



**In the Missouri Court of Appeals
Eastern District
DIVISION FIVE**

DONALD SOMMERHALDER,)	No. ED97225
)	
Claimant/Appellant,)	
)	
vs.)	Appeal from the Labor and
)	Industrial Relations Commission
PROCESS CONTROLS INTERNATIONAL,)	
INC., and DIVISION OF EMPLOYMENT)	
SECURITY,)	
)	
Respondents.)	FILED: November 22, 2011

Claimant, Donald Sommerhalder, has filed a notice of appeal from the Labor and Industrial Relations Commission's (Commission) decision concerning his 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 eligible for benefits. His employer, Process Controls International, Inc. (Employer), filed an appeal to the Appeals Tribunal, which dismissed the Employer's appeal. Employer appealed to the Commission. The Commission concluded that Employer's appeal to the Appeals Tribunal was timely and further, reversed the deputy's determination that Claimant was eligible for unemployment. The Commission concluded that Claimant was disqualified for unemployment benefits. The Commission mailed this decision to Claimant on May 27, 2011. Claimant filed a notice of

appeal to this Court on August 26, 2011. The Division has filed a motion to dismiss Claimant's appeal, asserting it is untimely. Claimant has not filed a response to the motion.

Under Chapter 288, governing unemployment matters, a notice of appeal to this Court is due within twenty days of the Commission's 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 May 27, 2011. Therefore, Claimant's notice of appeal to this Court was due on or before Monday, June 27, 2011. Sections 288.200.2, 288.210; Section 288.240, RSMo 2000. Claimant mailed his notice of appeal to the Commission. The envelope in which it was contained was postmarked August 26, 2011. Therefore, under section 288.240, the notice of appeal is considered filed on August 26, 2011. Claimant's notice of appeal is untimely under section 288.210.

Because procedures governing unemployment benefits are solely based on statute, those procedures are mandatory. Burch Food Services, Inc. v. Division of Employment Security, 945 S.W.2d 478, 481 (Mo. App. W.D. 1997). The unemployment statutes make no provision for filing a late notice of appeal. 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). 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