

## **Summary of SC89239, *Amy Difatta-Wheaton v. Dolphin Capital Corp., et al.***

Petition for review of a decision of the Labor and Industrial Relations Commission.

**Attorneys:** Difatta-Wheaton was represented by Susan Ford Robertson of Ford, Parshall & Baker in Columbia. The Division of Employment Security was represented by Matthew W. Murphy and Marilyn Green of the division's office in Jefferson City.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A woman appeals the denial of unemployment benefits by the Labor and Industrial Relations Commission, asserting she did not leave her employment voluntarily and should not have been disqualified. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the commission's decision and remands (sends back) the case for further determination, holding the woman did not leave work voluntarily. She was suffering from sudden complications related to ovarian cancer, and she properly notified her employer of her absence. As such, she is not disqualified for unemployment benefits under the plain language of the employment security statute.

**Facts:** While employed with Dolphin Capital Corporation, Amy Difatta-Wheaton was diagnosed with ovarian cancer. After a week's absence due to this illness, she suffered a recurrence of symptoms the night before she was to report to work. The following morning, she telephoned her supervisor to state that she was unable to come to work, and then she visited her doctor. Her doctor faxed an excuse to Dolphin Capital, and DiFatta-Wheaton also had the excuse hand-delivered later in the week. These measures to notify Dolphin Capital were consistent with those required by its written absence policy. After another week's absence from work, Difatta-Wheaton was fired for unexcused absences. A deputy for the division of employment security then denied her unemployment benefits on the grounds that she left work voluntarily. Upon review, the division's appeals tribunal and the Labor and Industrial Relations Commission affirmed the deputy's decision. DiFatta-Wheaton seeks review in this Court.

### **REVERSED AND REMANDED.**

**Court en banc holds:** Applying the law to the facts here, DiFatta's absence from work was not voluntary. The General Assembly states that its general purpose with Missouri's employment security law is to cover those who are unemployed through no fault of their own and that the unemployment security laws related should be construed liberally. In the statute, the legislature uses the language "left work voluntarily" to describe a situation in which an otherwise-qualified claimant is disqualified for certain unemployment benefits. The plain meaning of the word "voluntarily" is to do some act willfully or by choice, and

the General Assembly's statement of purpose shows that this is the meaning that it intended. Accordingly, it cannot be said that Difatta-Wheaton made a voluntary choice to contract ovarian cancer, to experience complications or to time their occurrence, though she did take every measure to preserve her employment pursuant to her employer's written policy. To the extent past Missouri cases suggest that non-work-related illness is a *per se* disqualification for unemployment benefits, they no longer should be followed. The commission's decision denying her unemployment benefits is reversed, and the case is remanded.