



In the Missouri Court of Appeals Eastern District

DIVISION ONE

ADRIAN AZEVEDO,)	No. ED95570
)	
Claimant/Appellant,)	
)	
vs.)	Appeal from the Labor and
)	Industrial Relations Commission
NAPOLI 2, and DIVISION OF)	
EMPLOYMENT SECURITY,)	
)	FILED: November 30, 2010
Respondents.)	

Adrian Azevedo (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.

On August 5, 2010, the Commission issued its decision concluding that Claimant was disqualified from receiving unemployment benefits because he was discharged from his employment for misconduct connected with his work. Claimant filed a notice of appeal to this Court. The Division of Employment Security has filed a motion to dismiss Claimant's appeal, asserting it is untimely. Claimant has not filed a response to the motion.

The unemployment statutes require a claimant to 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

August 5, 2010. Therefore, the notice of appeal to this Court was due on or before Tuesday, September 7, 2010. Sections 288.200.2, 288.210, 288.240, RSMo 2000.

Claimant mailed his notice of appeal to the Commission. Under section 288.240, RSMo 2000, any notice of appeal is deemed filed “as of the date endorsed by the United States post office on the envelope. . . .” The postmark on Claimant’s envelope was September 28, 2010. As a result, Claimant's notice of appeal is untimely.

Unemployment benefits are solely a creature of statutory provision. Martinez v. Lea-Ed, Inc., 155 S.W.3d 809, 810 (Mo. App. E.D. 2005). The unemployment statutes do not provide for the late filing of the notice of appeal and do not recognize any exceptions for filing out of time. McCuin Phillips v. Clean-Tech, 34 S.W.3d 854, 855 (Mo. App. E.D. 2000).

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.