



OKLAHOMA
Employment Security
Commission

OESC Precedent Manual

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OESC PRECEDENT MANUAL

Table of Contents

- I. **Legal Authority Governing the Implementation of the Unemployment Insurance Program**
 - a. [VALIDITY OF THE UNEMPLOYMENT COMPENSATION PROGRAM](#)
 - b. [DUE PROCESS](#)
 - c. [BENEFITS ARE PAYABLE WHEN DUE](#)
 - d. [ELIGIBILITY FOR BENEFITS](#)
- II. **Separations**
 - a. [SECTION 2-406: DISCHARGE FOR MISCONDUCT](#)
 - b. [SECTION 2-404: LEAVING WORK VOLUNTARILY](#)
 - c. [SECTION 2-210: SEPARATION FROM WORK DUE TO COMPELLING FAMILY CIRCUMSTANCES](#)
 - d. [SECTION 2-404.1: LEAVING WORK VOLUNTARILY OF TEMPORARY EMPLOYEE](#)
 - e. [SECTION 2-404.2: WORK OF A LIMITED DURATION OF TIME](#)
 - f. [SECTION 2-406.1: DISCHARGE FOR REFUSAL TO UNDERGO DRUG OR ALCOHOL TESTING OR POSITIVE TEST](#)
- III. **Procedural Issues**
 - a. [SECTION 2-614: WAIVER OF APPEAL TIME](#)
 - b. [SECTION 2-503: CLAIMS, NOTICES AND OBJECTIONS](#)
 - c. [REOPENS: RULE 240:10-13-40](#)
 - d. [MISCELLANEOUS PROCEDURAL ISSUES](#)
- IV. **Other Issues**
 - a. [SECTION 2-203: CLAIM](#)
 - b. [SECTION 2-204: REGISTRATION FOR EMPLOYMENT](#)
 - c. [SECTION 2-205.1: ABILITY TO WORK AND ACCEPTANCE OF EMPLOYMENT](#)
 - d. [SECTION 2-207: WAGE REQUIREMENT DURING BASE PERIOD](#)

- e. [SECTION 2-209: BENEFITS FOR EMPLOYEES OF GOVERNMENTAL OR NONPROFIT EMPLOYERS](#)
 - f. [SECTION 2-411: RETIREMENT PAYMENTS](#)
 - g. [SECTION 2-417: SEEK AND ACCEPT WORK](#)
 - h. [SECTION 2-418: SEEK AND ACCEPT WORK](#)
 - i. [SECTION 2-420: FAILURE TO PERSONALLY APPEAR AS DIRECTED](#)
 - j. [SECTION 2-613: BENEFIT OVERPAYMENTS](#)
- V. **All Precedential Cases**
- a. By Section
 - i. [Section 2-406](#)
 - ii. [Section 2-404](#)
 - iii. [Section 2-210](#)
 - iv. [Section 2-404.1](#)
 - v. [Section 2-404.2](#)
 - vi. [Section 2-406.1](#)
 - vii. [Section 2-614](#)
 - viii. [Section 2-503](#)
 - ix. [Reopens: Rule 240:10-13-40](#)
 - x. [Miscellaneous Procedural Issues](#)
 - xi. [Section 2-203](#)
 - xii. [Section 2-205.1](#)
 - xiii. [Section 2-207](#)
 - xiv. [Section 2-209](#)
 - xv. [Section 2-418](#)
 - xvi. [Section 2-420](#)
 - xvii. [Section 2-613](#)
 - b. By Section Summary
 - i. [2-406](#)
 - ii. [2-404](#)
 - iii. [2-210](#)
 - iv. [2-404.1](#)
 - v. [2-503](#)
 - vi. [2-205.1](#)
 - c. [By Docket Number](#)
- VI. [Legal Authority Documentation](#)

- I. **Legal Authority Governing the Implementation of the Unemployment Insurance Program**
 - a. [VALIDITY OF THE UNEMPLOYMENT COMPENSATION PROGRAM](#)
 - b. [DUE PROCESS](#)
 - c. [BENEFITS ARE PAYABLE WHEN DUE](#)
 - d. [ELIGIBILITY FOR BENEFITS](#)

II. Separations

a. SECTION 2-406: DISCHARGE FOR MISCONDUCT

§ 2-406. Discharge for misconduct

- A. An individual shall be disqualified for benefits if he or she has been discharged for misconduct connected with his or her last work. If discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct as defined by this section. Such burden of proof is satisfied by the employer, or its designated representative, providing a signed affidavit, or presenting such other evidence which properly demonstrates the misconduct which resulted in the discharge. Once this burden is met, the burden then shifts to the discharged employee to prove that the facts are inaccurate or that the facts as stated do not constitute misconduct as defined by this section. Disqualification under this section shall continue for the full period of unemployment next ensuing after he or she has been discharged for misconduct connected with his or her work and until such individual has become reemployed and has earned wages equal to or in excess of ten (10) times the weekly benefit amount.
- B. Acts which constitute misconduct under this section shall be limited to the following:
1. Any intentional act or omission by an employee which constitutes a material or substantial breach of the employee's job duties or responsibilities or obligations pursuant to his or her employment or contract of employment;
 2. Unapproved or excessive absenteeism or tardiness;
 3. Indifference to, breach of, or neglect of the duties required which result in a material or substantial breach of the employee's job duties or responsibilities;
 4. Actions or omissions that place in jeopardy the health, life, or property of self or others;
 5. Dishonesty;
 6. Wrongdoing;
 7. Violation of a law; or
 8. A violation of a policy or rule enacted to ensure orderly and proper job performance or for the safety of self or others.
- C. Any misconduct violation as defined in subsection B of this section shall not require a prior warning from the employer. As long as the employee knew, or

should have reasonably known, that a rule or policy of the employer was violated, the employee shall not be eligible for benefits.

- D. Any finding by a state or federal agency of any failure by the employee to meet the applicable civil, criminal or professional standards of the employee's profession shall create a rebuttable presumption of such misconduct, and benefits shall be denied, unless the employee can show, with clear and convincing evidence, that such misconduct did not occur, or the Commission determines that such failure did not constitute misconduct as defined herein.

[All 2-406 Precedential Cases](#)

By Subject

[Employee Honesty](#)

[Employer Rules and Practices](#)

[Employee Performance](#)

[Failure to Obtain or Maintain Licensure](#)

[Drug Testing](#)

[Attendance](#)

[Employee Negligence](#)

[Discharge Due to Arrest](#)

[Insubordination](#)

[Miscellaneous](#)

[Workplace Behavior](#)

[Breach of Duty](#)

II. **Separations - Continued**

b. **SECTION 2-404: LEAVING WORK VOLUNTARILY**

§ 2-404. Leaving work voluntarily

- A. An individual shall be disqualified for benefits for leaving his or her last work voluntarily without good cause connected to the work, if so found by the Commission.
- B. When adjudicating a separation from employment in an initial claim or additional initial claim, disqualification under this section shall continue for the full period of unemployment next ensuing after the individual left work voluntarily without good cause connected to the work and until the individual has become reemployed and has earned wages equal to or in excess of ten (10) times his or her weekly benefit amount.
- C. When adjudicating a separation from employment during a continued claim series, disqualification under this section shall be for the week of the occurrence of leaving work voluntarily without good cause connected to the work.

[**All 2-404 Precedential Cases**](#)

By Subject

[Hostile Work Environment](#)

[Change in Working Conditions](#)

[Quit to Move](#)

[Salary Reduction](#)

[Quit to Accept New Employment](#)

[Definition of Voluntary Quit](#)

[Employer Fails to Keep Promise](#)

II. **Separations - Continued**

c. **SECTION 2-210: SEPARATION FROM WORK DUE TO COMPELLING FAMILY CIRCUMSTANCES**

§ 2-210. Separation from work due to compelling family circumstances

In addition to the eligibility provisions provided by this act, an individual shall be eligible to receive unemployment benefits, if monetarily and otherwise eligible, if the claimant was separated from work due to compelling family circumstances. For purposes of this section:

1. "Immediate family member" means the claimant's spouse, parents and dependent children;
2. "Illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant paid or unpaid leave;
3. "Disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant paid or unpaid leave. Disability encompasses all types of disability, including:
 - a. mental and physical disabilities,
 - b. permanent and temporary disabilities, and
 - c. partial and total disabilities; and
4. "Compelling family circumstances" means:
 - a. if the claimant was separated from employment with the employer because of the illness or disability of the claimant and, based on available information, the Oklahoma Employment Security Commission finds that it was medically necessary for the claimant to stop working or change occupations,
 - b. the claimant was separated from work due to the illness or disability of an immediate family member,
 - c. if the spouse of the claimant was transferred or obtained employment in another city or state, and the family is required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse,
 - d. if the claimant separated from employment due to domestic violence or abuse, verified by any reasonable evidence, which causes the individual to reasonably believe that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family, or

- e. if the claimant separated from employment to move with the claimant's spouse to a new location, and if the spouse of the claimant:
 1. was a member of the U.S. Military, the U.S. Military Reserve, or the National Guard,
 2. was on active duty within ninety (90) days of the date of discharge,
 3. has a service-connected disability,
 4. was discharged under honorable conditions from the military service and
 5. takes up residence at a location more than fifty (50) miles away from the claimant's former employer for the purpose of reentering civilian life.

[All 2-210 Precedential Cases](#)

By Subject

[2-210\(A\) Separation due to Claimant Illness or Disability](#)

[2-210\(B\) Separation due to Immediate Family Member Illness or Disability](#)

[2-210\(C\) Quit to Move with Spouse who is transferred or obtains employment](#)

2-210(D) Separation due to domestic violence

II. **Separations - Continued**

d. **SECTION 2-404.1: LEAVING WORK VOLUNTARILY OF TEMPORARY EMPLOYEE**

§ 2-404.1. Leaving work voluntarily of temporary employee

- A. For the purposes of this section:
1. "Temporary help firm" means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects;
 2. "Temporary employee" means an employee assigned to work for the clients of a temporary help firm; and
 3. "Good cause" means a reason that is significant and would compel an average reasonable worker, who would otherwise want a suitable job assignment with a client of the temporary help firm, to fail to contact the temporary help firm, to refuse an offered assignment, or to be unavailable for assignment; and
 4. "Suitable job assignment" means work, either full-time or part-time for one or more days or portions thereof, that is in keeping with the education, training, experience, and ability of the individual to perform.
- B. A temporary employee of a temporary help firm will be deemed to have left his or her last work voluntarily without good cause connected with the work if the temporary employee:
1. Does not contact the temporary help firm for reassignment on completion of an assignment. The temporary help firm shall establish the manner for a temporary employee to communicate that his or her assignment has ended and that he or she is available for reassignment at any time;
 2. Refuses a suitable job assignment, without good cause;
 3. Communicates his or her decision to cease seeking assignment
 4. Becomes unavailable to accept a suitable job assignment, without good cause; or
 5. Accepts employment with a client of the temporary help firm.

On and after the effective date of this act, the provisions of this subsection shall apply only if the temporary employee has been advised of the obligations and been provided a copy of a separate document written in clear and concise language that states the provisions in this section and that unemployment benefits may be denied for failure to comply.

C. For the purposes of the Employment Security Act of 1980, the temporary help firm is deemed to be the employer of the temporary employee.

[All 2-404.1 Precedential Cases](#)

By Subject

[Application of Section 2-404.1\(B\)](#)

[Temporary to Permanent Assignments](#)

[Temporary Assignments](#)

II. **Separations - Continued**

e. **SECTION 2-404.2: WORK OF A LIMITED DURATION OF TIME**

§ Section 2-404.2 Work of a limited duration of time

- A. When an employer employs a worker for a limited duration of time specified by the employer, the worker is considered to have been laid off due to lack of work at the end of the time period set by the employer, provided that the worker's separation was due only to the completion of the work or the expiration of the time period.
- B. When an employer employs a worker for a limited duration of time specified by the worker, the worker is considered to have voluntarily quit work at the end of the time period set by the worker, provided that the worker's separation was due only to the expiration of the time period.

[Work of a Limited Duration of Time](#)

II. **Separations - Continued**

f. **SECTION 2-406.1: DISCHARGE FOR REFUSAL TO UNDERGO DRUG OR ALCOHOL TESTING OR POSITIVE TEST**

- A. 1. An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a positive drug or alcohol test conducted in accordance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for benefits pursuant to the provisions of Section 2-406 of this title.
2. In any challenge to a positive drug or alcohol test, the claimant has the burden to prove that the test was not properly conducted. The employer must provide the chain of custody documentation at the request of any claimant challenging his or her test result.
3. When the claimant fails to request a confirmation test pursuant to Section 556 of this title, the claimant shall not be eligible for benefits.
- B. In any claim brought by the discharged employee for compensation, a written report of the drug or alcohol test results shall be accepted as prima facie evidence of the administration and results of the drug or alcohol test. If challenged by the claimant as provided in paragraph 2 of subsection A of this section, the written report of the drug or alcohol test results shall be acceptable for presentation as evidence with the chain of custody of the sample properly documented.

[Drug Testing](#)

III. **Procedural Issues**

a. **SECTION 2-614: WAIVER OF APPEAL TIME**

§ 2-614. Waiver of appeal time

All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown; provided, this waiver shall not apply to appeals to district court of decisions of the Board of Review.

240:10-13-37. Good cause

Good cause is defined as a situation beyond the control of the parties. Situations considered beyond the control of a party may include, among other factors, a disabling personal illness, death in immediate family, jury duty, or military obligations.

