



In the Missouri Court of Appeals Eastern District

DIVISION ONE

GENEVIEVE FRANK,)	No. ED95725
)	
Claimant/Appellant,)	
)	
vs.)	Appeal from the Labor and
)	Industrial Relations Commission
ST. PETER'S OPERATIONS, LLC,)	
and DIVISION OF EMPLOYMENT SECURITY,)	
)	FILED: January 18, 2011
Respondents.)	

Genevieve Frank ("Claimant") has filed a notice of appeal from the Labor and Industrial Relations Commission's ("Commission") decision regarding her application for unemployment benefits. We dismiss the appeal.

A deputy of the Division of Employment Security (Division) concluded that Claimant was not disqualified from receiving unemployment benefits. Her employer St. Peter's Operations, LLC (Employer) appealed this decision to the Appeals Tribunal of the Division. The Appeals Tribunal reversed the deputy's decision and concluded that Claimant was disqualified from receiving unemployment benefits because she was discharged from her employment for misconduct connected with work. Claimant then filed an application for review with the Commission. On September 21, 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 party aggrieved by an unemployment decision must file a notice of appeal to this Court from the Commission's decision 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 21, 2010. Therefore, the notice of appeal to this Court was due on or before October 21, 2010. Sections 288.200.2, 288.210. The secretary of the Commission certified that Claimant filed her notice of appeal by fax on October 25, 2010, which is untimely. There are no exceptions in the unemployment statutes to file 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.

ROY L. RICHTER, CHIEF JUDGE

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