

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

COMPLETE TITLE OF CASE

MARIANN ATWELL, et al.,

Respondents,

v.

JAMES FITZSIMMONS,

Appellant.

DOCKET NUMBER WD77100

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 21, 2014

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Judge

JUDGES

Division I: Pfeiffer, P.J., and Hardwick and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Caroline M. Coulter, Heather L. McCreery, and Matthew B. Briesacher
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Attorneys for Respondents,

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Attorney for Appellant.



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

MARIANN ATWELL, et al.,)
)
Respondents,)
v.) **OPINION FILED:**
) **October 21, 2014**
JAMES FITZSIMMONS,)
)
Appellant.)

WD77100

Cole County

Before Division I Judges: Mark D. Pfeiffer, Presiding Judge, and Lisa White Hardwick and Karen King Mitchell, Judges

James D. Fitzsimmons (“Fitzsimmons”) was employed as a tractor trailer truck driver by the Missouri Department of Corrections (“MDOC”). During an assigned trip, as Fitzsimmons was getting out of his truck, he slipped on an icy lower step, landed hard on his foot as he slipped and fell on the ground twice, and fractured his ankle in four places. Fitzsimmons asserted a claim for workers’ compensation benefits with the Risk Management Section of the State Office of Administration. The Central Accident Reporting Office (“CARO”), which reviews workers’ compensation claims on behalf of state agency employers, denied that Fitzsimmons’s injury arose out of and in the course of his employment with the MDOC.

Accordingly, Fitzsimmons and the MDOC operated under the MDOC’s authorized/unauthorized absence policy. Under that policy, at such time as an employee fails to report to work for three consecutive work days without employer authorization, the employee is subject to discipline. Fitzsimmons exhausted all of his paid leave; his Family and Medical Leave Act leave expired; and he requested and was granted an extension of medical leave without pay. Fitzsimmons’s physician opined that Fitzsimmons was unable to perform the essential functions of his position as a tractor trailer driver. When the extension period ended, Fitzsimmons did not return to work, and his absences were then considered unauthorized.

Mariann Atwell (“Atwell”), the Director and Appointing Authority of the Division of Offender Rehabilitation Services within the MDOC, dismissed Fitzsimmons from his merit system position. Fitzsimmons appealed his dismissal to the Administrative Hearing Commission

(“AHC”), which found that Atwell did not have cause to dismiss Fitzsimmons and ordered the MDOC to accommodate Fitzsimmons’s injuries during recuperation and to reinstate Fitzsimmons to an alternative duty assignment during recuperation. Atwell and the MDOC petitioned the Circuit Court of Cole County, Missouri, to review the AHC’s decision. The circuit court reversed the AHC’s decision, and Fitzsimmons appealed.

AFFIRMED.

Division I holds:

Where an injured merit system state employee alleges that he is entitled to an award of relief or compensation directly related to an accidental injury that arose out of and in the course of the employee’s employment, the employee’s *exclusive* forum for that claim is with the administrative tribunals operating within the purview of the Labor and Industrial Relations Commission. Conversely, where a merit system state employee is terminated from employment for reasons unrelated to an injury that arose out of and in the course of employment, that employee’s forum for relief is with the AHC. In this case, the AHC erroneously usurped the function of the Labor and Industrial Relations Commission. Therefore, the AHC’s decision is unauthorized by law and unsupported by competent and substantial evidence.

Opinion by: Mark D. Pfeiffer, Judge

October 21, 2014

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