[Definition of Good Cause](#)

III. **Procedural Issues - Continued**

b. SECTION 2-503: CLAIMS, NOTICES AND OBJECTIONS

§ 2-503. Claims, notices and objections

- A. Claims for benefits shall be made in accordance with all rules that the Oklahoma Employment Security Commission may prescribe.
- B. Promptly after an initial claim or an additional initial claim is filed, the Commission shall give written notice of the claim to the last employer of the claimant for whom he or she worked at least fifteen (15) working days. The required fifteen (15) working days are not required to be consecutive. Provided, that promptly after the Commission is notified of the claimant's separation from an employment obtained by a claimant during a continued claim series, the Commission shall give written notice of the claim to the last separating employer. Notices to separating employers during a continued claim series will be given to the last employer in the claim week without regard to length of employment.
- C. Promptly after the claim is paid for the fifth week of benefits the Commission shall give written notice of the claim to all other employers of the claimant during the claimant's base period. The notice will be given pursuant to Section 3-106 of this title.
- D. Notices shall be deemed given when the Commission deposits the same in the United States mail addressed to the employer's last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice. If the employer has elected to be notified by electronic means according to procedures set out in Oklahoma Employment Security Commission rules, notice shall be deemed to be given when the Commission transmits the notification by electronic means.
- E. Within ten (10) days after the date on the notice or the date of the postmark on the envelope in which the notice was sent, whichever is later, an employer may file with the Commission at the address prescribed in the notice written objections to the claim setting forth specifically the facts which:
 - 1. Make the claimant ineligible for benefits under Sections 2-201 through 2-210 of this title;
 - 2. Disqualify the claimant from benefits under Sections 2-401 through 2-419 of this title; or
 - 3. Relieve such employer from being charged for the benefits wages of such claimant.

- F. An untimely employer objection to a claim for unemployment benefits made pursuant to subsection E of this section may be allowed for good cause shown.

[All 2-503 Precedential Cases](#)

By Subject

[Employer Address](#)

[Timely Protest](#)

[Written Protest](#)

III. Procedural Issues - Continued

c. REOPEN: RULE 240:10-13-40

Rule 240:10-13-40. Reopen

- a. If a party does not appear for a scheduled hearing, the party may move to reopen the hearing within five (5) days after the mailing of the Appeal Tribunal's Order of Decision. The motion shall provide reasoning for failure to appear and will become a part of the record. Upon receipt of the motion, the Chief Hearing Officer shall set the case for hearing on the issue of good cause for the nonappearance. All interested parties shall be notified of the newly scheduled hearing.
- b. If the hearing officer finds good cause as the basis for failure to appear at the previously scheduled hearing, the case will proceed to be heard on its merits.
- c. If the hearing officer does not find good cause for the party's failure to appear at the originally scheduled hearing, a decision will be rendered reinstating the original decision.
- d. If the party who failed to appear at the originally scheduled hearing appears for the new hearing and the party who appeared at the originally scheduled hearing does not appear, testimony and evidence from the party present will be taken, the tape made at the original hearing played, and the decision shall be rendered based upon the sworn testimony and other evidence submitted at both the first hearing and the second hearing.

[Definition of Good Cause](#)

III. Procedural Issues - Continued

d. MISCELLANEOUS PROCEDURAL ISSUES

[18-AT-09646-BR](#) – In the employer’s appeal to the Board of Review, the Vice President, who did not participate in the hearing, offered new reasons for the employer’s untimely protest and documentation of medical appointments. None of this information was provided at the Appeal Tribunal hearing, and thus, cannot be considered by the Board.

[18-AT-09514-BR](#) - In the claimant’s appeal to the Board of Review, he stated he wanted to subpoena two witnesses who worked for his last employer to testify. The claimant could have requested subpoenas for those individuals prior to the Appeal Tribunal hearing. Because their testimony was not presented for the record at the Appeal Tribunal hearing, the Board of Review cannot consider it.

[18-AT-08872-BR](#) – The claimant’s attorney based her appeal to the Board of Review on the fact that the claimant subpoenaed documents for the hearing which the employer did not provide. However, the Hearing Officer gave the attorney an opportunity to present an offer of proof regarding what would have been shown by the documents. Therefore, the absence of the documents is not found to have been detrimental to the case.

[18-AT-07231-BR](#) – In the employer’s appeal to the Board of Review, the Unemployment Coordinator referred to a document in the appeal packet as proof of his argument that it timely filed its initial appeal to the Appeal Tribunal. However, the Unemployment Coordinator did not appear for the Appeal Tribunal hearing and neither of the witnesses who did offer the document into the hearing record. The Board of Review can only consider exhibits and sworn testimony from the hearing; thus, the document the Unemployment Coordinator referred to cannot be considered.

[18-AT-04740-BR](#) – The attorney’s application for attorney fees is approved as the request does not exceed 20% of the claimant’s maximum benefit amount. The claimant is solely responsible for the payment of all attorney fees assessed by the attorney and approved by the Board of Review.

[18-AT-04566-BR](#) – When a claimant files for two consecutive claim years, without intervening employment, a disqualification from the previous claim year carries over to the newly established claim year.

[18-AT-02996-BR](#) - The claimant objected to a signed statement from a potential witness being entered into the record, when the employer’s Investigative Report was entered. The claimant’s witness statement was hard to read, not notarized, and likely would not be admissible when the witness was not at the hearing to be sworn or cross-examined. The employer’s Investigative Report was a record kept in the regular course of business, and therefore an exception to the hearsay rule.

[18-AT-02210-BR](#)- The issue discussed at the Appeal Tribunal hearing and later appealed to the Board of Review concerned the claimant's availability to seek and accept work while caring for his seriously ill mother. The claimant argued in his appeal to the Board of Review that he should be qualified for benefits under Section 2-210, which is an issue not before the Board of Review. Because a hearing on his separation had not been held, the Board of Review cannot address that matter.

[17-AT-09181-BR](#) – The claimant disagreed with B&H Construction being considered his last employer because he had worked for Lamunyon Drilling for 12 days after he quit B&H. Section 2-503 requires an individual must work for an employer at least 15 working days in order for that employer to be considered the “last” employer. Thus, B&H Construction is the claimant's last employer.

[17-AT-08749-BR](#) – In a hearing on May 30, 2017, the employer's representative voluntarily requested to withdraw from the hearing due to its witness being unavailable. The Hearing Officer granted the employer's withdrawal request and dismissed the appeal with prejudice on May 31, 2017. On June 12, 2017, the employer submitted a reopen request due to its witness writing down the date of the hearing incorrectly. The Appeal Tribunal responded on June 16, 2017, advising the employer that its request was denied due to the appeal having been dismissed with prejudice. When the case was dismissed with prejudice as a result of the employer's withdrawal request, the employer forfeited its right to reopen the case. The Board of Review notes that had the case been dismissed without prejudice, the employer's reason for its witness' absence would not be considered good cause to reopen the case.

[17-AT-02912-BR](#)- Claimant's attorney asserted that the Claimant did not receive due process due to the attorney not being notified of the hearing. The Claimant had received appeal documents herself, had not notified the Appeal Tribunal of her desire to have her attorney notified, and advised the Hearing Officer at hearing that she did not expect her attorney to participate. Thus, the Claimant did receive due process.

[17-AT-01879-BR](#) - The Employer withdrew its appeal on the record after having been denied a continuance which it requested because it desired an attorney for representation upon learning the Claimant had one. The Employer's withdrawal cannot be rescinded because the Employer later changed its mind about the proceeding.

[16-AT-00291-BR](#) - Remanded to allow the claimant to question an available witness whose handwritten comment is on an employer exhibit.

22-AT-02022-BR - In the claimant's appeal he stated he did not register for the hearing 24 hours prior to the hearing, because he did not know that the business day prior to the hearing was a holiday. The Notice of Hearing, which the claimant received, required registration by 2PM the business day prior to the hearing. The claimant's request to reopen was denied. The hearing officer found since “... the claimant did receive the Notice which contained the date, time, and instructions for appearing at the hearing, ...

the claimant's failure to follow the instructions it contained is considered to be within the claimant's control and not good cause to reopen the hearing." The claimant appealed to the Board of Review. The Board of Review reversed the Appeal Tribunal's decision denying the request to reopen and remanded for a hearing on the merits. The Board of Review held that, although the Notice of Hearing explains how to register for a Monday hearing, by registering the Friday prior, it "...does not explain what one should do to register when the office is closed for any reason." The Board held, "If the instructions in the Notice instructed an appellant that if Monday was a holiday or the office was closed for any other reason they must register on Friday, and the appellant did not register as instructed, then their attempt would be untimely."

IV. **Other Issues**

a. **SECTION 2-203: CLAIM**

§ 2-203. Claim

- A. An unemployed individual must file an initial claim for unemployment benefits by calling an Oklahoma Employment Security Commission claims representative in a Commission Call Center, by completing the required forms through the Internet Claims service provided by the Commission, or by completing all forms necessary to process an initial claim in a local office of the Commission or any alternate site designated by the Commission to take unemployment benefit claims. The Commission may obtain additional information regarding an individual's claim through any form of telecommunication, writing, or interview. An unemployed individual must file a claim in writing or by telecommunication for benefits with respect to each week in accordance with such rule as the Commission may prescribe.
- B. 1. During the process of filing an initial claim for unemployment benefits, the claimant shall be made aware of the definition of misconduct set out in Section 2-406 of this title, and the claimant shall affirmatively certify that the answers given to all questions in the initial claim process are true and correct to the best of the claimant's knowledge and that no information has been intentionally withheld or misrepresented in an attempt by the claimant to receive benefits to which he or she is not entitled.

2. The certification statement required in paragraph 1 of this subsection shall be available through the Internet Claims service provided by the Commission and by a form to be completed by the claimant in a local office of the Commission or at any alternate site designated by the Commission to take unemployment benefit claims.
- C. With respect to each week, he or she must provide the Commission with a true and correct statement of all material facts relating to: his or her unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or accepting full-time employment immediately; applications for or receipt of workers' compensation benefits; employment and earnings; and the reporting of other income from retirement, pension, disability, self-employment, education or training allowances.
- D. No claim will be allowed or paid unless the claimant resides within a state or foreign country with which the State of Oklahoma has entered into a reciprocal or cooperative arrangement pursuant to Part 7 of Article IV of the Employment Security Act of 1980.
- E. The Commission may require the individual to produce documents or information relevant to the claim for benefits. If the individual fails to produce it, the

individual's claim for unemployment benefits may be disqualified indefinitely by the Commission until the information is produced. An individual that has been disqualified indefinitely by the provisions of this subsection may receive payment for any week between the initial failure and the compliance with this subsection if the claimant is otherwise eligible and has made a timely filing for each intervening week.

[Request to Backdate a Claim](#)

[Claimant Responsibilities for Weekly Claim Filing](#)

Failure to Respond to Commission Request for Information

IV. Other Issues - Continued

b. SECTION 2-204: REGISTRATION FOR EMPLOYMENT

§ 2-204. Registration for employment

The unemployed individual must register for work within seven (7) days of filing his or her initial claim for unemployment benefits in accordance with such rules as the Commission may prescribe, except that the Commission may waive the requirements of this section as to individuals attached to regular jobs, situations involving mass layoffs, or individuals in areas not served by an established employment office or Internet service when it finds that compliance with these requirements would be oppressive, or would be inconsistent with the purpose of the Employment Security Act of 1980.

Failure to Register Within Seven Days

Failure to Update Resume

Registered in Another State

Waiver of Registration Requirements

IV. Other Issues - Continued

c. SECTION 2-205.1: ABILITY TO WORK AND ACCEPTANCE OF EMPLOYMENT

§ 2-205.1. Ability to work and acceptance of employment

The unemployed individual must be able to perform work duties in keeping with his education, training and experience. He must also be available to seek and accept work at any time and may not be engaged in any activity that would normally restrict his seeking or accepting employment in keeping with his education, training and experience.

The fact that an individual is enrolled in school shall not, in and of itself, render an individual ineligible for unemployment benefits. Such individual who is involuntarily unemployed and otherwise eligible for benefits and who offers to quit school, adjust class hours or change shifts in order to secure employment shall be entitled to benefits.

[All 2-205.1 Precedential Cases](#)

By Subject

[Medical Limitations](#)

[Education and Work History](#)

Income Requirements

[Availability Limitations](#)

IV. Other Issues - Continued

d. SECTION 2-207: WAGE REQUIREMENT DURING BASE PERIOD

§ 2-207. Wage requirement during base period

- A. The unemployed individual, during the individual's base period, shall have been paid:
1. Taxable wages of not less than One Thousand Five Hundred Dollars (\$1,500.00); and
 2. Total wages of not less than one and one-half (1 1/2) times the amount of wages during that quarter of the individual's base period in which the wages were highest.
- B. Notwithstanding the provisions in subsection A of this section, an unemployed individual shall be eligible for benefits if, during the individual's base period, he or she shall have been paid:
1. Taxable wages of any amount; and
 2. Total wages equal to or more than the annual amount of taxable wages that applies to any calendar year in which the claim for unemployment benefits was filed.
- C.
1. If an individual lacks sufficient base period wages under subsection A or B of this section to establish a claim for benefits, any wages paid in the individual's alternative base period shall be considered as the individual's base period wages.
 2. If the Commission has not received wage information from the individual's employer for the most recent calendar quarter of the alternative base period, the Commission shall accept an affidavit from the individual supported by wage information such as check stubs, deposit slips, or other supporting documentation to determine wages paid.
 3. A determination of benefits based on an alternative base period shall be adjusted when the quarterly wage report is received from the employer, if the wage information in the report differs from that reported by the individual.
 4. If alternative base period wages are established by affidavit of the individual, the employer to which the wages are attributed will have the right to protest the wages reported. If a protest is made, the employer must provide documentary evidence of wages paid to the individual. The

Commission will determine the wages paid based on the preponderance of the evidence presented by each party.

5. Provided, no wages used to establish a claim under an alternative base period shall be subsequently used to establish a second benefit year.

[Determining Monetary Eligibility](#)

IV. Other Issues - Continued

e. SECTION 2-209: REASONABLE ASSURANCE

§ 2-209. Benefits for employees of governmental or nonprofit employers

Benefits based on service in employment defined in paragraph (3) or (4) of Section 1-210 of this title, including any federally operated educational institutions, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to the Employment Security Act of 1980, except that:

(1) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs services in the first academic year or term and if there is a contract or a reasonable assurance that the individual will perform services in any capacity for any educational institution in the second academic year or term.

