MISSOURI COURT OF APPEALS
WESTERN DISTRICT

HOMER HERGINS, JR.

APPELLANT,

v.

DIVISION OF EMPLOYMENT SECURITY

RESPONDENT.

DOCKET NUMBER WD73190
MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: June 19, 2012

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Karen King Mitchell, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

Attorneys:

Homer Hergins, Jr., Appellant Pro Se, for **appellant**.

Larry Raymond Ruhmann, Jefferson City, MO, for **respondent**.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
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HOMER HERGINS, JR.,

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DIVISION OF EMPLOYMENT SECURITY,

RESPONDENT.

No. WD73190 Labor and Industrial Relations Commission

Before Division Three: Karen King Mitchell, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

In July 2008, Homer Hergins, Jr., after having lost his job, filed a claim and began receiving unemployment benefits through the Missouri Division of Employment Security ("Division"). After exhausting his regular unemployment compensation in Missouri in April 2009, Hergins filed for extended benefits in Missouri under the Federal Emergency Unemployment Compensation Act of 2008 ("EUC") and began claiming EUC benefits from April 19, 2009 through July 18, 2009. After exhausting his extended benefits, Hergins filed a claim for regular unemployment compensation in the State of Kansas.

Subsequently, the Division was contacted by the Kansas Department of Labor and informed that Hergins would have been eligible to receive regular unemployment benefits in Kansas during the same period of time that he was receiving EUC benefits in Missouri. A deputy with the Division determined that Hergins was not eligible to claim and receive EUC benefits in Missouri when, during the same time, he was eligible to claim and receive regular unemployment benefits in Kansas. The Division deputy also, in a separate case bearing a separate case number, determined that Hergins had been overpaid EUC benefits during the period of ineligibility.

Hergins filed an appeal with the Appeals Tribunal, which upheld the Division's determination as to the eligibility issue (Appeal No. 10-21279) and as to the overpayment issue (Appeal No. 10-21280). The decision in No. 10-21280 directed recovery of the overpaid benefits. Hergins appealed to the Labor and Industrial Relations Commission ("Commission"). The Commission adopted and affirmed the Tribunal's rulings on both issues. Hergins appealed to this court and argued that he should not be required to reimburse the Division for the amount of overpaid benefits, because he complied with the requirements and did not act in bad faith or willfully withhold information from the Division. On March 6, 2012, this court vacated the Commission's ruling and remanded the matter to the Commission to remand the case to the Division with instructions.

The Division filed a motion for rehearing, which this court granted. Upon rehearing, it was determined that Hergins' application for review to the Commission referred only to No. 10-21279 (the eligibility decision) and not to No. 10-21280 (the overpayment decision).

AFFIRMED.

Division Three holds: Because Hergins appealed only the Commission's eligibility decision, and not the overpayment decision, this court lacked authority to address the issues relating to the overpayment of benefits. The Commission's decision in No. 10-21279 is supported by substantial evidence.

Opinion by James M. Smart, Jr., Judge June 19, 2012

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