

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAWN RICHARDSON, APPELLANT

vs.

DIVISION OF EMPLOYMENT SECURITY, RESPONDENT

DOCKET NUMBER WD73076

DATE: November 15, 2011

Appeal from:

The Labor and Industrial Relations Commission

Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr. and Joseph M. Ellis, JJ.

Attorneys:

Dawn Richardson, Appellant Pro-se
Bart A. Matanic, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAWN RICHARDSON, APPELLANT

v.

DIVISION OF EMPLOYMENT SECURITY, RESPONDENT

WD73076

Labor and Industrial Relations

Before Division Three Judges: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Dawn Richardson ("Claimant") appeals from an order issued by the Labor & Industrial Relations Commission disqualifying her from receiving unemployment benefits for five weeks based upon a finding that she was terminated from her employment with Seniortrust of Columbia, LLC ("Seniortrust") for misconduct related to work. The Commission rested its decision on findings that traveling all day before reporting to work, thereby reporting to work insufficiently rested, and using allergy pills constituted misconduct because Employer had a right to expect its employees would not engage in such activities and that those actions demonstrated substantial disregard of Claimant's obligation to Employer.

REVERSED AND REMANDED.

Division Three holds:

- (1) Ordinarily, an employee's conduct off of the working premises or outside the scope of his or her employment is not considered as misconduct in connection with employment.
- (2) Having found that the Claimant was suffering from an allergy attack, the Commission could not reasonably conclude that Claimant committed an act of misconduct by treating that condition with medication, absent evidence and a finding that Claimant was aware that her use of that medication would compromise her ability to perform her work duties and that an acceptable, alternative treatment was available. Moreover, there is no apparent connection between the Claimant's act of taking an allergy pill at home and her work.
- (3) Likewise, there is no apparent connection between the Claimant's driving across the country in her off-time and her work, and there was no evidence that the Claimant had reason to know that her travel would compromise her ability to

stay awake during her shift or that she would have otherwise fallen asleep absent the ingestion of Benadryl.

(4) The Commission failed to address the real issue in the case, whether the Claimant's act of falling asleep at work, for which the employer fired her, constituted misconduct. Because making that assessment requires resolution of disputed factual issues and weighing evidence not reflected in the Commission's decision, the case must be remanded for such a determination.

(5) While sleeping on the job certainly can constitute misconduct related to work in many, if not most, situations, such a determination is dependent on the facts and circumstances of each case.

Opinion by Joseph M. Ellis, Judge

Date: November, 15, 2011

This summary is *UNOFFICIAL* and should not be quoted or cited.