(2) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of services to any individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs services in the first academic year or term and there is a reasonable assurance that the individual will perform services in the second academic year or term, except that if compensation is denied to any individual pursuant to this paragraph and the individual was not offered an opportunity to perform services for the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause;

(3) With respect to any services described in paragraphs (1) and (2) of this section, benefits shall not be payable on the basis of services in any capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform services in the period immediately following the vacation period or holiday recess;

(4) With respect to any services described in paragraphs (1) and (2) of this section, benefits shall not be payable on the basis of services in any capacities as specified in paragraphs (1), (2) and (3) of this section to any individual who performed services in an educational institution while in the employ of an educational service agency. For

purposes of this paragraph, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions;

(5) With respect to services to which paragraph (3) or (4) of Section 1-210 of this title applies, if services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in paragraphs (1), (2), (3) and (4) of this section; and

(6) If an individual has employment with an educational institution and has employment with a noneducation employer or employers during the base period of the individual's benefit year, the individual may become eligible for benefits during the between-term denial period, based only on the noneducational employment.

[Reasonable Assurance](#)

IV. Other Issues - Continued

f. SECTION 2-411: RETIREMENT PAYMENTS

§ 2-411. Retirement payments

1. Except for any payment or benefit payment made pursuant to the federal Social Security Act, an individual shall be disqualified for benefits for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic retirement payment which is based on the previous work of such individual if:
 - a. such pension, retirement or retired pay, annuity or similar payment is under a plan maintained, or contributed to, by a base period or chargeable employer; and
 - b. in the case of such a payment not made under the Railroad Retirement Act of 1974, 45 U.S.C., Section 231 et seq., services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.
2. If the total of such remuneration is less than the benefits which would otherwise be due under the Employment Security Act of 1980, Section 1-101 et seq. of this title, the individual shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.
3. If payments referred to in this section are being received by an individual under the federal Social Security Act, the Commission shall take into account the individual's contribution to Social Security and make no reduction in the weekly benefit amount.

Determining Retirement Payments

IV. Other Issues - Continued

g. SECTION 2-417: SEEK AND ACCEPT WORK

§ 2-417. Seek and accept work--Week of occurrence disqualification

A. An individual shall be disqualified to receive benefits for each week in which the individual shall have failed to do any of the following:

1. Diligently search for suitable employment at a pay rate generally available in that area of the state in keeping with his or her prior experience, education and training;
2. Make application for work with employers who could reasonably be expected to have work available; or
3. Present oneself as an applicant for employment in a manner designed to encourage favorable employment consideration.

B. The requirements of subsection A of this section shall be waived if the individual has been summoned to appear for jury duty before any court of the United States or of any state. The waiver will continue for as long as the individual remains on jury duty pursuant to the original summons.

Failure to Seek Work

Failure to Accept Work

IV. Other Issues - Continued

h. SECTION 2-418: SEEK AND ACCEPT WORK

§ 2-418. Seek and accept work--Indefinite disqualification

- A. An individual shall be disqualified to receive benefits for the full period of unemployment next ensuing after the individual shall have failed to do any of the following:
 - 1. Accept an offer of suitable work, as defined by Section 2-408 of this title, from an employer including any former employer;
 - 2. Apply for or accept suitable work, as defined by Section 2-408 of this title, when so directed by the Commission; or
 - 3. Accept employment pursuant to a hiring hall agreement when so offered. Such disqualification shall continue until the individual has become reemployed and has earned wages equal to or in excess of ten (10) times his or her weekly benefit amount.
- B. An employer who provides evidence of an offer of suitable work pursuant to paragraph 1 of subsection A of this section shall be proof of the failure of the individual to meet this requirement and shall result in the immediate cessation of benefits until a determination can be made by the Commission. The Commission shall conduct a timely investigation of any such claim and verify the offer of suitable work.
- C. Any individual who shall have failed in any of the requirements of subsection A of this section due to illness, death of a family member or other extenuating circumstance beyond his or her control shall be disqualified for regular benefits under this section only for the week of the occurrence of such circumstance beyond his or her control.

Failure to Seek Work

[Failure to Accept Work](#)

IV. Other Issues - Continued

i. SECTION 2-420: FAILURE TO PERSONALLY APPEAR AS DIRECTED

§ 2-420. Failure to personally appear as directed

The Oklahoma Employment Security Commission may require the individual to personally appear at a location for a purpose relevant to the individual's unemployment claim, job search, or reemployment services. If the individual fails to appear, the individual's claim for unemployment benefits will be disqualified indefinitely by the Commission until the individual makes a personal appearance as directed. An individual who has been disqualified indefinitely by the provisions of this section shall be disqualified for all weeks between the initial failure and the compliance with this section.

[Failure to Appear](#)

IV. Other Issues - Continued

j. SECTION 2-613: BENEFIT OVERPAYMENTS

§ 2-613. Benefit overpayments

An overpayment of unemployment benefits shall be classified in one of three ways with recovery and recoupment to be conducted as follows:

1. Fraud overpayment: in which an individual intentionally makes a false statement or representation or fails to disclose a material fact, and has received any sum as benefits to which the individual was not entitled. The individual shall be liable to repay this sum, plus a penalty of twenty-five percent (25%) of the amount of the original overpayment and interest at the rate of one percent (1%) per month on the unpaid balance of the overpayment, to the Oklahoma Employment Security Commission. Three-fifths (3/5) of the penalty amount collected shall be deposited in the Unemployment Trust Fund for the State of Oklahoma and the remaining two-fifths (2/5) shall be deposited in the Oklahoma Employment Security Commission Revolving Fund. The interest shall cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest shall cease to accrue when the total accrued interest equals the amount of the modified overpayment. The Commission shall deduct the principal sum from any future benefits payable to the individual;
2. Claimant error overpayment: in which an individual, by mistake of law or fact, makes a false statement or representation or fails to disclose a material fact and has received any sum as benefits to which the individual was not entitled. The individual shall be liable to repay this sum, plus interest at the rate of one percent (1%) per month on the unpaid balance of the overpayment, to the Commission. The interest shall cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest shall cease to accrue when the total accrued interest equals the amount of the modified overpayment. The Commission shall deduct the principal sum from any future benefits payable to the individual; or
3. Administrative overpayment -- in which:
 - a. an individual has received any sum as benefits under the Employment Security Act of 1980 due to an error by the Commission or an employer, or
 - b. an individual has received benefits and, under a redetermination or a reversal of a decision on appeal, the individual has been found to be not entitled to benefits.

The individual shall be liable to have this sum deducted from any future benefits payable to the individual with respect to the benefit year current at the time of the receipt and the next subsequent benefit year that begins within one (1) year after the expiration of the benefit year current at the time of the receipt. No interest shall accrue on administrative overpayments.

Fraud Overpayment
[Claimant Error Overpayment](#)
[Administrative Error Overpayment](#)

V. All Precedential Cases

a. By Section

Section 2-406 Precedential Cases

2-406 ATTENDANCE

[18-AT-10307-BR](#) - The employer's point-based attendance policy provides for termination if an employee accrues twenty (20) points. The bulk of the claimant's attendance points leading up to her separation were due to caring for her parents who suffered from significant health issues. Because of this, the claimant inquired about FMLA but was told by her supervisor that she did not qualify. Rather than mentioning to the claimant a 30-day unpaid leave that could have been offered to her, the supervisor advised she would "work with" the claimant. The claimant's final absences were due to her mother's surgery, which she notified the employer of in advance. Because the claimant had been told the supervisor would work with her, and because nothing was said about possible termination over her absences, the claimant had reason to conclude that her job was not in jeopardy. The employer's later decision to terminate her for her attendance may have been a good business decision, but does not meet the burden of proving misconduct.

[17-AT-10849-BR](#) - The claimant's failure to do anything more than call the doctor's office for over a month to get the required FMLA paperwork to the employer by the deadline provided resulted in him not providing the necessary documentation to excuse his absences. Because he did not provide the necessary documentation, his discharge was for unapproved or excessive absenteeism, and thus misconduct.

[17-AT-05210-BR](#) - The claimant was discharged for attendance issues after, having been warned and made aware that her job was in jeopardy, she missed two consecutive days of work due to a snow storm. The severe weather event was outside of the claimant's control and her absences due to such storm are not considered misconduct.

[17-AT-02447-BR](#) - The claimant's sixth absence in a one-year period, which put her in violation of the employer's policy, was not excessive, given that the final absence was due to an emergency and that the employer's policy provides that such absences can be excused.

[16-AT-06415-BR](#) - Claimant's discharge due to erratic attendance and performance issues was for misconduct.

[16-AT-06103-BR](#) - Claimant discharged for attendance after being warned for tardiness. Final absence was due to oversleeping after taking medication. Claimant was discharged for misconduct.

[16-AT-004320-BR](#) - Two absences, one year apart, do not meet the definition of excessive.

[15-AT-10954-BR](#) - Claimant discharged for attendance not domestic violence.

[15-AT-05353-BR](#) - Four days absence in last week of employment not excessive and is not a separation due to compelling family circumstances.

Section 2-406 Precedential Cases Continued

2-406 BREACH OF DUTY

[19-AT-10313-BR](#) - The claimant was hired by the employer as a teacher under the process of emergency certification, which allows a person to teach no more than four semesters without a valid teaching certificate. During this two-year period, a person such as the claimant must take and pass certain examinations if they desire to continue teaching; if said examinations are not completed, teachers are not eligible to remain employed. The claimant failed to complete the required examinations prior to the end of her contract period and was discharged. Because the discharge was for a breach of job duties and responsibilities or obligations to her employer, the discharge was for misconduct.

Section 2-406 Precedential Cases Continued

2-406 DISCHARGE DUE TO ARREST

[18-AT-10043-BR](#) – The employer’s appeal to the Board of Review states that the claimant was discharged for failure to call in for five days while in jail. However, the employer testified at the Appeal Tribunal hearing that the claimant was terminated due to being arrested on felony charges. While the employer’s argument in its appeal certainly could be misconduct, the Board of Review must base its consideration on the sworn testimony provided at hearing. Because the arrest was not connected to the work, and the claimant has not been convicted, misconduct has not been shown.

[16-AT-3082 BR](#) - Sheriff's arrest for DUI and violation of Employer's Code of Conduct which required him to follow all laws reflected negatively on the Sheriff's office; discharged for misconduct.

Section 2-406 Precedential Cases Continued

2-406 DRUG TESTING

[15-AT-07662 BR](#) - Claimant's failure to request a confirmation drug test is misconduct.

[15-AT-06358 BR](#) - Claimant's testimony regarding medication adopted as fact.

Section 2-406 Precedential Cases Continued

2-406 EMPLOYEE HONESTY

[19-AT-03446-BR](#) - The claimant had been missing work for medical reasons, during which time was reported for and paid to her when she had not actually worked. The claimant made no attempt to correct these records and was terminated for time clock fraud. Because the claimant was aware that her hours had been reported incorrectly, and she made no attempt to correct the issue, the claimant was discharged for misconduct.

[15-AT-06640 BR](#) - Claimant did not intend to deceive employer regarding her employment application

Section 2-406 Precedential Cases Continued

2-406 EMPLOYEE NEGLIGENCE

[18-AT-02798-BR](#) – The claimant was warned for failure to complete a state-mandated task, costing the employer a large loss of funding. The Hearing Officer ruled that a subsequent decision to terminate an employee, for the same infraction they received previous discipline for, was not misconduct. The Board of Review finds no statute, policy or precedent case that says that. An employer is not obligated to give an employee a warning for the employee's actions to amount to misconduct. The claimant's failure to complete a critical task was a substantial breach of her job duties and a neglect of the duties required of her. Thus, the claimant was discharged for misconduct.

[17-AT-03443-BR](#) - Claimant was a 13-year employee and last worked as an Assembler. She accrued an excessive number of assembly errors in 2016 and was terminated for such. Claimant put forth significant effort at her position and performed at the required level on multiple occasions. The effort put forth by the claimant was sufficient to overcome a finding of neglect of duty. No misconduct found.

[15-AT-6185 BR](#) - Claimant received warnings for negligence and engaged in actions which were grossly negligent; misconduct.

Section 2-406 Precedential Cases Continued

2-406 EMPLOYEE PERFORMANCE

[18-AT-07890-BR](#) - During a day when he was not scheduled to work, the claimant was contacted by a manager on duty who advised he would not be coming in that day. As a result, the claimant immediately went to the workplace, where he then learned the cook would also not be coming in. The claimant went to extraordinary measures to open the store and prepare a catering order, but was unsuccessful in opening the store on time and getting the order done on time. This does not diminish the fact that he exhibited a great deal of responsibility toward the employer's interest. As such, his discharge for failure to get everything done in time that day does not rise to the level of misconduct.

[17-AT-08584-BR](#) – The claimant, a three-year employee, was discharged for poor performance. The claimant began making errors in December 2016 due to having trouble concentrating on her work as a result of serious health concerns of her father, daughter, and nephew, as well as the recent passing of her grandfather. No evidence was submitted to show the claimant was intentionally performing poorly, or that she was indifferent to or neglectful of her duties. No misconduct found.

[17-AT-03443-BR](#) - Claimant was a 13-year employee and last worked as an Assembler. She accrued an excessive number of assembly errors in 2016 and was terminated for such. Claimant put forth significant effort at her position and performed at the required level on multiple occasions. The effort put forth by the claimant was sufficient to overcome a finding of neglect of duty. No misconduct found.

[17-AT-01447-BR](#) - Claimant's poor work performance and habitual lateness, which she admitted having been warned about, is considered misconduct connected to the work.

[16-AT-06415 BR](#) - Claimant's discharge due to erratic attendance and performance issues was for misconduct.

[15-AT-8734-UCFE BR](#) - Claimant put forth significant effort which was sufficient to overcome a finding of neglect of duty.

