

**Summary of SC93628, *Cheikh Seck v. Department of Transportation, Division of Employment Security***

Appeal from the labor and industrial relations commission

Argued and submitted February 19, 2014; opinion issued May 27, 2014, and modified on the Court's own motion June 24, 2014

**Attorneys:** Seck was represented by Kenneth D. Kinney (a law student practicing under Rule 13) and Jeffrey B. Berman of the University of Missouri-Kansas City School of Law's appellate practice clinic in Kansas City, (816) 235-1640, and the division was represented by in-house counsel Ninion S. Riley of Jefferson City, (573) 751-3844.

*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 man fired for falsifying his doctor's return-to-work certificate seeks judicial review of the labor and industrial relations commission's determination that he was discharged for misconduct connected with work and, therefore, is disqualified from receiving unemployment benefits. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the commission's decision. Sufficient and competent evidence on the whole record supports the commission's finding that the man falsified the return-to-work certificate his doctor signed and that the employer fired the man for this action. The commission properly concluded the man was discharged for "misconduct" "connected to" his work under the statute.

**Facts:** Cheikh Seck, a bridge maintenance worker for the state transportation department, reported injuries to his thumb and shoulder to his supervisor in July 2011. His supervisor told him to take sick leave and see his personal physician, who told him he could return to work the next day but only on light duty. The supervisor told Seck that, because "light duty" was not available for Seck's job classification, he could not return to work until his doctor completed a specific return-to-work certificate, using the department's form, demonstrating Seck was able to work with no restrictions. After several attempts to submit information from his doctor that did not meet the department's requirements, Seck submitted a return-to-work certificate, signed by his doctor August 2, verifying he was able to return to work without restrictions. At the bottom of the certificate, however, there was a handwritten notation that Seck needed to finish taking his medicine (which the notation misspelled) and that he could return to work on August 8. Suspicious about the misspelling, the department contacted the doctor's office and learned the doctor did sign the certificate but did not include any notation about medication. When asked about the notation upon his return to work, Seck admitted he altered the certificate after his doctor signed it. He was terminated in September 2011 for falsifying the certificate. After he sought unemployment benefits, the division of employment security determined Seck had been discharged for misconduct connected with work and, therefore, was disqualified from receiving benefits. Seck sought review from the labor and industrial relations commission, which affirmed the division's decision. Seck now seeks this Court's review of the commission's decision.

**AFFIRMED.**

**Court en banc holds:** (1) The commission properly found that the department fired Seck for falsifying the return-to-work certificate his doctor signed. The evidence gives rise to reasonable inferences that Seck intended for his alteration to be understood as a statement by his doctor that he was allowed to return to work only as of August 8. Further, the record does not support Seck's argument that he altered the certificate only to reflect an "agreement" that his supervisor made, after the doctor signed the certificate, to allow Seck to delay his return so he could finish taking muscle relaxants his doctor had prescribed the previous month. In his hearing before the division's appeals tribunal, Seck did not testify about any agreement or that he misunderstood his doctor's instructions that he was to take the medicine only "as needed" for spasms or pain. Rather, he admitted his doctor never told him he needed to finish the medicine before returning to work, and he repeatedly testified that he decided to alter the certificate to delay his return because he wanted time to finish taking the muscle relaxants and because he was afraid to ask his doctor to complete any more paperwork. Sufficient and competent evidence on the whole record supports the commission's findings that Seck falsified his doctor's return-to-work certificate before submitting it to the department and that the department fired him for that action.

(2) The commission properly concluded that Seck was discharged for misconduct connected to his work. By statute, a claimant is not eligible for unemployment benefits if he was "discharged for misconduct connected with the claimant's work." Four separate categories of work-related behavior qualify as "misconduct." The one applicable to Seck describes "a disregard of standards of behavior which the employer has the right to expect of his or her employee." While the other three categories list a requisite mental state – one requiring "wanton or willful disregard," the second requiring that conduct be "deliberate" and the last requiring "intentional and substantial disregard" – that plain language of the category at issue requires no such mental state. Even though apparently it is not stated among its express rules for employees, the department – like all employers – is entitled to expect its employees will not falsify medical certificates required from and signed by the employees' physicians. Seck knew this standard of behavior was expected from him – he knew the department would not let him return to work until his doctor completed and signed the certificate to show the doctor believed Seck was ready to return to work with no restrictions. Seck disregarded that standard of behavior by altering his doctor's certificate and submitting it to the department as though the statement about finishing his medication had come from his doctor. Accordingly, the commission did not err in concluding that Seck's conduct in falsifying his doctor's certificate constituted "misconduct" under the statute. Further, there is no question that Seck's misconduct was "connected to" his work with the department. Nothing in the statute requires or even suggests that there must be proof of harm to the employer resulting from the employee's misconduct, Seck understood the doctor's certificate controlled whether – and when – he would be allowed to return to work, and he changed the date of that return when he falsified the certificate.