

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TIMOTHY WHITE,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD76431

Date: May 27, 2014

Appeal from:
Labor and Industrial Relations Commission Circuit Court

Appellate Judges:
Division Two: Victor C. Howard, P.J., Alok Ahuja and Anthony Rex Gabbert, JJ.

Attorneys:
Jeffrey B. Berman and James Breckenridge (Rule 13 student), Kansas City, MO, for appellant.
Ninion S. Riley, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

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v.

DIVISION OF EMPLOYMENT SECURITY,

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WD76431

Labor and Industrial Relations Commission

Timothy White worked at Centerpoint Medical Center as a floor technician or housekeeper. White suffers from diabetic neuropathy, which causes periodic pain in his hands and feet. White had informed his employer of this condition, and had been given permission to sit when needed to alleviate the pain.

On December 7, 2012, White was experiencing pain related to his medical condition while working. White sat down in an unoccupied patient examination room to rest his feet. Centerpoint claimed that White watched television in the examination room for one hour and forty minutes, while remaining on the clock. It terminated his employment on December 13, 2012.

The Labor and Industrial Commission found that White had been terminated for misconduct connected with work, and that he was therefore disqualified from receiving unemployment compensation benefits. White appeals.

REVERSED.

Division Two holds:

Centerpoint contended that it terminated White because he took an extended, unauthorized break without clocking out. Centerpoint did not argue that White was terminated because he took an approved break in an unapproved break area; its evidence does not support the conclusion that White would have been terminated merely because of the *location* in which he took his break (separate from the *length* of that break, or the fact that it was *unauthorized*).

Contrary to Centerpoint's evidence, the Commission's decision found that White's break was *approved*. The Commission's decision found that the reason for White's termination, and

the reason he had committed misconduct, was because he took that authorized break *in the wrong location*.

The Commission relied on a reason for termination different from the reason to which the employer's witnesses testified. Because the Commission's finding concerning the reason for White's discharge is not supported by the employer's evidence, the Commission lacked competent evidence in the record to find that White's action of taking an approved break in unauthorized location constituted disqualifying misconduct. Moreover, because the Commission's decision rejected the reason offered by Centerpoint to establish misconduct, there is no basis to deny White's claim for unemployment compensation benefits.

Before: Division Two: Victor C. Howard, P.J., Alok Ahuja and Anthony Rex Gabbert, JJ.

Opinion by: Alok Ahuja, Judge

May 27, 2014

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