Section 2-406 Precedential Cases Continued

2-406 EMPLOYER RULES AND PRACTICES

[18-AT-08514-BR](#) - The claimant was discharged after being charged with a DUI which resulted in a revocation of his driver's license. The employer discharged the claimant based on its policy which states that suspension or dismissal may occur if an employee receives " A DUI conviction which leads to a felony conviction OR revocation of a driver's license OR other vehicular convictions which lead to revocation, suspension, non-renewal or uninsurability for any employee who drives a District-owned vehicle." Thus, the claimant violated the employer's written policy, and his discharge was for misconduct.

[18-AT-04867-BR](#) – The claimant was warned for violation of the employer's policy when he allowed staff to use his register card. A few days after the warning, the employer decided his actions warranted termination. Section 2-406 does not require a warning as long as the claimant knew or should have known that a policy was being violated. Thus, the claimant's violation of the employer's policy, of which he was aware, amounts to misconduct.

[18-AT-04530- BR](#) – The claimant's failure to call in and report her absences due to illness, causing her to exceed the allowable number of attendance points, was within her control and was violation of a known and reasonable policy. Misconduct found.

[18-AT-02798-BR](#) – The claimant was warned for failure to complete a state-mandated task, costing the employer a large loss of funding. The Hearing Officer ruled that a subsequent decision to terminate an employee, for the same infraction they received previous discipline for, was not misconduct. The Board of Review finds no statute, policy or precedent case that says that. An employer is not obligated to give an employee a warning for the employee's actions to amount to misconduct. The claimant's failure to complete a critical task was a substantial breach of her job duties and a neglect of the duties required of her. Thus, the claimant was discharged for misconduct.

[18-AT-02761-BR](#) – The claimant mistakenly transposed an inventory count into the employer's computer system, leading to an error in the employer's stated inventory. The claimant's actions do not amount to misconduct when no evidence was presented to show the employer suffered monetarily, or that the mistake was intentional or reckless.

[17-AT-00260-BR](#)- Claimant's isolated mistake in preparing a surgical consent form which was not Medicaid approved, resulting in a loss of money for her employer, was not an intentional, malicious, dishonest, or material breach of her duties and thus not misconduct.

[16-AT-12548-BR](#)- Claimant's one-time failure to follow the Employer's policy to honk the horn of his forklift every time he went around a corner was a mistake and did not rise to the level of misconduct.

[16-AT-012050-BR](#)- An isolated incident of failure to wear required uniform by an employee who had worked for the employer for nine years does not rise to the level of misconduct as defined in Section 2-406(B).

[16-AT-08485 BR](#)- Claimant's failure to follow the employer's written policy regarding wire transfers was a breach of her job duties, responsibilities and obligations; discharged for misconduct.

[16-AT-08409-UCFE-BR](#)- Claimant was charged with four criminal charges which were not job related. The employer denied the claimant access to the workplace as a result. Because the claimant was discharged before the charges were tried or substantiated, the claimant was discharged not for misconduct.

[16-AT-3082 BR](#) - Sheriff's arrest for DUI and violation of Employer's Code of Conduct which required him to follow all laws reflected negatively on the Sheriff's office; discharged for misconduct.

[15-AT-11075 BR](#) - Claimant's clocking-in of coworker was not in violation of employer rules

Section 2-406 Precedential Cases Continued

2-406 FAILURE TO OBTAIN OR MAINTAIN LICENSURE

[16-AT-011510-BR](#) - Claimant's license was suspended in error by the county clerk's office, and notice was sent to his parents' home. Claimant's failure to notify the Employer of his suspended license is not misconduct when Claimant was unaware of the suspension.

[16-AT-08213 BR](#) - Claimant's inability to obtain his Commercial Driver's License is not misconduct.

[15-AT-11425 BR](#) - Claimant's failure to obtain CLEET license is misconduct.

Section 2-406 Precedential Cases Continued

2-406 INSUBORDINATION

[18-AT-06194-BR](#) – The claimant’s discharge for failure to complete an assigned duty did not constitute misconduct when she was called away from an assigned task by the assistant store manager.

[16-AT-08370 BR](#) Claimant's refusal to meet with supervisor was insubordination and misconduct.

[16-AT-005951 BR](#) Claimant left meeting early without permission; not misconduct.

Section 2-406 Precedential Cases Continued

2-406 MISCELLANEOUS

[19-AT-02752-BR](#) – The employer argued that since the claimant knew he had been hired for a temporary position, he was “at fault” for his termination. However, Section 2-404.2 states that if an employer hires someone for a limited period of time specified by the employer, the worker is considered laid off due to lack of work at the end of that time period. Therefore, the claimant is considered discharged but not for misconduct connected to the work.

[17-AT-13142-BR](#) - Claimant worked for over a year with weight restrictions of lifting no more than 10 pounds, but was told he would not be put back on the schedule unless he provided the employer a full medical release without restrictions. Because the claimant had worked for over a year with the restrictions and the employer refused to allow him to work under those same conditions, the claimant was discharged but not for misconduct.

[17-AT-12231-BR](#) - The employer did not have a position for the claimant under his light-duty restrictions, after he had sustained an injury and missed several months of work. Despite the employer placing the claimant on leave and paying his insurance premiums, he is deemed unemployed as he is not performing work for the employer. Because the claimant is willing to work but the employer does not have that type of work available, the claimant was discharged but not for misconduct.

[16-AT-05951-BR](#) Claimant left meeting early without permission; not misconduct.

[15-AT-11030-BR](#) - Claimant discharged when Employer did not allow her to return to work.

[15-AT-03602-BR](#) - 406(B) limits misconduct to eight specific acts; Claimant's actions do not meet any of those.

Section 2-406 Precedential Cases Continued

2-406 WORKPLACE BEHAVIOR

[19-AT-08608-BR](#) - The employer discharged the claimant for inappropriate conduct including gossiping and discussing confidential information. The employer investigated the matter and based its decision to terminate the claimant, at least partially, on a video surveillance tape which did not have audio. The claimant was not allowed to see the video. At the hearing, the claimant flatly denied gossiping or saying anything inappropriate, and stated that the host asked her for personal information and blocked her from leaving the room. The video was not submitted for the hearing. Because the claimant's testimony had as much credibility as the casino host's, the Board of Review finds that the employer did not meet its burden of proof. No misconduct established.

Section 2-404 Precedential Cases

2-404 CHANGE IN WORKING CONDITIONS

[17-AT-02278-BR](#) - Claimant's voluntary quit due to health issues related to a chemical used at her place of employment is considered good cause connected to the work.

[15-AT-11847 BR](#) - Claimant quit without good cause when reassigned duties.

Section 2-404 Precedential Cases Continued

2-404 DEFINITION OF VOLUNTARY QUIT

[18-AT-04991-BR](#) – The claimant’s voluntary quit due to needing to care for her young grandchildren does not meet the criteria of Section 2-210 when she failed to demonstrate the employer was unwilling to grant leave to her.

[16-AT-12765-BR](#) - Acceptance of an early retirement incentive plan, when layoffs were not imminent and acceptance of the plan was not required, is a voluntary quit but not for good cause connected to the work.

[16-AT-06727 BR](#) - Claimant quit when he turned in his two week notice; employer accepted resignation immediately. This constitutes a quit.

[14-AT-08374 BR](#) - Claimant’s quit was not voluntary because it was the result of agreement with employer. Claimant was discharged.

Section 2-404 Precedential Cases Continued

2-404 EMPLOYER FAILS TO KEEP PROMISE

[17-AT-05589-BR](#) - The claimant had a previously scheduled humanitarian trip for which leave had been approved by the employer. The organization postponed this trip and the claimant advised the employer of the postponement. Prior to leaving for the trip, the employer denied the claimant's previously approved leave due to her having been gone too much, though claimant still had leave available. Money had been donated to the claimant for the purpose of the relief effort and all reservations had already been made. The claimant's voluntary quit to attend the trip is considered for good cause.

Section 2-404 Precedential Cases Continued

2-404 HOSTILE WORK ENVIRONMENT

[17-AT-09137-BR](#) - The claimant, an eighteen-year employee, quit the employment due to being subjected to harsh verbal treatment, after tolerating it as long as he could. Section 2-405 does not imply that an employee must quit immediately, or that the employee must accept the treatment forever. Thus, the claimant's voluntary quit was for good cause connected to the work.

[17-AT-03792-BR](#) - Claimant reported her dissatisfaction with her general manager's treatment of her to another manager who advised she would take care of it with upper management on claimant's behalf. When claimant's working conditions didn't improve after several months, she voluntarily quit the employment for good cause connected to the work.

[17-AT-00361-BR](#) - Repeated harassment by one's supervisor is considered unfair treatment and thus constitutes good cause for voluntarily quitting the employment.

[15-AT-08736 BR](#) - Claimant in hostile work environment who reported issues to supervisor had good cause for quitting.

[15-AT-08031 BR](#) - Claimant quit because he felt afraid; no evidence CL was in actual danger.

[14-AT-08489 BR](#) - Claimant who was cursed at by employer and who was not paid overtime had good cause for quitting due to substantially difficult working conditions.

Section 2-404 Precedential Cases Continued

2-404 QUIT TO ACCEPT NEW EMPLOYMENT

[17-AT-05098-BR](#) - Claimant was discharged from a full-time salesperson position due to performance. She was then offered and accepted a part-time position covering lunch breaks, but quit that position after one day to seek full-time work. Claimant filed for unemployment after quitting her part-time position. The claimant's voluntary quit due to seeking a better job is not considered good cause connected to the work.

Section 2-404 Precedential Cases Continued

2-404 QUIT TO MOVE

[15-AT-09323 BR](#) - Claimant quit to move with husband who did not have a job offer at time of move.

Section 2-404 Precedential Cases Continued

2-404 SALARY REDUCTION

[R&R Engineering Co. v. Oklahoma Employment Security Commission, Board of Review, and Gilbert V. Farris, 1987 OK 36, ¶ 9, 737 P.2d 118, 119](#) - A pay cut in excess of 15% is excessive and can be good cause for voluntarily quitting.

[16-AT-07947 BR](#) - Claimant quit for good cause when employer did not pay her on a regular basis.

[15-AT-01700 BR](#) - Claimant quit for good cause when salary reduced

Section 2-210 Precedential Cases

2-210(A) SEPARATION DUE TO CLAIMANT ILLNESS OR DISABILITY

[17-AT-13142-BR](#) – Claimant worked for over a year with weight restrictions of lifting no more than 10 pounds, but was told he would not be put back on the schedule unless he provided the employer a full medical release without restrictions. Because the claimant had worked for over a year with the restrictions and the employer refused to allow him to work under those same conditions, the claimant was discharged but not for misconduct.

[17-AT-12231-BR](#) – The employer did not have a position for the claimant under his light-duty restrictions, after he had sustained an injury and missed several months of work. Despite the employer placing the claimant on leave and paying his insurance premiums, he is deemed unemployed as he is not performing work for the employer. Because the claimant is willing to work but the employer does not have that type of work available, the claimant was discharged but not for misconduct.

[17-AT-10849-BR](#) - The claimant's failure to do anything more than call the doctor's office for over a month to get the required FMLA paperwork to the employer by the deadline provided resulted in him not providing the necessary documentation to excuse his absences. Because he did not provide the necessary documentation, his discharge was for unapproved or excessive absenteeism, and thus misconduct.

[16-AT-08299-BR](#) - Claimant has permanent medical restrictions; therefore separated due to compelling family circumstances. Distinguished from 15-AT-05754 BR.

[15-AT-08655-BR](#) - Claimant did not tell Employer about medical issues; did not ask for accommodations; did not present medical documentation to support medical issues; quit without good cause.

[15-AT-06568-BR](#) - After release from hospital, claimant did not contact EMP and did not provide medical evidence to support inability to work; quit without good cause.

[15-AT-05754-BR](#) - Claimant on medical leave; has not quit or been discharged but is on leave. Denied under 2-210.

[15-AT-05353-BR](#) - Four days absence in last week of employment not excessive and is not a separation due to compelling family circumstances.

Section 2-210 Precedential Cases Continued

2-210(B) SEPARATION DUE TO IMMEDIATE FAMILY MEMBER ILLNESS OR DISABILITY

[18-AT-04991-BR](#) – The claimant’s voluntary quit due to needing to care for her young grandchildren does not meet the criteria of Section 2-210 when she failed to demonstrate the employer was unwilling to grant leave to her.

[11-AT-06255 BR](#) - Unreasonable to ask for leave in certain indefinite situations; uncontroverted testimony can satisfy medical verification requirement.

Section 2-210 Precedential Cases Continued

2-210(C) QUIT TO MOVE WITH SPOUSE WHO IS TRANSFERRED OR OBTAINS EMPLOYMENT

[16-AT-01150 BR](#) - Claimant's act of quitting in anticipation of moving to California with her future spouse does not fall within the guidelines of compelling family circumstances.

[14-AT-09745 BR](#) - Denied when moved to California to marry, did not transfer with spouse.

[12-AT-2860 BR](#) - Moving to Spouse not same as moving with spouse.

Section 2-404.1 Precedential Cases

APPLICATION OF SECTION 2-404.1(B)

[15-AT-10904-BR](#) Section 2-404.1(B) applies only if the temporary employee has been advised of the obligations and provided a separate copy.

Section 2-404.1 Precedential Cases Continued

2-404.1 TEMPORARY ASSIGNMENTS

[14-AT-005132 BR](#) Section 2-404.1 does not specify a length of time for temporary assignment.

Section 2-404.1 Precedential Cases Continued

2-404.1 TEMPORARY-TO-PERMANENT ASSIGNMENTS

[14-AT-004547-BR](#) Temporary-to-permanent assignment is an audition and not a temporary assignment under the Act.

Section 2-404.2 Precedential Cases

2-404.2: Work of a Limited Duration of Time

[18-AT-01778-BR](#) – The claimant was separated for lack of work, in accordance with Section 2-404.2(A), when she was told she was no longer needed after an employee she was hired to fill in for returned to work.

Section 2-406.1 Precedential Cases

2-406 DRUG TESTING

[15-AT-07662 BR](#) - Claimant's failure to request a confirmation drug test is misconduct.

