

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ANDREA HARRIS,

Appellant

v.

DIVISION OF EMPLOYMENT SECURITY.

Respondent

DOCKET NUMBER WD69968

DATE: July 21, 2009

Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division Three: Thomas H. Newton, C.J., Harold L. Lowenstein and James Edward Welsh, JJ.

Attorneys:

Andrea Harris, Kansas City, MO

Appellant Acting Pro Se,

Attorneys:

Larry R. Ruhmann, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

Andrea Harris, Appellant,
v.
Division of Employment Security, Respondent.

WD69968

Labor and Industrial Relations Commission

Before Division Three Judges: Newton, C.J., Lowenstein and Welsh, JJ.

Andrea D. Harris appeals from the Labor and Industrial Relations Commission's decision that she was overpaid unemployment benefits during a period in which she was disqualified from receiving such benefits. In particular, she contends that she should not have to pay back the unemployment benefits because her former employer, Ford Motor Company, approved the payment of those benefits and because she did not know that she could not receive the benefits.

AFFIRMED.

Division Three holds:

(1) Harris's brief repeatedly violates Rule 84.04's briefing requirements in that the statement of facts fails to include references to the record; the points relied on are insufficient; no list of cases, constitutional, statutory, or regulatory provisions, or other authority is cited following the points relied on; the brief does not contain a statement of the applicable standard of review; and the argument section of the brief consists merely of three sentences. Although we could dismiss Harris's appeal on the basis of Harris's failure to comply with Rule 84.04's briefing requirements, we prefer to dispose of a case on the merits, whenever possible, rather than to dismiss an appeal for deficiencies in the brief.

(2) Harris essentially complains about the decision that she was disqualified from receiving unemployment benefits. Harris, however, failed to timely appeal this determination to the Commission, and, therefore, this decision is final. The only issue before the Commission subject to appeal in this case was its determination that Harris had been overpaid \$7,280 during a period in which she was disqualified from receiving benefits. Harris admits that she was paid benefits in the amount of \$7,280 but asserts that she does not have the money to pay it back and asks for "mercy." The Division, however, does not have authority to consider issues of fairness and economic hardship in determining whether to seek recoupment.

Opinion by: James Edward Welsh, J.

July 21, 2009

Concurring opinion by Judge Harold L. Lowenstein:

The author agrees with the majority opinion that the result here is legally mandated, but concludes that the result is completely devoid of fairness; a problem that could be easily corrected by the legislature providing some measure of discretion to the Division of Employment with regard to this matter.

Thomas H. Newton, C.J., Concur.

July 21, 2009

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