

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOHN W. KOELKEBECK

Appellant

v.

DIRECTOR OF REVENUE OF THE STATE OF MISSOURI

Respondent

DOCKET NUMBER **WD73304**

DATE: January 3, 2012

Appeal From:

Circuit Court of Carroll County, MO
The Honorable David Harrison Miller, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

Attorneys:

James Rahm and Joseph D. McGaugh, Carrollton, MO

Counsel for Appellant

Attorneys:

Jayne Woods and Mary H. Moore, Jefferson City, MO

Counsel for Respondent

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

JOHN W. KOELKEBECK, Appellant, v. DIRECTOR OF
REVENUE OF THE STATE OF MISSOURI, Respondent

WD73304

Carroll County

Before Division One Judges: Ahuja, P.J., Newton, Welsh, JJ.

On June 4, 2010, the Department of Revenue notified Koelkebeck that it had received information indicating he had a condition preventing him from being able to safely operate a motor vehicle. The notice informed him he had ten days to submit a physician's statement and thirty days to file an appeal from the Director's decision to deny his driving privileges. On June 14, the Director revoked Koelkebeck's license. On July 6, Koelkebeck filed a petition appealing the revocation of his license. On July 9, Koelkebeck filed a physician's statement with the trial court asserting that he was capable of safely operating a motor vehicle. After a hearing, the trial court entered judgment finding that Koelkebeck's July 6 appeal was untimely because it was made two days past the time limit set by statute. Koelkebeck appeals.

REVERSED AND REMANDED.

Division One Holds:

Koelkebeck argues that the trial court erred (a) because he submitted to an examination within ten days after the Department's correspondence stating that his license would be denied, or (b) in the alternative, because he appealed to the circuit court within thirty days after his license was denied.

We reject Koelkebeck's argument that he submitted to an examination within ten days of the Department's correspondence. Even assuming that was the timeframe required by section 302.291, which we question but do not address, Koelkebeck's brief misstates the record. The record unequivocally shows the Department's notice was dated June 4, 2010, and that the physician's examination was dated July 8, 2010, not June 8, 2010, as Mr. Koelkebeck argues.

Koelkebeck next argues that the appeal to the circuit court was timely pursuant to section 302.311. The Director concedes the appeal was timely, and we agree. Even if we assumed *arguendo* that Koelkebeck's time to appeal ran from June 4 (the date of the Department's notice), rather than June 14 (the date Koelkebeck's license was revoked), his appeal was filed within 30 days of June 4. Rule 44.01(a) provides that legal holidays are not included in the computation when it is the last day of a prescribed period and July 5, 2010 was a legal holiday. Consequently, Koelkebeck's appeal was timely. Therefore, we reverse and remand.

Opinion by Thomas H. Newton, Judge

Date: January 3, 2012

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