[15-AT-06358 BR](#) - Claimant's testimony regarding medication adopted as fact.

Section 2-614 Precedential Cases

2-614 DEFINITION OF GOOD CAUSE

[19-AT-10184-BR](#) - In his appeal to the Board of Review, the claimant stated that his appeal to the Notice of Determination was late due to having been out of town due to two deaths in his wife's family. At the Appeal Tribunal hearing, the claimant testified his appeal to the Notice of Determination was late due to being out of town frequently visiting his daughter who lives in Texas. No mention of the deaths was made at the hearing. Because the Board of Review must base its decision on the sworn testimony presented at the Appeal Tribunal hearing, good cause was not demonstrated for the claimant's untimely appeal to the Appeal Tribunal.

[19-AT-01088-BR](#) - The Appeal Tribunal decision was mailed on December 6, 2018. The Board of Review received an untimely appeal from the claimant on October 25, 2019, which the claimant indicated was late due to not receiving the Appeal Tribunal decision in the mail as the result of an address change. The claimant provided the Hearing Officer with an address at the Appeal Tribunal hearing, to which the decision was sent two (2) days later. The claimant did not provide the Commission with another address until ten (10) months later. It is the claimant's responsibility to keep the Commission advised of her current address. In addition, the Hearing Officer instructed the claimant that the decision would be mailed within 10-14 days, yet the claimant waited ten (10) months to contact the Commission when it was not received. Because the claimant has not shown it was beyond her control to have filed the appeal sooner, good cause is not found.

[19-AT-09925-BR](#) - The claimant stated that his appeal to the Appeal Tribunal was late due to his belief that he was sick during that period of time. The claimant did not know when he received the Notice of Determination, and admitted that four other people live at his address of record and could have picked up the mail without telling him. The claimant failed to explain how being sick would have prevented him from filing his appeal on time. Because he was not sure of when he received the Notice of Determination, was not sure of when he was sick, or how being sick could have prevented him filing a timely appeal, the Board of Review does not find that it was beyond his control to have filed his appeal timely; thus, good cause was not demonstrated.

[19-AT-09739-BR](#) - The claimant stated that she called the UI Service Center and was advised that the Commission's determination denying her benefits was being mailed to her that day. The claimant said the employee did not inform her of her right to appeal. The Board of Review is not aware of any regulation or statute requiring that an employee advise the claimant of the appeal rights since said rights are included on the determination. When the claimant received the determination in the mail, she did not read it thoroughly due to being hurt that her case was denied. The claimant did not realize that she had the right to appeal and instead began searching for a lawyer to tell her what to do next. By the time she found a representative to help her, the filing period

had lapsed. Because the appeal rights were plainly given on the determination, and because the claimant admitted she did not read it due to being upset, the Board of Review finds that the claimant did not show that it was beyond her control to have filed her appeal timely. Thus, good cause was not established.

[19-AT-08440-BR](#) - The Appeal Tribunal decision was mailed to the claimant on October 11, 2019. The Board of Review received an untimely appeal from the claimant on October 22, 2019, which the claimant indicated was due to getting an error message when he tried to email his appeal. Documentation submitted with his appeal shows that the claimant was putting a space between the “f” and “r” in the email address. The claimant did not attempt to send his appeal by any other method when unsuccessful with email; thus, it has not been established that it was beyond his control to have filed the appeal timely.

[19-AT-06331-BR](#) - The claimant’s appeal to the Appeal Tribunal was filed one day late. The claimant indicated that she had left town on April 30th and made her son responsible for checking her post office box in her absence, which was only done once every two weeks. Around May 21st, Skiatook was flooded making roads impassable and preventing the claimant’s son from checking her post office box. The claimant received a photo of the Notice of Determination from her son on May 29th. However, the claimant did not know when the post office box had last been checked prior to the flood, or when it was checked afterward. Because it is likely that the Determination was delivered to her post office box prior to the flood given its mailing on May 16th, and because the claimant failed to provide firsthand testimony to the dates her post office box was checked, it is not established that it was beyond her control to have filed timely. Good cause is not found.

[19-AT-06322-BR](#) - The employer’s untimely appeal to the Board of Review was due to the Appeal Tribunal Order of Decision having been mis-delivered to his neighbor who brought it to him on August 2nd. As the deadline for filing was August 2nd, the employer could have filed a timely appeal that day. Thus, good cause is not found for the untimely appeal.

[19-AT-05077-BR](#) - The claimant’s appeal to the Notice of Determination was due by April 5th. At hearing, the claimant provided vague testimony concerning his receipt of the Determination and when he was unable to check his mail due to being out of town. His attorney asserted that he received the Determination on the tenth (10th) day after 4:00 P.M. and, thus, did not have time to file a timely appeal. However, the claimant’s appeal was not filed until six (6) days later despite the claimant having access to e-mail, which is the method he chose to use when filing his appeal on April 11th. Because the claimant could have filed a timely appeal had he e-mailed it prior to midnight on the day of his receipt, good cause is not found.

[19-AT-05018-BR](#) - The Appeal Tribunal Order of Decision was mailed on May 21, 2019. The claimant indicated that she filed an appeal to the Board of Review via fax on May 31, 2019, and provided a fax confirmation sheet. This confirmation sheet,

however, showed that zero pages went through. Because the claimant could have attempted to fax her appeal again, e-mailed it, or mailed it, she has not shown that it was beyond her control to have filed her appeal timely. Thus, good cause is not shown for her June 26th appeal.

[19-AT-02955-BR](#) – In the claimant’s appeal to the Board of Review, he indicated he did not believe his appeal was untimely due to having filed it within ten (10) days of his receipt of the Determination. However, the Determination clearly states that an appeal must be filed within ten (10) days of the mailing date. Further, the claimant asserted that weekends and holidays should not be counted when calculating the ten-day time period. In this particular case, the tenth (10th) day fell on a Sunday, with the next day being a federal holiday. As a result, the last day to timely file an appeal was January 22nd, but the claimant’s appeal was not filed until January 23rd. At the Appeal Tribunal hearing, the claimant testified that he failed to file his appeal within the filing period due to having other things to do, and believing he had ten (10) days from the date he received the determination to file an appeal. The claimant has not shown that it was beyond his control to have filed his appeal on time, and good cause is not found.

[19-AT-02692-BR](#) – The employer’s appeal to the Appeal Tribunal was due no later than January 7, 2019, but was filed on January 11th. The employer’s Human Resources Assistant said in his appeal to the Board of Review that the Notice of Determination was not received until January 8th, after the appeal period had expired. However, at the Appeal Tribunal hearing, the Human Resources Administrator testified that the Notice of Determination was received on January 5th. The Board must base its decision on the sworn testimony provided at hearing. Because the testimony demonstrated that the Notice of Determination was received before the expiration of the filing period, good cause for the untimely filing is not shown.

[19-AT-02581-BR](#) – The Appeal Tribunal Decision was mailed to the employer on February 5, 2019, and an appeal was received via fax by the Board of Review on February 18th. The Senior Human Resources Generalist said that the employer did not receive the decision until February 13th, and she was out of the office until February 18th. The decision was sent to TALX, and it appears they may have delayed sending the decision to the employer. However, it is undisputed that the employer received the decision within the 10-day filing period. The employer could have chosen to have TALX file the appeal, or could have had another employee file the appeal in the absence of the Senior Human Resources Generalist. As a result, it has not been shown that it was beyond the employer’s control to have filed a timely appeal, and good cause is not found.

[19-AT-01554-BR](#) – In the employer’s Board of Review appeal, it stated that he was taken by surprise at hearing when questioned about the reason for his late appeal to the Appeal Tribunal. Testimony provided at hearing indicated that the late appeal was caused by a “mistake” or “oversight.” The appeal, however, indicated that the Notice of Determination was not received in a timely manner. The Notice of Telephone Hearing listed the legal issues to be covered at hearing, including whether there is good cause

to waive the appeal filing period. Thus, the employer knew or should have known this issue would be discussed. The Board of Review must base its decision on the sworn testimony given at hearing. No testimony was provided at hearing to the date the Notice of Determination was received, nor was it mentioned in the employer's Appeal Tribunal appeal. Thus, the Hearing Officer's ruling that no good cause was shown is affirmed.

[19-AT-00822-BR](#) – The claimant did not receive the Notice of Determination in the mail due to the lot number being left off her address. When filing weekly claims online, she found out she had been denied but was told she would receive a written determination. She was also advised she would have ten (10) days to file an appeal, but was not told when the filing period began. After waiting a few days to receive a determination in the mail, she filed the appeal online. Because the claimant was told she would receive a determination in the mail explaining the denial and her appeal rights, good cause is found for filing her appeal one day late.

[19-AT-00260-BR](#) – In the claimant's appeal to the Board of Review, he indicated that he was unaware he could be mailed time-sensitive paperwork while he was out of town. When he filed his initial claim for benefits, he was instructed to read the "Informational Booklet for Workers Who Are Unemployed" which explained that important documents may be mailed and could delay the claim or cause a denial of benefits if action was not taken in a timely manner. It also explained that his separation from work would be investigated and a determination mailed, advising him of whether benefits would be allowed or denied and the associated appeal rights. Because of this, the Board finds the claimant should have been aware he could receive time-sensitive mail from the Commission.

[18-AT-10224-BR](#) – In the employer's Board of Review appeal, he stated he did not know he should have a firsthand witness at hearing to testify about when the Notice of Determination was received. The employer argued that, in a previous case, it was not a requirement that he have such a witness. The Board finds that, in the previous case, the appeal was not actually late and no testimony was taken on that issue, making a witness unnecessary. In this case, the appeal was late and no witness was presented who could have testified about the Notice's receipt. Thus, the Notice must be presumed timely delivered and good cause for filing an untimely appeal was not presented.

[18-AT-06748-BR](#) – The employer's appeal was filed untimely due to the Human Resources Director being out of the office during the week it was due. As arrangements could have been made for someone else to handle the employer's important mail, it cannot be found that the employer's untimely appeal was for reasons beyond its control.

[18-AT-05480-BR](#) – The claimant stated his May 16th e-mailed appeal to the Board of Review was untimely due to being out of town working and not collecting his mail until May 14th. Instead of filing his appeal the day he collected his mail, however, he waited until the following day to call the Appeal Tribunal which is not a method listed on the

Appeal Tribunal decision for filing an appeal to the Board of Review. The claimant presented no reason to demonstrate it was beyond his control to e-mail his appeal on May 14th. As a result, good cause cannot be found.

[18-AT-05345-BR](#) - The claimant stated his appeal was filed roughly one month late due to family matters and health problems. However, because this explanation does not show it was beyond his control to file a timely appeal, good cause is not found.

[18-AT-04871-BR](#) – The claimant stated his appeal to the Board of Review was untimely due to not reading or understanding his mail well. Because the claimant had just gone through an appeal hearing regarding an untimely appeal to the Appeal Tribunal, he knew or should have known the importance of filing a timely appeal to the Board of Review. As a result, the claimant did not demonstrate he filed his appeal for reasons beyond his control, and good cause cannot be found.

[18-AT-04673-BR](#) – The claimant stated her appeal to the Board of Review was untimely due to not receiving the Appeal Tribunal decision and not knowing she was denied benefits. At the end of the Appeal Tribunal hearing, the parties were instructed to expect a decision in the mail within 10 to 14 days, but the claimant did not contact the Commission until roughly one month after the hearing. As a result, the claimant did not demonstrate her appeal was untimely filed for reasons beyond her control, and good cause cannot be found.

[18-AT-02212-BR](#) - The claimant exhausted benefits in June 2017, and moved out-of-state in September 2017. She did not update her address with the Commission upon her move, and consequently did not receive the determination until after the appeal period expired. The claimant's failure to update her address with the Commission when she was no longer filing weekly claims and had no reason to think there was a pending issue on her claim is good cause for filing an untimely appeal to the Appeal Tribunal.

[18-AT-01433-BR](#) – The claimant lives in Malaysia, but has someone checking his mail at his address of record in Texas who scans and emails his important mail to him upon receipt. This person received the Appeal Tribunal decision but mailed it to the claimant, rather than emailing it, causing the claimant to file an untimely appeal to the Board of Review. Because the decision was mailed to his address of record, and there is no evidence to show it was not received at that address timely, no good cause is found for the untimely appeal.

[18-AT-00554-BR](#) - The claimant's untimely e-mailed appeal to the Board of Review was due to a surgery, strep throat, bronchitis, and receiving the Appeal Tribunal decision on the last day of the filing period. The claimant did not explain how her illnesses prevented her from e-mailing her appeal on time. Thus, good cause to waive the ten-day appeal period was not shown.

[18-AT-00285-BR](#) - Claimant's belief that he had ten working days in which to file an appeal, rather than calendar days as specified in the Appeal Rights section of the

Appeal Tribunal Decision, is not good cause to waive the 10-day appeal period when his appeal to the Board of Review was one day late.

[17-AT-12544-BR](#) - Claimant's appeal to the Board of Review was untimely filed due to taking time to contact other employees for information regarding her job separation. Because this is not required in order to file an appeal, good cause has not been shown to waive the ten-day appeal period.

[17-AT-12381-BR](#) - The employer's untimely appeal to the Board of Review due to the office manager being off of work and failing to advise other office personnel of time-sensitive documents is considered for oversight and not good cause.

[17-AT-12069-BR](#) - The claimant's untimely appeal to the Board of Review due to finding employment and being unable to use the phone at work is not for good cause when use of a phone is not required to file an appeal.

[17-AT-10411-BR](#) - Claimant's appeal to the Board of Review was untimely filed due to making a mistake and it being the first opportunity she had to use a fax due to living in a rural area. Because there are other ways to file an appeal, good cause has not been shown to waive the ten-day appeal period.

[17-AT-08467-BR](#) - The employer's failure to timely file an appeal to the Board of Review due to unfamiliarity with the claims process and the Post Office taking around five days to deliver mail to her address is not for good cause when the employer received the Appeal Tribunal Order of Decision within the statutory 10-day appeal period.

