

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**PAMELA A. FOSTER and WILLIAM D. FOSTER,
APPELLANTS**

vs.

**DIVISION OF EMPLOYMENT SECURITY,
RESPONDENT**

DOCKET NUMBER WD73826 (Consolidated with WD73827)

DATE: December 27, 2011

Appeal from:

The Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Mark D. Pfeiffer, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

Attorneys:

Paul W. King, for Appellants

Shelly A. Kintzel, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PAMELA J. FOSTER and WILLIAM D. FOSTER, APPELLANTS

v.

DIVISION OF EMPLOYMENT SECURITY, RESPONDENT

WD73826

Labor and Industrial Relations Commission

Before Division Two: Mark D. Pfeiffer, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

Pamela Foster and William Foster operate a Springfield Yellow Cab franchise. A deputy of the Division of Employment Security determined that the Fosters were employers and that a driver who filed for unemployment benefits was an employee of the Fosters. The Fosters appealed both determinations, and the Appeals Tribunal affirmed both decisions. The Fosters filed untimely applications for review with the Labor and Industrial Relations Commission. The Commission considered the applications and affirmed the decisions of the Appeals Tribunal. The Fosters appeal.

REVERSED.

Division Two holds:

Where the Fosters untimely filed their applications for review, and the unemployment statutes provide no exceptions for filing out of time, the Commission lacked the statutory authority to consider the Fosters' applications for review. Therefore, the Commission acted in excess of its statutory authority in considering the untimely applications for review. The decisions of the Commission are set aside and the decisions of the Appeals Tribunal are reinstated.

Opinion by: Victor C. Howard, Judge

Date: December 27, 2011

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