

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

VIERY GUYTON,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD74817

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 28, 2012

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Division Three: Howard, P.J., and Mitchell and Martin, JJ.

CONCURRING.

ATTORNEYS

Vierly Guyton
East St. Louis, IL

Appellant, *pro se*,

Shelly A. Kintzel
Jefferson City, MO

Attorney for Respondent.



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

VIERY GUYTON,

Appellant,

v.

**DIVISION OF EMPLOYMENT
SECURITY,**

Respondent.

**OPINION FILED:
August 28, 2012**

WD74817

Labor and Industrial Relations Commission

Before Division Three Judges:

Victor C. Howard, Presiding Judge, and
Karen King Mitchell and Cynthia L. Martin, Judges

This is an unemployment benefits case. The issue is whether the claimant showed good cause for failing to appear at the initial appeal of the denial of her claim. We hold that she did not show good cause. Accordingly, we affirm.

AFFIRMED.

Division Three holds:

“The conduct of hearings before the Appeals Tribunal ‘shall be in accordance with regulations prescribed by the Division for determining the rights of the parties’” *Weirich v. Div. of Emp’t Sec.*, 301 S.W.3d 571, 573 (Mo. App. W.D. 2009) (quoting § 288.190.2). “If the appellant fails to appear at a hearing at the scheduled time or location, the appeal shall be dismissed.” 8 CSR 10-5.040(2)(A).

A claimant may appeal the Tribunal’s decision to the Commission. *Weirich*, 301 S.W.3d at 573. If the Tribunal dismissed the appeal for failure to appear, the claimant, in order to be entitled to a new hearing, must show that her failure to appear was for good cause. *Id.* at 574-75.

Formerly, “the regulations prescribed by the Division,” *see* § 288.190.2, required the Tribunal to initiate the telephone hearing by calling the claimant at the number provided by the

claimant. *Wilson v. Div. of Emp't Sec.*, 359 S.W.3d 133, 136 (Mo. App. W.D. 2012); *Jackson-Mughal v. Div. of Emp't Sec.*, 359 S.W.3d 97, 101-02 (Mo. App. W.D. 2011). But on October 30, 2011, a new regulation took effect, requiring that, for telephone hearings, the claimant must “[j]oin the telephone conference as instructed in the notice of hearing at the time of the hearing.” 8 CSR 10-5.010(2)(B)2.

Here, the claimant’s telephone hearing took place on November 29, 2011, so the new regulation was in effect for her hearing. She did not, however, join the telephone conference as the notice of hearing had instructed her to do.

Failure to read the notice of hearing correctly is not reasonable under the circumstances and does not constitute good cause for failure to appear at the hearing. *Jenkins v. Manpower on Site at Proctor & Gamble*, 106 S.W.3d 620, 625 (Mo. App. W.D. 2003).

Opinion by: Karen King Mitchell, Judge

August 28, 2012

* * * * *

THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.