[17-AT-07025-BR](#) - The claimant's late-filed appeal is not for reasons beyond his control when a business he used to send faxes changed its hours from closing at midnight to closing at 10PM. The claimant could have attempted to fax earlier in the evening, mailed or hand-delivered the appeal within the ten-day time frame. No good cause shown.

[17-AT-06635-BR](#) - Good cause is not found for claimant filing his Board of Review appeal seven days past the deadline due to waiting to obtain information from an attorney.

[17-AT-05931-BR](#) - Claimant's failure to file a timely appeal to the Appeal Tribunal due to inability to get through by telephone is not for good cause when claimant cannot show it was beyond his control to use any of the other methods to file an appeal.

[17-AT-03654-BR](#) - The Claimant's failure to file a timely appeal due to miscalculation of the ten-day appeal period is not considered beyond her control. Good cause not found.

[17-AT-02792-BR](#) - Claimant filed an appeal to the Board of Review on March 28, 2017, over 2 months after the expiration of the filing period. Claimant stated her appeal was late due to having gone out of town to care for her ailing aunt. The claimant was told in

the Appeal Tribunal hearing of the decision being mailed within 10-14 days, and of the 10-day appeal filing period. Thus, claimant was aware she would need to check her mail or call to learn of the outcome of the hearing, but did not do so. Claimant returned from out of town in the middle of March, but still waited to file her appeal until the end of the month. Good cause is not found for claimant's failure to file her appeal in a more timely manner.

[17-AT-00863-BR](#) - Claimant filed his appeal over two months after the 10-day timeframe expired because he did not understand the procedure until he contacted the Service Center. It was within Claimant's control to contact the Service Center within the 10-day timeframe. Good cause for the untimely appeal is not found.

[16-AT-09266 BR](#) - Claimant's mother received Notice of Determination; Claimant's failure to ask what the mail from the Commission was and failure to file timely appeal as a result is not good cause.

[16-AT-08791 BR](#) - Claimant's failure to read instructions on Notice of Determination is not good cause for late appeal.

[15-AT-12854 BR](#) - Claimant's homelessness and lack of transportation resulted in good cause for untimely appeal.

[15-AT-11264 BR](#) - Employer did not respond timely because absences and being busy; not good cause.

[15-AT-10547 BR](#) - Claimant misunderstood 10 day time limit file an appeal; not good cause for untimely appeal.

[15-AT-08545 BR](#) - R Engineering (2014) does not allow for untimely appeals.

[15-AT-05835 BR](#) - Relative of Claimant is not responsible for filing an appeal on Claimant's behalf.

Section 2-503 Precedential Cases

2-503 EMPLOYER ADDRESS

[15-AT-08866 BR](#) - Employer has responsibility for providing correct address of record.

Section 2-503 Precedential Cases Continued

2-503 TIMELY PROTEST

[19-AT-06622-BR](#) - The employer's protest to the Notice of Application for Unemployment Compensation was filed untimely. The employer indicated this was due to the Notice being sent to the wrong address, though the employer did not change his address of record until after the Notice's mailing. Because the Notice was mailed to the correct address, and because the protest was late due to the employer's failure to check the mail on a timely basis, good cause is not found and the employer is excluded as an interested party to the claim.

[15-AT-10322 BR](#) - Employer attorney failed to file a timely protest; no good cause if due to negligence of the party's representative.

Section 2-503 Precedential Cases Continued

2-503 WRITTEN PROTEST

[15-AT-04644 BR](#) - Employer must respond in writing to protest a claim.

Reopens: Rule 240:10-13-40 Precedential Cases

DEFINITION OF GOOD CAUSE TO REOPEN

[19-AT-08964-BR](#) - The claimant failed to call in and register for the Appeal Tribunal hearing, which he stated was due to not understanding what the Notice of Telephone Hearing meant when it said to register for the hearing. The claimant believed the Notice referred to registering for work, which he had already completed. However, the Notice plainly stated he must call at least ten (10) minutes before the hearing. Thus, while it is unfortunate that the claimant did not follow the instructions, he has not shown that it was beyond his control to have called in for the hearing. Therefore, good cause is not shown to reopen the matter.

[19-AT-08512-BR](#) - The claimant did not call in for the Appeal Tribunal hearing which she stated was due to her phone being shattered, but also due to not being able to afford minutes for her phone. It is unclear which reason is correct. Because the claimant did not show that it was beyond her control to have used someone else's phone or to have used a phone at the local employment office, good cause is not found to reopen the matter.

[19-AT-08125-BR](#) - The employer's hearing representative called in for the hearing and requested a continuance, stating that she had only received the Notice of Telephone Hearing the previous day, giving her little time to prepare for the hearing. The Notice was mailed to the correct address for Employer's Unity in Colorado, while the representative is located in Las Vegas, Nevada. The reason it took so long for the hearing representative to receive the Notice from the Colorado office is unknown. However, it was received prior to the hearing. Thus, the Board of Review does not find good cause to reopen the hearing.

[19-AT-07546-BR](#) - A representative from ADP Unemployment Group who had previously registered for the hearing was called by the Hearing Officer. That representative advised that the case had been re-assigned to a coworker. When the Hearing Officer called that coworker, he was told that the hearing had been mistakenly calendared for the wrong date and that the employer would not be participating in the hearing. The Board of Review does not find good cause for the employer's failure to participate in the Appeal Tribunal hearing.

[19-AT-05731-BR](#) - The employer failed to appear for the June 18th Appeal Tribunal hearing due to failing to see that he was supposed to call in to register. The employer indicated he was short-handed that day and did not receive any calls to remind him of the hearing. The Appeal Tribunal issues a Notice of Telephone Hearing to the parties, advising them to call in at least 10 minutes prior to the hearing to register. No reminder phone calls are provided by the Appeal Tribunal. Thus, it appears the employer became busy and simply forgot about the hearing, which is not beyond his control. Good cause is not shown to reopen the matter.

[19-AT-00221-BR](#) – In her appeal to the Board of Review, the claimant requested the case be reopened so that her union representative could testify on her behalf. The claimant had the representative subpoenaed for the hearing, but she did not appear. The address the claimant provided to the Appeal Tribunal for the representative was incorrect, and unrecognized by the employer. The claimant did not explain why she used that particular address. When asked by the Hearing Officer if she wished to proceed without the representative, the claimant indicated that she did. Thus, good cause to reopen the hearing is not found.

[19-AT-00102-BR](#) – The employer's witness at hearing, who works at an Oklahoma location, testified that she did not appear for the original Appeal Tribunal hearing due to not receiving the Notice of Telephone Hearing until October 2nd. The Notice was mailed on September 13th to the employer's address of record in St. Louis, Missouri. While the witness may have received the Notice late from that office, no evidence was presented to show the Notice was not received at the address of record before the hearing. Thus, good cause for the employer's failure to appear at the original hearing is not found.

[18-AT-10193-BR](#) – The claimant said he did not call in for the original Appeal Tribunal hearing due to not knowing the date and time of the hearing until after it had taken place. The Notice of Telephone Hearing was mailed on September 6th, while the claimant was working out of town from September 6th to 17th. During this time, the claimant's wife was home and had received the Notice in the mail. The claimant neither asked his wife to let him know when the Notice was received nor gave her permission to open his mail. Because of this, and because the claimant made no arrangements to receive the Notice he otherwise anticipated at an alternate address, good cause for his failure to appear has not been established.

[18-AT-08064-BR](#) - The hearing took place on August 10, 2018. The employer appeared and offered testimony and evidence in support of its case. In a subsequent request for reopen, TALX, the employer's third party representative, stated that it believed that the hearing was on September 10 instead of August 10 and asked for a new hearing date. However, the Notice of Hearing was never sent to TALX, nor did the employer make mention of the fact that it needed a continuance or assistance of its TALX representative. As a result, the Board cannot find good cause for the reopen.

[18-AT-05835-BR](#) – The claimant stated she failed to participate in the Appeal Tribunal hearing due to not receiving the Notice of Telephone Hearing after she moved and failed to notify the Commission of her change in address. The claimant argued that it is unfair that Commission mail is not forwarded by the Post Office, when a request for mail forwarding has been made. Because all claimants are advised at the time that they file their claim that they must notify the Commission directly of a change in address, good cause for her non-appearance cannot be found.

[17-AT-12881-BR](#) - The Appeal Tribunal denied Claimant's request to reopen the appeal hearing after Claimant stated that he had forgotten about the hearing. In his appeal to the Board of Review, Claimant changed his argument, and stated that he missed the

hearing because his employer “dropped a conference” in his lap 30 minutes prior to the hearing, and that he did not want to tell the employer that he needed to attend the hearing instead. Claimant’s argument to the Board is unpersuasive, given that if he had truly planned to participate in the hearing he would have advised his employer about it more than 30 minutes prior. Because he failed to do so, the claimant’s failure to participate in the Appeal Tribunal hearing due to forgetting is the most persuasive of the two excuses for missing the hearing, and is not good cause for reopen.

[17-AT-09383-BR](#) - The employer states it missed the hearing due to a recent change of address which resulted in it not receiving the Notice of Telephone Hearing. The employer did not update its address with the Commission until June 21, after the Notice of Telephone Hearing was mailed. The employer did not advise the Commission in its May protest that it needed to update its address. Further, the employer’s own written return address on its envelope was incorrect. It is the employer’s responsibility to have a correct address on file with the Commission. Therefore, the employer’s consequent failure to appear for the hearing, is not for good cause.

[17-AT-08963-BR](#) - The Claimant appealed a determination issued by the Commission under Section 2-205.1. Thereafter, and before a hearing was held, the Commission issued a redetermination causing the claimant to receive notice of another appeal. The claimant was confused by this and contacted the Commission for explanation, at which time she was advised she did not have to call in for the hearing because she had been allowed benefits. Because the claimant is the only person with firsthand knowledge of that phone call, and because the claimant did not understand the paperwork given to her, she had a right to rely on the information provided by the Commission employee. As a result, the claimant has shown good cause for her failure to appear at the original hearing.

[17-AT-08749-BR](#) – In a hearing on May 30, 2017, the employer’s representative voluntarily requested to withdraw from the hearing due to its witness being unavailable. The Hearing Officer granted the employer’s withdrawal request and dismissed the appeal with prejudice on May 31, 2017. On June 12, 2017, the employer submitted a reopen request due to its witness writing down the date of the hearing incorrectly. The Appeal Tribunal responded on June 16, 2017, advising the employer that its request was denied due to the appeal having been dismissed with prejudice. When the case was dismissed with prejudice as a result of the employer’s withdrawal request, the employer forfeited its right to reopen the case. The Board of Review notes that had the case been dismissed without prejudice, the employer’s reason for its witness’ absence would not be considered good cause to reopen the case.

[17-AT-06953-BR](#) – The claimant has not shown good cause to reopen when he failed to call in for the hearing due to a disagreement with a friend the evening prior resulting in his telephone being destroyed.

[17-AT-06689-R-BR](#) – The claimant accepted a new job in Arizona and moved his family before obtaining a new mailing address. The claimant placed his mail on hold, moved, and discovered his mail would be delivered to a community mailbox for which a new key had to be made. The delays in access to his mail caused him not to receive the Notice of Telephone Hearing until after the hearing had taken place. The claimant also started his new job on the day of the hearing. Thus, good cause for missing the Appeal Tribunal hearing was shown.

[17-AT-06501-BR](#) - The Notice of Telephone Hearing was mailed to the claimant's correct address of record, which at that time was her mother's address where claimant was living. Claimant's mother did not tell her she had received the Notice of Telephone Hearing until four days after the hearing date. There was no evidence to show the Notice of Telephone Hearing was not received at the address of record prior to the hearing date. Claimant's failure to appear for the hearing is not for good cause.

[17-AT-05915-BR](#) - Claimant stated he missed the Appeal Tribunal hearing due to being told by an OESC representative that he would not need to call in for the hearing since he had been allowed benefits. The Appeal Tribunal mailed the Claimant an information booklet about appeal hearings and a Notice of Telephone Hearing, both of which instruct parties of how important it is to participate in the hearing. Good cause is not found for the claimant's failure to appear.

[17-AT-05604-BR](#) – The employer has not shown good cause to reopen when its witness was registered for the hearing but, upon the Hearing Officer's call, the receptionist advised the Hearing Officer that the witness was out making sales calls.

[17-AT-00375-BR](#) -The claimant's failure to appear at the continuation of the original hearing due to mistaking the scheduled time is not considered good cause to reopen.

[16-AT-012674-BR](#) Employer's representative attempted to arrive to the office in time to participate in the hearing, but was unable due to uncontrollable vomiting. The representative's failure to appear due to illness is considered beyond her control.

[16-AT-12413-BR](#) - Claimant did not appear for the Appeal Tribunal hearing because he did not receive the Notice of Telephone Hearing due to his failure to change his address with the Commission upon obtaining work in Colorado. Claimant's failure to update his address of record with the Commission is considered within his control; no good cause shown.

[16-AT-09770-BR](#) Failure to appear for a hearing due to attending a job interview is good cause for failure to appear.

[16-AT-09488 BR](#) Claimant's multiple reasons for missing hearing, including death of father, frustration, and financial worries do not amount to good cause for her failure to appear. Claimant also failed to ask for a continuance.

[16-AT-06203 BR](#) Employer's failure to rearrange work schedule and ask for a continuance is not good cause to reopen the hearing.

[15-AT-09475-UCFE-BR](#) Claimant's multiple explanations for failure to appear casts doubt on his credibility.

[15-AT-08135-BR](#) Within employer control to have mail sent to corporate address.

[15-AT-06582-BR](#) Employer's failure to appear at hearing due to train blocking entrance to his yard is not good cause.

Miscellaneous Procedural Issues Precedential Cases

MISCELLANEOUS PROCEDURAL ISSUES

[18-AT-09646-BR](#) – In the employer’s appeal to the Board of Review, the Vice President, who did not participate in the hearing, offered new reasons for the employer’s untimely protest and documentation of medical appointments. None of this information was provided at the Appeal Tribunal hearing, and thus, cannot be considered by the Board.

