receive the Commission's decision until August 25, 2011 and then she sent her notice of appeal "right out." However, the Secretary for the Commission has certified that she mailed the notice of appeal on July 11, 2011 to Claimant's official address. There is nothing to indicate this address has changed.¹

Moreover, even if Claimant's contention is true, there is no procedure for filing a late notice of appeal in the unemployment statutes. Ross v. Division of Employment Sec., 332 S.W.3d 922 (Mo. App. E.D. 2011). While there are procedures for filing a late notice of appeal in other civil matters, such procedures do not apply to special statutory proceedings, such as unemployment matters under Chapter 288. Holmes v. Navajo Freight Lines, Inc., 488 S.W.2d 311, 314-15 (Mo. App. 1972); See also, Porter v. Emerson Elec. Co., 895 S.W.2d 155, 158-59 (Mo. App. S.D. 1995). In addition, the procedures governing unemployment benefits are mandatory. Burch Food Services, Inc. v. Division of Employment Security, 945 S.W.2d 478, 481 (Mo. App. W.D. 1997). Therefore, our only recourse is to dismiss Claimant's appeal.

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

KURT S. ODENWALD, CHIEF JUDGE

ROBERT G. DOWD, JR., J. and
GARY M. GAERTNER, JR., J., Concur.

¹ Claimant's notice of appeal was not mailed until September 19, 2011, which was three weeks after she contends she received the decision.