

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

BRITTANI GARDNER,)	No. ED97740
)	
Appellant,)	Appeal from the Labor and
)	Industrial Relations Commission
v.)	
)	
DIVISION OF EMPLOYMENT)	
SECURITY,)	
)	
Respondent.)	FILED: June 26, 2012

Claimant Brittani Gardner appeals from the decision of the Labor and Industrial Relations Commission determining that Claimant was ineligible to receive unemployment benefits because she was not unemployed. Claimant contends that the Commission erred in its application of the law as it relates to claimants working part-time while seeking full-time employment.

REVERSED AND REMANDED.

DIVISION ONE HOLDS: As a general rule, one who devotes his time to the practice of a profession by which a living is customarily earned, and spends his full time in any endeavor in an attempt to produce income, cannot be said to be unemployed. Here, however, the Commission's findings that Claimant worked substantially full-time and was therefore unavailable for work are not supported by substantial competent evidence and are contrary to the overwhelming weight of the evidence. A review of the entire record establishes that Claimant's insurance sales activity was part-time, that she was actively and earnestly seeking full-time employment, and that she remained "available for work" as required by §288.040. On these particular facts, Missouri precedent prescribes a conclusion that Claimant remained eligible for partial benefits pursuant to §288.060. DeLong's, Inc. v. Purcell, 965 S.W.2d 376 (Mo. App. 1998).

Opinion by: Clifford H. Ahrens, P.J. Roy L. Richter, J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: John J. Ammann

Attorney for Respondent: Larry Raymond Ruhmann

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**