[18-AT-09514-BR](#) - In the claimant’s appeal to the Board of Review, he stated he wanted to subpoena two witnesses who worked for his last employer to testify. The claimant could have requested subpoenas for those individuals prior to the Appeal Tribunal hearing. Because their testimony was not presented for the record at the Appeal Tribunal hearing, the Board of Review cannot consider it.

[18-AT-08872-BR](#) – The claimant’s attorney based her appeal to the Board of Review on the fact that the claimant subpoenaed documents for the hearing which the employer did not provide. However, the Hearing Officer gave the attorney an opportunity to present an offer of proof regarding what would have been shown by the documents. Therefore, the absence of the documents is not found to have been detrimental to the case.

[18-AT-07231-BR](#) – In the employer’s appeal to the Board of Review, the Unemployment Coordinator referred to a document in the appeal packet as proof of his argument that it timely filed its initial appeal to the Appeal Tribunal. However, the Unemployment Coordinator did not appear for the Appeal Tribunal hearing and neither of the witnesses who did offer the document into the hearing record. The Board of Review can only consider exhibits and sworn testimony from the hearing; thus, the document the Unemployment Coordinator referred to cannot be considered.

[18-AT-04740-BR](#) – The attorney’s application for attorney fees is approved as the request does not exceed 20% of the claimant’s maximum benefit amount. The claimant is solely responsible for the payment of all attorney fees assessed by the attorney and approved by the Board of Review.

[18-AT-04566-BR](#) – When a claimant files for two consecutive claim years, without intervening employment, a disqualification from the previous claim year carries over to the newly established claim year.

[18-AT-02996-BR](#) - The claimant objected to a signed statement from a potential witness being entered into the record, when the employer’s Investigative Report was entered. The claimant’s witness statement was hard to read, not notarized, and likely would not be admissible when the witness was not at the hearing to be sworn or cross-examined. The employer’s Investigative Report was a record kept in the regular course of business, and therefore an exception to the hearsay rule.

[18-AT-02210-BR](#)- The issue discussed at the Appeal Tribunal hearing and later appealed to the Board of Review concerned the claimant's availability to seek and accept work while caring for his seriously ill mother. The claimant argued in his appeal to the Board of Review that he should be qualified for benefits under Section 2-210, which is an issue not before the Board of Review. Because a hearing on his separation had not been held, the Board of Review cannot address that matter.

[17-AT-09181-BR](#) – The claimant disagreed with B&H Construction being considered his last employer because he had worked for Lamunyon Drilling for 12 days after he quit B&H. Section 2-503 requires an individual must work for an employer at least 15 working days in order for that employer to be considered the “last” employer. Thus, B&H Construction is the claimant's last employer.

[17-AT-08749-BR](#) – In a hearing on May 30, 2017, the employer's representative voluntarily requested to withdraw from the hearing due to its witness being unavailable. The Hearing Officer granted the employer's withdrawal request and dismissed the appeal with prejudice on May 31, 2017. On June 12, 2017, the employer submitted a reopen request due to its witness writing down the date of the hearing incorrectly. The Appeal Tribunal responded on June 16, 2017, advising the employer that its request was denied due to the appeal having been dismissed with prejudice. When the case was dismissed with prejudice as a result of the employer's withdrawal request, the employer forfeited its right to reopen the case. The Board of Review notes that had the case been dismissed without prejudice, the employer's reason for its witness' absence would not be considered good cause to reopen the case.

[17-AT-02912-BR](#)- Claimant's attorney asserted that the Claimant did not receive due process due to the attorney not being notified of the hearing. The Claimant had received appeal documents herself, had not notified the Appeal Tribunal of her desire to have her attorney notified, and advised the Hearing Officer at hearing that she did not expect her attorney to participate. Thus, the Claimant did receive due process.

[17-AT-01879-BR](#) - The Employer withdrew its appeal on the record after having been denied a continuance which it requested because it desired an attorney for representation upon learning the Claimant had one. The Employer's withdrawal cannot be rescinded because the Employer later changed its mind about the proceeding.

[16-AT-00291-BR](#) - Remanded to allow the claimant to question an available witness whose handwritten comment is on an employer exhibit.

Section 2-203 Precedential Cases

2-203: REQUESTS TO BACKDATE A CLAIM

[15-AT-11358 BR](#) Claimant did not file claim timely; reasons for filing late were not beyond her control.

Section 2-203 Precedential Cases Continued

2-203: Claimant Responsibilities for Weekly Claim Filing

[19-AT-02043-BR](#) – The claimant did not file for weeks ending July 28, 2018, through December 1, 2018, and was consequently denied benefits. While the claimant argued she was unaware that she was supposed to file weekly claims, the record demonstrated that the claimant received the Benefit Rights Interview advising her of this requirement, and acknowledged understanding it at that time. The claimant’s later misunderstanding of the requirements does not negate that weekly claims were not filed within the time allowed by law.

Section 2-205.1 Precedential Cases

2-205.1 MEDICAL LIMITATIONS

[18-AT-09153-BR](#) – During her application for unemployment benefits, The claimant initially indicated in an August 1st letter that she no longer felt able to work due to physical and emotional problems. On August 13th, the claimant reported herself as able to work again. The Hearing Officer found the claimant's testimony at hearing to be contradictory to her previous statement to the Commission when she was unaware that she could be denied benefits, and therefore unpersuasive. The Board of Review finds the claimant's second statement not inherently incredible, considering a person's physical and emotional state may change over time. Based on the claimant's sworn testimony, the claimant was able and available to work beginning August 13th.

[18-AT-05917-BR](#) – The claimant cannot be found able and available when unable to name any type of work he could perform.

[17-AT-012910-BR](#) – Claimant provided contradictory answers to the Commission and during the hearing regarding her ability and availability to work. Because of the inconsistency of the information, there is insufficient evidence to disturb the decision to deny benefits.

[17-AT-02659-CO-BR](#) - Claimant's lifting restriction does not prevent him from working in at least one type of job in which he has previous work experience. Therefore, Claimant is able and available to work.

Section 2-205.1 Precedential Cases Continued

2-205.1 EDUCATION AND WORK HISTORY

[18-AT-05917-BR](#) – The claimant cannot be found able and available when unable to name any type of work he could perform.

[15-AT-01325 BR](#) Certain level of education or experience not required for basic skill jobs.

Section 2-205.1 Precedential Cases Continued

2-205.1 AVAILABILITY LIMITATIONS

[18-AT-09153-BR](#) - During her application for unemployment benefits, The claimant initially indicated in an August 1st letter that she no longer felt able to work due to physical and emotional problems. On August 13th, the claimant reported herself as able to work again. The Hearing Officer found the claimant's testimony at hearing to be contradictory to her previous statement to the Commission when she was unaware that she could be denied benefits, and therefore unpersuasive. The Board of Review finds the claimant's second statement not inherently incredible, considering a person's physical and emotional state may change over time. Based on the claimant's sworn testimony, the claimant was able and available to work beginning August 13th.

[17-AT-012910-BR](#) – Claimant provided contradictory answers to the Commission and during the hearing regarding her ability and availability to work. Because of the inconsistency of the information, there is insufficient evidence to disturb the decision to deny benefits.

Section 2-207 Precedential Cases

2-207 DETERMINING MONETARY ELIGIBILITY

[18-AT-03456-BR](#) – The claimant argued that the fourth quarter of 2017 should be included in his alternate base period, which consists of the four most recent completed calendar quarters immediately preceding the first day of the benefit year. Because the effective date of his claim is December 31, 2017, the fourth quarter of 2017 was not completed at the time of his filing and cannot be included in his base period.

[16-AT-06097-BR](#) Section 1-210(14) supports a rebuttable presumption of employment. Claimant was an "at will" employee; made no capital contributions to the company; company directed the claimant's work; claimant could not bind the company to any agreement; claimant received no guaranteed payment from the company; claimant had taxes withheld; and claimant's income was not based on company's profits. Claimant's wages are not exempt from unemployment taxes.

Section 2-209 Precedential Cases

2-209: REASONABLE ASSURANCE

[18-AT-07344-BR](#) – Section 2-209 refers to employees who work as teachers or administrators at educational institutions. Considering the claimant was employed by Great Western Campus Dining as a cook at Murray State College, Section 2-209.1, which addresses employees of educational service contractors, applies to her and makes her ineligible for benefits.

Section 2-418 Precedential Cases

2-418: FAILURE TO ACCEPT WORK

[19-AT-04342-BR](#) - The claimant had previously worked for the employer within 60 miles of his home. On February 20, 2019, the employer offered him another job which he initially accepted but later declined when he learned it was over 80 miles from his home. Because Rule 210:10-1-2 defines commuting distance as 50 miles from a claimant's residence, and because Section 2-408 requires that distance of available work be considered when determining suitability, the employer's offer cannot be considered suitable due to the distance of the job from the claimant's residence.

[18-AT-09784-BR](#) – The claimant filed her initial claim for benefits on July 30th. On July 23rd, the claimant was offered a job in person, and was to let the employer know if she would accept by July 27th. The claimant did not contact the employer to accept that offer. The employer later offered the same position in a letter sent by certified mail, which the claimant received on August 15th. Again, the claimant did not contact the employer to accept. Because the initial offer was made prior to her filing for benefits, the claimant cannot be denied for that refusal. However, the claimant should be denied for week ending August 18, 2018, for her refusal post-filing.

[18-AT-04840-BR](#) – The Commission has no jurisdiction to deny benefits for refusal of a job offer made prior to filing for unemployment benefits.

Section 2-420 Precedential Cases

2-420 FAILURE TO APPEAR

[17-AT-05397-BR](#) - Claimant should not be disqualified for failing to attend an eligibility review interview (ERI) after obtaining new employment and notifying the workforce office of such in advance.

Section 2-613 Precedential Cases

2-613 CLAIMANT ERROR OVERPAYMENT

[18-AT-04052-BR](#) – The claimant is not considered to have intentionally deceived the Commission when he selected the wrong employer account of the three reporting wages for him when he filed his claim. The employer did receive notice the claimant had filed for benefits, and did file a protest. Thus, the claimant is not considered overpaid due to claimant error.

[18-AT-04564-BR](#) – The Appeal Tribunal decision affirming but modifying the overpayment from claimant error to administrative error is affirmed when no evidence was presented to demonstrate the overpayment was a result of claimant error.

Section 2-613 Precedential Cases Continued

2-613 ADMINISTRATIVE ERROR OVERPAYMENT

[18-AT-04564-BR](#) – The Appeal Tribunal decision affirming but modifying the overpayment from claimant error to administrative error is affirmed when no evidence was presented to demonstrate the overpayment was a result of claimant error.

[18-AT-04052-BR](#) – The claimant is not considered to have intentionally deceived the Commission when he selected the wrong employer account of the three reporting wages for him when he filed his claim. The employer did receive notice the claimant had filed for benefits, and did file a protest. Thus, the claimant is not considered overpaid due to claimant error.

[15-AT-09158 BR](#) Claimant was not overpaid when employer gave him back pay for missed work.

V. **All Precedential Cases Continued**
b. By Section Summary

2-406 All PRECEDENTIAL CASES

[19-AT-10313-BR](#) - The claimant was hired by the employer as a teacher under the process of emergency certification, which allows a person to teach no more than four semesters without a valid teaching certificate. During this two-year period, a person such as the claimant must take and pass certain examinations if they desire to continue teaching; if said examinations are not completed, teachers are not eligible to remain employed. The claimant failed to complete the required examinations prior to the end of her contract period and was discharged. Because the discharge was for a breach of job duties and responsibilities or obligations to her employer, the discharge was for misconduct. **(Breach of Duty)**

[19-AT-08608-BR](#) - The employer discharged the claimant for inappropriate conduct including gossiping and discussing confidential information. The employer investigated the matter and based its decision to terminate the claimant, at least partially, on a video surveillance tape which did not have audio. The claimant was not allowed to see the video. At the hearing, the claimant flatly denied gossiping or saying anything inappropriate, and stated that the host asked her for personal information and blocked her from leaving the room. The video was not submitted for the hearing. Because the claimant's testimony had as much credibility as the casino host's, the Board of Review finds that the employer did not meet its burden of proof. No misconduct established. **(Workplace Behavior)**

[19-AT-03446-BR](#) - The claimant had been missing work for medical reasons, during which time was reported for and paid to her when she had not actually worked. The claimant made no attempt to correct these records and was terminated for time clock fraud. Because the claimant was aware that her hours had been reported incorrectly, and she made no attempt to correct the issue, the claimant was discharged for misconduct. **(Employee Honesty)**

[19-AT-02752-BR](#) – The employer argued that since the claimant knew he had been hired for a temporary position, he was “at fault” for his termination. However, Section 2-404.2 states that if an employer hires someone for a limited period of time specified by the employer, the worker is considered laid off due to lack of work at the end of that time period. Therefore, the claimant is considered discharged but not for misconduct connected to the work. **(Miscellaneous)**

[18-AT-10307-BR](#) - The employer's point-based attendance policy provides for termination if an employee accrues twenty (20) points. The bulk of the claimant's attendance points leading up to her separation were due to caring for her parents who suffered from significant health issues. Because of this, the claimant inquired about FMLA but was told by her supervisor that she did not qualify. Rather than mentioning to the claimant a 30-day unpaid leave that could have been offered to her, the supervisor

advised she would “work with” the claimant. The claimant’s final absences were due to her mother’s surgery, which she notified the employer of in advance. Because the claimant had been told the supervisor would work with her, and because nothing was said about possible termination over her absences, the claimant had reason to conclude that her job was not in jeopardy. The employer’s later decision to terminate her for her attendance may have been a good business decision, but does not meet the burden of proving misconduct. **(Attendance)**

[18-AT-10043-BR](#) – The employer’s appeal to the Board of Review states that the claimant was discharged for failure to call in for five days while in jail. However, the employer testified at the Appeal Tribunal hearing that the claimant was terminated due to being arrested on felony charges. While the employer’s argument in its appeal certainly could be misconduct, the Board of Review must base its consideration on the sworn testimony provided at hearing. Because the arrest was not connected to the work, and the claimant has not been convicted, misconduct has not been shown. **(Discharge due to Arrest)**

