MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

ROSE SPEED

Appellant

v.

DIVISION OF EMPLOYMENT SECURITY

Respondent

DOCKET NUMBER WD75346

DATE: June 25, 2013

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division One
Gary D. Witt, P.J.,

Attorneys:

Rose Speed, Kansas City, MO — Appellant Acting Pro Se

Attorneys:

Robert Bedell, Jefferson City, MO — Counsel for Respondent

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

ROSE SPEED, Appellant, v.
DIVISION OF EMPLOYMENT SECURITY, Respondent

WD75346 **Labor and Industrial Relations**

Before Division One Judges: Witt, P.J., Newton, and Pfeiffer, JJ.

The Division of the Employment Security (Division) determined Speed was ineligible for unemployment benefits. Speed filed an appeal to the Appeals Tribunal of the Division. However, Speed failed to appear for the scheduled telephone hearing. Consequently, Speed's appeal was dismissed. Thereafter, she was granted a hearing to show good cause for failure to appear. Speed testified that she had called in a few minutes earlier than her scheduled time and, after being told to wait for the "host," she was then disconnected from the system and was unable to reconnect. The Appeals Tribunal determined that Speed's reason for failing to appear did not constitute good cause. The Commission affirmed and adopted the Appeals Tribunal decision. Speed appeals.

REVERSED AND REMANDED.

Division One Holds:

Speed argues that the Commission erred in denying her unemployment benefits because the record shows good cause for her nonappearance. A good cause determination is reviewed for an abuse of discretion.

Good cause is shown when the circumstances demonstrate that the claimant acted in good faith and reasonably under all the circumstances. The Commission determined that it was reasonable to expect a claimant to call at the scheduled time according to the unambiguous language in the instructions and that Speed's circumstances were not beyond her control. We disagree.

Initially, we note that the method by which a claimant appears for a telephone hearing has changed. The regulation currently requires the claimant to call at a scheduled time and follow a recorded prompt. Although the method has changed, the regulation defining "good cause" has remained the same. Precedent interpreting this definition holds that good cause is shown where the claimant has made affirmative efforts to appear. The fact that Speed failed to follow the instructions when she called in early does not necessarily preclude a finding of good cause. A claimant may show good cause where she made affirmative efforts to appear, despite failing to adhere to instructions, where he or she acted reasonably. Speed made an affirmative effort to be available for the hearing. Because calling in ten minutes earlier than the appointed time was not explicitly prohibited or cautioned against in the notice, and in fact the instructions indicate the claimant should wait patiently on hold, Ms. Speed acted in good faith and reasonably.

Consequently, the Commission abused its discretion. Therefore, we reverse and remand for a determination on the merits.

Opinion by Thomas H. Newton, Judge June 25, 2013

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