

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

EILEEN CARTER,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD73538

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 18, 2011

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Division Four: Hardwick, C.J., Pfeiffer, J., and Mesle, Sp.J.

CONCURRING.

ATTORNEYS

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

EILEEN CARTER,

Appellant,

v.

**DIVISION OF EMPLOYMENT
SECURITY,**

Respondent.

**OPINION FILED:
October 18, 2011**

WD73538

Labor and Industrial Relations Commission

Before Division Four Judges:

Lisa White Hardwick, Chief Judge, Presiding,
Mark D. Pfeiffer, Judge, and Ann Mesle, Special Judge

Eileen Carter (“Claimant”), a military spouse, appeals the decision of the Labor and Industrial Relations Commission affirming the Appeals Tribunal’s finding that Claimant voluntarily left her employment without good cause attributable to her work or her employer and was, therefore, disqualified from receiving unemployment compensation benefits. On appeal, Claimant argues that the Commission erred in denying her claim for unemployment benefits in that her husband’s military relocation orders were mandatory, she was not at fault for the military relocation, and the Commission thus failed to properly apply the voluntariness analysis interpreting section 288.050.

REVERSED AND REMANDED.

Division Four holds:

The question before this Court is whether Claimant’s resignation due to her husband’s mandatory and permanent military change of station order was voluntary. The Missouri Supreme Court’s voluntariness analysis in *Difatta-Wheaton v. Dolphin Capital Corp.*, 271 S.W.3d 594, 595 (Mo. banc 2008), is controlling. Pursuant to the voluntariness analysis in *Difatta-Wheaton*, we conclude that Claimant was not responsible for, and could not control, her husband’s mandatory and permanent military change of station orders to the state of Texas; that

she attempted to preserve her employment with her employer, albeit unsuccessfully; and that under these circumstances, she did not leave her employment voluntarily.

Opinion by: Mark D. Pfeiffer, Judge

October 18, 2011

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