

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

TERRY LANCE

Appellant

v.

DIVISION OF EMPLOYMENT SECURITY

Respondent

DOCKET NUMBER WD72136

DATE: February 1, 2011

Appeal From:

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division One: Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Terry Lance, Fillmore, MO

Appellant Acting Pro Se

Attorneys:

Jeannie D. Mitchell, Jefferson City, MO

Counsel for Respondent

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

TERRY LANCE, Appellant, v. DIVISION OF
EMPLOYMENT SECURITY, Respondent

WD72136

Labor and Industrial Relations Commission

Before Division One Judges: Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Terry Lance was laid off from Gray in February 2009. While applying for unemployment benefits, Lance learned that if he qualified for the State's "Dislocated Worker Program," he could return to school for retraining. He applied for the program and was found eligible. In March 2009, while waiting for classes to commence, he began temporary work for Kelly. In May 2009, after giving notice, he left Kelly to begin classes. He sought unemployment benefits and was determined to be ineligible because he had left Kelly voluntarily without good cause attributable to the work or the employer, section 288.050. Lance appeals.

REVERSED AND REMANDED.

Division One Holds:

On appeal, Lance argues that section 288.055 barred the Commission from disqualifying him for unemployment benefits. Section 288.055 provides that an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits because of his enrollment in and satisfactory pursuit of a retraining course of instruction. It further provides that the claimant shall not be disqualified for leaving his most recent temporary work, accepted during his retraining, if continuing such work would require him to terminate his retraining course of instruction. The Division, however, argues that section 288.055 is inapplicable because Lance had not yet enrolled or started classes when he accepted temporary employment. We are thus required to determine the scope of the phrase "during his retraining."

We determine that the Division's argument is in conflict with the chapter's intent to promote employment security and to use unemployment reserves for the benefit of persons unemployed through no fault of their own. The Division's extremely narrow interpretation of "accepted during retraining" would deny a claimant benefits because he pursued temporary employment while waiting for retraining classes to begin. Such an interpretation would defeat the purpose of section 288.055's safe harbor. It would further provide a disincentive for the currently unemployed worker (who is capable of being retrained) to seek temporary work, thereby encouraging him to remain idle. We therefore conclude the Commission's decision was contrary to the law because section 288.055 prevented Mr. Lance from being disqualified for unemployment benefits. Lance's point is granted.

Further remaining is a question of whether Kelly's account should be charged for the payment of Lance's benefits, as opposed to charging only Gray, the other base period employer. On remand, we direct the Commission to determine this issue.

Therefore, we reverse the Commission's decision and remand the case for proceedings consistent with this opinion.

Opinion by: Thomas H. Newton, Judge

February 1, 2011

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