



# In the Missouri Court of Appeals Eastern District

## DIVISION FIVE

GARY MILNER,	)	No. ED92038
	)	
Claimant/Appellant,	)	
	)	
vs.	)	Appeal from the Labor and
	)	Industrial Relations Commission
KUESEL EXCAVATING COMPANY and	)	
DIVISION OF EMPLOYMENT SECURITY,	)	
	)	
Respondents.	)	
	)	FILED: December 9, 2008

Gary Milner (Claimant) appeals the Labor and Industrial Relations Commission's (Commission) decision regarding unemployment benefits. We dismiss the appeal for lack of jurisdiction.

A deputy of the Division of Employment Security (Division) initially determined that Claimant was disqualified from receiving unemployment benefits because he was discharged due to misconduct connected with his work. He appealed to the Appeals Tribunal, which dismissed his appeal. Claimant then sought review by the Commission, which affirmed the Appeals Tribunal's decision. Claimant has now filed a notice of appeal to this Court.<sup>1</sup>

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<sup>1</sup> Claimant's notice of appeal to this Court lists only employment security appeal no. 08-14730 R-A. There was a separate determination that Claimant was ineligible from receiving unemployment from 6/01/08 to 6/07/08 because he was not available for work. Claimant's appeal to this Court does not apply to this determination.

The Division has filed a motion to dismiss Claimant's appeal, asserting it is untimely and thus, this Court lacks jurisdiction. Claimant has not filed a response to the motion.

The notice of appeal to this court from the Commission's decision in unemployment matters is due 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 September 17, 2008. Therefore, the notice of appeal was due on or before October 17, 2008. Sections 288.200.2, 288.210. Claimant mailed his notice of appeal to the Commission in an envelope postmarked October 18, 2008, which is the date of its filing. Section 288.240, RSMo 2000. Therefore, Claimant's notice of appeal is untimely.

Chapter 288 governing unemployment cases fails to provide for the filing of a late notice of appeal. 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. Flotron v. Information Solutions Design, 238 S.W.3d 745, 746 (Mo. App. E.D. 2007).

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

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NANNETTE A. BAKER, CHIEF JUDGE

PATRICIA L. COHEN, J. and  
KENNETH M. ROMINES, J., concur.