

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE

MICHELE WEIRICH,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD70891

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 29, 2009

Appeal from

The Labor and Industrial Relations Commission

APPELLATE JUDGES

Division Three: Pfeiffer, P.J., and Mitchell and Martin, JJ.

ATTORNEYS

George S. Smith
Columbia, MO

Attorney for Appellant,

Jeannie Desir Mitchell
Jefferson City, MO

Attorney for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MICHELE WEIRICH,)
)
Appellant,)
v.)
)
DIVISION OF EMPLOYMENT)
SECURITY,)
)
Respondent.)

WD70891

December 29, 2009

Before Division Three Judges: Mark D. Pfeiffer, P.J., and Karen King Mitchell and Cynthia L. Martin, JJ.

Michelle Weirich appeals the Labor and Industrial Relations Commission's order affirming the dismissal of her claim for unemployment benefits. Weirich's claim was dismissed because she failed to participate in her telephone appeal hearing and the Commission found she had not shown good cause for her failure to participate. On appeal, Weirich claims that the Commission erred in affirming the dismissal of her claim because she did, in fact, show good cause for her failure to participate in the telephone appeal hearing, but that the Commission's review was based upon the record made by the Appeals Tribunal, which was devoid of original evidence demonstrating Weirich's good cause.

REVERSED AND REMANDED.

Division Three holds:

In this case, the record shows that Weirich was sent a notice of her telephone appeal hearing instructing her that she would be contacted at her home telephone number. Weirich's counsel was sent the same notice, but no telephone number was listed on the copy he received. Weirich's counsel sent the Appeals Tribunal requests for subpoenas that stated that he and Weirich would be available for the hearing at his office telephone number. Also, the appeals referee for Weirich's case had contacted her counsel several times at his office telephone number to discuss the hearing. Weirich's counsel informed Weirich that the hearing would occur at his office and Weirich was present at his office at the stated time for the hearing. The referee called Weirich's home number, however, and so did not reach Weirich.

We find that Weirich has made a prima facie showing of good cause for her failure to participate in the hearing. Also, because it is unclear as to whether the Commission considered

the evidence Weirich presented to this court to support her good-cause claim, we reverse the order of the Commission and remand so that the Appeals Tribunal can hold a hearing to determine whether Weirich had good cause for her failure to participate in the hearing. If the Commission finds that Weirich had good cause, then it is to hold a new hearing on the merits of her appeal.

Opinion by: Karen King Mitchell, Judge

December 29, 2009

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