

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOSE VALDEZ

v.

MVM SECURITY, INC.

DIVISION OF EMPLOYMENT SECURITY

APPELLANT,

DEFENDANT,

RESPONDENT.

**DOCKET NUMBER WD73239
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: September 13, 2011

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Michael John Joshi, Lenexa, KS, for **appellant**.

Robert Anthony Bedell, Jefferson City, MO, for **respondent**.

MISSOURI APPELLATE COURT OPINION SUMMARY

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APPELLANT,

v.

MVM SECURITY, INC.

DEFENDANT,

DIVISION OF EMPLOYMENT SECURITY

RESPONDENT.

No. WD73239

Labor and Industrial Relations Commission

Before Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Jose Valdez was terminated from his employment as a security guard with MVM Security, Inc., after failing to pass a weapons proficiency test. Valdez was required to carry a firearm as part of his job duties guarding federal buildings. In the eight years that he had previously worked as a security guard, Valdez had always achieved a qualifying score to pass the weapons proficiency test. After the federal government raised the minimum passing score to 200, Valdez made several good faith attempts to achieve that score but was unsuccessful. As a result of his inability to pass the weapons proficiency test, MVM discharged Valdez.

Valdez filed a claim for unemployment benefits with the Division of Employment Security. MVM did not challenge his claim for benefits. The deputy with the Division denied his request for benefits on the basis that he voluntarily quit his job because he failed to maintain the required firearms certification to remain employed as a security guard. He appealed the decision. The appeals tribunal conducted a telephone conference. Valdez was the only witness who testified. MVM did not participate at the hearing. Valdez testified as to his efforts to achieve the new level for the weapons requirement. After the hearing, the appeals tribunal issued its decision affirming the deputy's determination in finding that Valdez's failure to achieve the minimum qualification score on the shooting proficiency test, as required to keep his job, constituted a "voluntary quit for reasons not attributable to the job or employer," citing section 288.050.1(1), RSMo 2000. Valdez appealed to the Labor and Industrial Relations Commission which adopted and affirmed the tribunal's decision. Valdez appeals.

Valdez raises two points on appeal, one of which is dispositive. In that point, Valdez claims the Commission erred in denying him unemployment benefits based on a finding that he voluntarily left his work without good cause attributable to his employment.

REVERSED AND REMANDED.

Division Three holds: Valdez was discharged involuntarily. The Commission's decision that Valdez voluntarily terminated his employment was not supported by the evidence, and was a misapplication of the law.

Opinion by James M. Smart, Jr., Judge

September 13, 2011

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