

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**TRICIA BARRON,**

**Appellant,**

**v.**

**DIVISION OF EMPLOYMENT SECURITY,**

**Respondent.**

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DOCKET NUMBER WD75934

**Date: May 11, 2014**

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Appeal from:  
Labor and Industrial Relations Commission Circuit Court

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Appellate Judges:  
Division Two: Gary D. Witt, P.J., Lisa White Hardwick and Alok Ahuja, JJ.

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Attorneys:  
Jeffrey B. Berman, John McPherson (Rule 13 student), Kansas City, MO, for appellant.  
Ninion S. Riley, Jefferson City, MO, for respondent.

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

**TRICIA BARRON**

**Appellant,**

**v.**

**DIVISION OF EMPLOYMENT SECURITY,**

**Respondent.**

WD75934

Labor and Industrial Relations Commission

Tricia Barron's employment with Lincare, Inc. was terminated in June 2012. She applied for unemployment compensation. Lincare protested the claim, contending that Barron had been discharged for misconduct. The Labor and Industrial Relations Commission found that Barron's violations of Lincare's attendance policy amounted to misconduct, and that she was therefore disqualified from receiving unemployment compensation benefits. Barron appeals.

**REVERSED AND REMANDED FOR THE ENTRY OF SUPPLEMENTAL FACTUAL FINDINGS.**

Division Two holds:

Pursuant to § 288.050.3, RSMo, "[a]bsenteeism or tardiness may constitute a rebuttable presumption of misconduct," disqualifying a claimant from eligibility for unemployment benefits, "if the discharge was the result of a violation of the employer's attendance policy, provided the employee had received knowledge of such policy prior to the occurrence of any absence or tardy upon which the discharge is based."

Barron first argues that there was not competent and substantial evidence in the record to support the Commission's finding that the attendance policy she was found to have violated was in fact the applicable Lincare policy. Barron signed the relevant attendance policy at a time when she was employed by another company, but detailed to Lincare. She was later hired directly by Lincare, and it was during her employment by Lincare that the relevant attendance infractions occurred. Although Barron signed the attendance policy before the commencement of her direct employment by Lincare, the testimony of her supervisor was sufficient to establish that the policy continued to apply to her after she became a direct Lincare employee, and that she was aware that she was subject to the policy. Point I is denied.

In her second and third Points, Barron argues that the evidence was insufficient to show that she violated the attendance policy, and that she rebutted the presumption of misconduct for any violations she committed. The evidence before the Appeals Tribunal indicates that Barron was discharged for tardiness in May and June 2012. Barron testified that her tardiness in May and June was due to parking difficulties at Lincare's facility, and due to computer problems which delayed her log-in to Lincare's computer system, resulting in her being reported tardy even though she was present at her work station at the beginning of her shift. For its part, Lincare offered testimony that Barron only referred to parking problems, and never computer issues, to justify her lateness in May and June 2012, and that Barron was not physically present at her work station when her work shift began.

The Appeals Tribunal's Decision (which the Commission adopted) does not address the parties' factual dispute as to whether parking or computer problems mitigated the culpability of Barron's tardiness on the occasions which ultimately led to her termination. Instead, the Decision finds that Barron's violated Lincare's attendance policy, and that those violations constituted misconduct, because she gave precedence to the demands of her schooling over her work schedule. But Barron's educational program ended in March 2012, and she did not rely on her school schedule to attempt to justify her tardiness in May and June 2012. Thus, the Appeals Tribunal's findings, which erroneously attributed the attendance problems which caused Barron's termination to her school schedule, failed to resolve a central factual issue on which the parties presented contrary evidence. Because the Commission did not resolve all of the disputed factual issues, it is not possible to conduct a meaningful review of the Commission's decision, and its decision must be reversed and the cause remanded so that the Commission can issue factual findings addressing the parties' dispute over the reasons for, and culpability of, Barron's tardiness in May and June 2012.

Before: Division Two: Gary D. Witt, P.J., Lisa White Hardwick and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

**March 11, 2014**

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