

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

SCOTT STEVENSON

Appellant

v.

DIVISION OF EMPLOYMENT SECURITY

Respondent

DOCKET NUMBER **WD73413**

DATE: October 25, 2011

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Thomas Thomas H. Newton, P.J., Cynthia L. Martin and Gary D. Witt, JJ.

Attorneys:

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Counsel for Appellant

Attorneys:

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Counsel for Respondent

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

SCOTT STEVENSON, Appellant, v. DIVISION OF
EMPLOYMENT SECURITY, Respondent

WD73413

Labor and Industrial Relations

Before Division Two Judges: Thomas Thomas H. Newton, P.J., Cynthia L. Martin and Gary D. Witt, JJ.

A deputy determined Scott Stevenson was ineligible for unemployment benefits. Stevenson filed an appeal. However, Stevenson failed to appear for the scheduled telephone hearing. Consequently, Stevenson's appeal was dismissed. Thereafter, he was granted a hearing to show good cause for his failure to appear. Stevenson testified that his telephone company notified him a week before the Monday hearing that his phone would be disconnected for nonpayment on the hearing date. Stevenson borrowed money to pay the bill and received assurances from his telephone company's representative that his service would not be disconnected if he placed a payment in the drop box over the weekend, and that if the payment did not post by Monday morning, his service would not be disconnected until the end of that day. Stevenson paid via the drop box, and relying on the representative's assurances, woke up fifteen minutes before the 9:00 a.m. hearing. He discovered that his service had been disconnected and unsuccessfully attempted to restore service before the hearing. The Appeals Tribunal determined that Stevenson's reasons for failing to appear at the telephone hearing did not constitute good cause. The Commission affirmed and adopted the Appeals Tribunal's decision. Stevenson appeals.

REVERSED AND REMANDED.

Division Two holds:

Stevenson argues that the Commission erred in affirming the Appeals Tribunal's decision because the record shows good cause for his nonappearance. A good cause determination is reviewed for an abuse of discretion.

Good cause is shown when the circumstances show that the claimant acted in good faith and reasonably under all the circumstances. The Commission determined that Stevenson did not act reasonably under all the circumstances; it provided four grounds in support of its conclusion. We disagree.

First, the Commission concluded that Stevenson's failure to secure an alternative line upon receiving the disconnection notice was unreasonable. Stevenson's decision to pay the phone bill to ensure service and prevent disconnection was not unreasonable because he was maintaining the number listed on the notice to receive the call. Second, the Commission

concluded it was unreasonable for Stevenson to rely on the representative's statement that his service *should be alright* after placing a payment in the company's drop box. However, the Stevenson testified that the representative told him that he would be okay for his hearing, and the Commission failed to consider undisputed evidence that the representative also stated that any disconnection of service would not happen until the end of the day. When considered, this undisputed evidence eliminates the risk that service would be disconnected at the time of the hearing. Even if the payment in the drop box was not processed in time, the representative told him that any disconnection would occur at the end of the day, which would be after his hearing. Because his reliance on the assurances was reasonable and consistent with making himself available for the hearing, Stevenson acted reasonably. Third, the Commission concluded that it was unreasonable for Stevenson to wake up only fifteen minutes before the hearing in light of the possible disconnection. Based on Stevenson's reasonable reliance that any disconnection would occur at the end of the day, it was not unreasonable for him to wake up just in time for the hearing. Fourth, the Commission concluded that it was unreasonable for Stevenson to fail to call the Division during the few minutes before the hearing. Stevenson acted reasonably in that he knew the fifteen-minute window to provide an alternative number had passed and he attempted to restore service, which he thought could be done in time for the hearing.

Consequently, the Commission abused its discretion. Therefore, we reverse and remand for a determination on the merits.

Opinion by: Thomas H. Newton, Judge

October 25, 2011

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