

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**TAB EVANS,**

**Appellant,**

**v.**

**DIVISION OF EMPLOYMENT SECURITY,**

**Respondent.**

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DOCKET NUMBER WD72169

**Date: September 27, 2011**

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Appeal from:

Labor and Industrial Relations Commission Circuit Court

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Appellate Judges:

Division One: Victor C. Howard, P.J., Alok Ahuja and Karen King Mitchell, JJ.

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Attorneys:

Tab Evans, Appellant Pro Se, for appellant.

Jeannie D. Mitchell, Jefferson City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

**TAB EVANS**

**Appellant,**

**v.**

**DIVISION OF EMPLOYMENT SECURITY,**

**Respondent.**

WD72169

Labor and Industrial Relations Commission

Tab Evans worked for Contract Callers, which performed services for St. Louis-area utilities. On June 18, 2009, Evans was tasked to reconnect electrical service for an apartment building on Santa Blas Walk in St. Louis. After arriving onsite, Evans tried to access the electrical meter by unlocking a door to the building's basement with a key. The key was difficult to turn. Evans used pliers to attempt to turn the key, which broke the key off in the lock.

Building management asked Evans to remain onsite until a maintenance worker could remove the broken key and open the basement door. Evans refused to stay. Building management claimed that Evans was rude and used profanity, which Evans denied. The management of the apartment building called Ameren UE to complain about Evans. Ameren UE in turn called Contract Callers. Due to this and prior incidents involving Evans' behavior toward its customers, Ameren UE requested that he no longer service its calls.

Contract Callers' management decided that Ameren UE's request that Evans no longer perform work for it, combined with two prior customer complaints for which Evans had been formally disciplined, justified his discharge.

A deputy within the Division of Employment Security found that Evans was discharged for misconduct: "[t]he claimant was discharged because he did not notify a member of management after he broke a client's key in a lock. Company policy states that a member of management must be notified when a client's property is damaged." Evans appealed. Following a telephone hearing, the Appeals Tribunal affirmed the deputy's determination that Evans' failure to call his supervisor before leaving the Santa Blas Walk apartment constituted misconduct. The Tribunal's decision specifically found that Contract Callers had failed to prove its claim that Evans had behaved inappropriately toward Ameren UE's customer. The Commission adopted the Appeals Tribunal's decision by a 2-1 vote. Evans appeals.

**REVERSED.**

Division One Holds:

The Commission found that Evans had been terminated for misconduct for failing to follow an employer policy which required that he contact his supervisor before leaving a job site where he damaged customer property and/or experienced difficulty in accessing an electrical meter to complete a reconnection. The employer's witnesses denied, however, that this was the reason for Evans' discharge. They claimed, instead, that Evans had been discharged based on his behavior toward building personnel at the Santa Blas Walk apartment, leading to Ameren UE's complaint, as well as two prior documented incidents in which customers complained regarding Evans' behavior. The Commission specifically found that the employer had failed to prove its allegation that Evans had behaved inappropriately at the Santa Blas Walk apartment building.

In order to constitute disqualifying misconduct, the employee behavior at issue must in fact have been the reason for the his termination. In the circumstances of this case – where the Commission relied on a ground for termination denied by the employer, and simultaneously rejected the employer's stated reason for termination – the Commission's conclusion that Evans was discharged for misconduct is unsupported by the evidence, and is reversed. *See Munson v. Division of Employment Security*, 323 S.W.3d 112, 115 (Mo. App. W.D. 2010).

Before: Division One: Victor C. Howard, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Opinion by: Alok Ahuja, Judge

**September 27, 2011**

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