

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

BRADFORD GUCCIONE, Appellant,	)	No. ED93097
	)	
v.	)	
	)	Appeal from the Labor and
RAY'S TREE SERVICE, and	)	Industrial Relations Commission
DIVISION OF EMPLOYMENT	)	
SECURITY, Respondents.	)	Filed: January 26, 2010

Bradford Guccione (Claimant) appeals from the judgment of the Labor and Industrial Relations Commission (Commission), denying Claimant unemployment benefits. The Commission adopted the decision of the Appeals Tribunal, which reversed the deputy of the Division of Employment Security's (Division) decision entitling Claimant to unemployment benefits because the Claimant was discharged for reasons other than misconduct connected with work and the employer did not provide specific information to the Division regarding the employer's belief that Claimant was insubordinate when given the opportunity to do so.

REVERSED AND REMANDED.

Division Four holds: We do not find substantial evidence that Claimant acted willfully, or in wanton disregard of Employer's interests when he chose to climb the live tree with spikes because it was the only way he knew how to complete the job, which was in the best interest of Employer and Claimant. Furthermore, the national guidelines for tree care operations demonstrate not only that Employer's rule against climbing with spikes without exception is unreasonable, but also that Claimant complied with the national standard. Employer did not prove by a preponderance of the evidence that Claimant's actions warranted a determination that would disqualify the employee from receiving unemployment benefits.

Opinion by: Kurt S. Odenwald, P.J.  
George W. Draper III, J., and Gary M. Gaertner, Jr., Concur

Attorney for Appellant: Portia C. Kayser and John J. Ammann

Attorney for Respondent Missouri Dept. of Labor & Industrial Relations: Shelly A. Kintzel

Attorney for Respondent Ray's Tree Service: Respondent Acting Pro Se

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