[18-AT-08514-BR](#) – The claimant was discharged after being charged with a DUI which resulted in a revocation of his driver’s license. The employer discharged the claimant based on its policy which states that suspension or dismissal may occur if an employee receives “ A DUI conviction which leads to a felony conviction OR revocation of a driver’s license OR other vehicular convictions which lead to revocation, suspension, non-renewal or uninsurability for any employee who drives a District-owned vehicle.” Thus, the claimant violated the employer’s written policy, and his discharge was for misconduct. **(Employer Rules and Practices)**

[18-AT-07890-BR](#) – During a day when he was not scheduled to work, the claimant was contacted by a manager on duty who advised he would not be coming in that day. As a result, the claimant immediately went to the workplace, where he then learned the cook would also not be coming in. The claimant went to extraordinary measures to open the store and prepare a catering order, but was unsuccessful in opening the store on time and getting the order done on time. This does not diminish the fact that he exhibited a great deal of responsibility toward the employer’s interest. As such, his discharge for failure to get everything done in time that day does not rise to the level of misconduct. **(Employee Performance)**

[18-AT-06194-BR](#) – The claimant’s discharge for failure to complete an assigned duty did not constitute misconduct when she was called away from an assigned task by the assistant store manager. **(Insubordination)**

[18-AT-04867-BR](#) – The claimant was warned for violation of the employer’s policy when he allowed staff to use his register card. A few days after the warning, the employer decided his actions warranted termination. Section 2-406 does not require a warning as long as the claimant knew or should have known that a policy was being violated. Thus, the claimant’s violation of the employer’s policy, of which he was aware, amounts to misconduct. **(Employer Rules and Practices)**

[18-AT-04530-BR](#) – The claimant’s failure to call in and report her absences due to illness, causing her to exceed the allowable number of attendance points, was within her control and was violation of a known and reasonable policy. Misconduct found. **(Employer Rules and Practices)**

[18-AT-02798-BR](#) – The claimant was warned for failure to complete a state-mandated task, costing the employer a large loss of funding. The Hearing Officer ruled that a subsequent decision to terminate an employee, for the same infraction they received previous discipline for, was not misconduct. The Board of Review finds no statute, policy or precedent case that says that. An employer is not obligated to give an employee a warning for the employee’s actions to amount to misconduct. The claimant’s failure to complete a critical task was a substantial breach of her job duties and a neglect of the duties required of her. Thus, the claimant was discharged for misconduct. **(Employee Negligence/Employer Rules and Practices)**

[18-AT-02761-BR](#) – The claimant mistakenly transposed an inventory count into the employer’s computer system, leading to an error in the employer’s stated inventory. The claimant’s actions do not amount to misconduct when no evidence was presented to show the employer suffered monetarily, or that the mistake was intentional or reckless. **(Employer Rules and Practices)**

[17-AT-13142-BR](#) - Claimant worked for over a year with weight restrictions of lifting no more than 10 pounds, but was told he would not be put back on the schedule unless he provided the employer a full medical release without restrictions. Because the claimant had worked for over a year with the restrictions and the employer refused to allow him to work under those same conditions, the claimant was discharged but not for misconduct. **(Miscellaneous)**

[17-AT-12231-BR](#) - The employer did not have a position for the claimant under his light-duty restrictions, after he had sustained an injury and missed several months of work. Despite the employer placing the claimant on leave and paying his insurance premiums, he is deemed unemployed as he is not performing work for the employer. Because the claimant is willing to work but the employer does not have that type of work available, the claimant was discharged but not for misconduct. **(Miscellaneous)**

[17-AT-10849-BR](#) - The claimant’s failure to do anything more than call the doctor’s office for over a month to get the required FMLA paperwork to the employer by the deadline provided resulted in him not providing the necessary documentation to excuse his absences. Because he did not provide the necessary documentation, his discharge was for unapproved or excessive absenteeism, and thus misconduct. **(Attendance)**

[17-AT-08584-BR](#) – The claimant, a three-year employee, was discharged for poor performance. The claimant began making errors in December 2016 due to having trouble concentrating on her work as a result of serious health concerns of her father, daughter, and nephew, as well as the recent passing of her grandfather. No evidence was submitted to show the claimant was intentionally performing poorly, or that she was

indifferent to or neglectful of her duties. No misconduct found. **(Employee Performance)**

[17-AT-05210-BR](#) - The claimant was discharged for attendance issues after, having been warned and made aware that her job was in jeopardy, she missed two consecutive days of work due to a snow storm. The severe weather event was outside of the claimant's control and her absences due to such storm are not considered misconduct. **(Attendance)**

[17-AT-03443-BR](#) - Claimant was a 13-year employee and last worked as an Assembler. She accrued an excessive number of assembly errors in 2016 and was terminated for such. Claimant put forth significant effort at her position and performed at the required level on multiple occasions. The effort put forth by the claimant was sufficient to overcome a finding of neglect of duty. No misconduct found. **(Employee Negligence/Employee Performance)**

[17-AT-02447-BR](#) - The claimant's sixth absence in a one-year period, which put her in violation of the employer's policy, was not excessive, given that the final absence was due to an emergency and that the employer's policy provides that such absences can be excused. **(Attendance)**

[17-AT-01447-BR](#) - Claimant's poor work performance and habitual lateness, which she admitted having been warned about, is considered misconduct connected to the work. **(Employee Performance)**

[17-AT-00260-BR](#) - Claimant's isolated mistake in preparing a surgical consent form which was not Medicaid approved, resulting in a loss of money for her employer, was not an intentional, malicious, dishonest, or material breach of her duties and thus not misconduct. **(Employer Rules and Practices)**

[16-AT-12548-BR](#) - Claimant's one-time failure to follow the Employer's policy to honk the horn of his forklift every time he went around a corner was a mistake and did not rise to the level of misconduct. **(Employer Rules and Practices)**

[16-AT-012050-BR](#) - An isolated incident of failure to wear required uniform by an employee who had worked for the employer for nine years does not rise to the level of misconduct as defined in Section 2-406(B). **(Employer Rules and Practices)**

[16-AT-011510-BR](#) - Claimant's license was suspended in error by the county clerk's office, and notice was sent to his parents' home. Claimant's failure to notify the Employer of his suspended license is not misconduct when Claimant was unaware of the suspension. **(Failure to Obtain or Maintain Licensure)**

[16-AT-08485-BR](#) - Claimant's failure to follow the employer's written policy regarding wire transfers was a breach of her job duties, responsibilities and obligations; discharged for misconduct. **(Employer Rules and Practices)**

[16-AT-08409-UCFE-BR](#) - Claimant was charged with four criminal charges which were not job related. The employer denied the claimant access to the workplace as a result. Because the claimant was discharged before the charges were tried or substantiated, the claimant was discharged not for misconduct. **(Employer Rules and Practices)**

[16-AT-08213-BR](#) - Claimant's inability to obtain his Commercial Driver's License is not misconduct. **(Failure to Obtain or Maintain Licensure)**

[16-AT-06415-BR](#) - Claimant's discharge due to erratic attendance and performance issues was for misconduct. **(Employee Performance/Attendance)**

[16-AT-06103-BR](#) - Claimant discharged for attendance after being warned for tardiness. Final absence was due to oversleeping after taking medication. Claimant was discharged for misconduct. **(Attendance)**

[16-AT-005951-BR](#) Claimant left meeting early without permission; not misconduct. **(Miscellaneous)**

[16-AT-004320-BR](#) - Two absences, one year apart, do not meet the definition of excessive. **(Attendance)**

[16-AT-3082-BR](#) - Sheriff's arrest for DUI and violation of Employer's Code of Conduct which required him to follow all laws reflected negatively on the Sheriff's office; discharged for misconduct. **(Employer Rules and Practices)**

[15-AT-11425-BR](#) - Claimant's failure to obtain CLEET license is misconduct. **(Failure to Obtain or Maintain Licensure)**

[15-AT-11075-BR](#) - Claimant's clocking-in of coworker was not in violation of employer rules. **(Employer Rules and Practices)**

[15-AT-11030-BR](#) - Claimant discharged when Employer did not allow her to return to work. **(Miscellaneous)**

[15-AT-10954-BR](#) - Claimant discharged for attendance not domestic violence. **(Attendance)**

[15-AT-8734-UCFE-BR](#) - Claimant put forth significant effort which was sufficient to overcome a finding of neglect of duty. **(Employee Performance)**

[15-AT-07662-BR](#) - Claimant's failure to request a confirmation drug test is misconduct. **(Drug Testing)**

[15-AT-06640-BR](#) - Claimant did not intend to deceive employer regarding her employment application. **(Employee Honesty)**

[15-AT-06358-BR](#) - Claimant's testimony regarding medication adopted as fact. **(Drug Testing)**

[15-AT-6185-BR](#) - Claimant received warnings for negligence and engaged in actions which were grossly negligent; misconduct. **(Employee Negligence)**

[15-AT-05353-BR](#) - Four days absence in last week of employment not excessive and is not a separation due to compelling family circumstances. **(Attendance)**

[15-AT-03602-BR](#) - 406(B) limits misconduct to eight specific acts; Claimant's actions do not meet any of those. **(Miscellaneous)**

2-404 All PRECEDENTIAL CASES

[R&R Engineering Co. v. Oklahoma Employment Security Commission, Board of Review, and Gilbert V. Farris, 1987 OK 36, ¶ 9, 737 P.2d 118, 119](#) - A pay cut in excess of 15% is excessive and can be good cause for voluntarily quitting. **(Salary Reduction)**

[18-AT-04991-BR](#) – The claimant’s voluntary quit due to needing to care for her young grandchildren does not meet the criteria of Section 2-210 when she failed to demonstrate the employer was unwilling to grant leave to her. **(Definition of Voluntary Quit)**

[17-AT-09137-BR](#) - The claimant, an eighteen-year employee, quit the employment due to being subjected to harsh verbal treatment, after tolerating it as long as he could. Section 2-405 does not imply that an employee must quit immediately, or that the employee must accept the treatment forever. Thus, the claimant’s voluntary quit was for good cause connected to the work. **(Hostile Work Environment)**

[17-AT-05589-BR](#) - The claimant had a previously scheduled humanitarian trip for which leave had been approved by the employer. The organization postponed this trip and the claimant advised the employer of the postponement. Prior to leaving for the trip, the employer denied the claimant’s previously approved leave due to her having been gone too much, though claimant still had leave available. Money had been donated to the claimant for the purpose of the relief effort and all reservations had already been made. The claimant’s voluntary quit to attend the trip is considered for good cause. **(Employer Fails to Keep Promise)**

[17-AT-05098-BR](#) - Claimant was discharged from a full-time salesperson position due to performance. She was then offered and accepted a part-time position covering lunch breaks, but quit that position after one day to seek full-time work. Claimant filed for unemployment after quitting her part-time position. The claimant’s voluntary quit due to seeking a better job is not considered good cause connected to the work. **(Quit to Accept New Employment)**

[17-AT-03792-BR](#) - Claimant reported her dissatisfaction with her general manager’s treatment of her to another manager who advised she would take care of it with upper management on claimant’s behalf. When claimant’s working conditions didn’t improve after several months, she voluntarily quit the employment for good cause connected to the work. **(Hostile Work Environment)**

[17-AT-02278-BR](#) - Claimant’s voluntary quit due to health issues related to a chemical used at her place of employment is considered good cause connected to the work. **(Change in Working Conditions)**

[17-AT-00361-BR](#) - Repeated harassment by one’s supervisor is considered unfair treatment and thus constitutes good cause for voluntarily quitting the employment. **(Hostile Work Environment)**

[16-AT-12765-BR](#) - Acceptance of an early retirement incentive plan, when layoffs were not imminent and acceptance of the plan was not required, is a voluntary quit but not for good cause connected to the work. **(Definition of Voluntary Quit)**

[16-AT-07947 BR](#) - Claimant quit for good cause when employer did not pay her on a regular basis. **(Salary Reduction)**

[16-AT-06727 BR](#) - Claimant quit when he turned in his two week notice; employer accepted resignation immediately. This constitutes a quit. **(Definition of Voluntary Quit)**

[15-AT-01700 BR](#) - Claimant quit for good cause when salary reduced. **(Salary Reduction)**

[15-AT-11847 BR](#) - Claimant quit without good cause when reassigned duties. **(Change in Working Conditions)**

[15-AT-09323 BR](#) - Claimant quit to move with husband who did not have a job offer at time of move. **(Quit to Move)**

[15-AT-08736 BR](#) - Claimant in hostile work environment who reported issues to supervisor had good cause for quitting. **(Hostile Work Environment)**

[15-AT-08031 BR](#) - Claimant quit because he felt afraid; no evidence CL was in actual danger. **(Hostile Work Environment)**

[14-AT-08489 BR](#) - Claimant who was cursed at by employer and who was not paid overtime had good cause for quitting due to substantially difficult working conditions. **(Hostile Work Environment)**

[14-AT-08374 BR](#) - Claimant's quit was not voluntary because it was the result of agreement with employer. Claimant was discharged. **(Definition of Voluntary Quit)**

2-210 ALL PRECEDENTIAL CASES

[18-AT-04991-BR](#) – The claimant’s voluntary quit due to needing to care for her young grandchildren does not meet the criteria of Section 2-210 when she failed to demonstrate the employer was unwilling to grant leave to her. **(Immediate Family)**

[17-AT-13142-BR](#) – Claimant worked for over a year with weight restrictions of lifting no more than 10 pounds, but was told he would not be put back on the schedule unless he provided the employer a full medical release without restrictions. Because the claimant had worked for over a year with the restrictions and the employer refused to allow him to work under those same conditions, the claimant was discharged but not for misconduct. **(Claimant Illness or Disability)**

[17-AT-12231-BR](#) – The employer did not have a position for the claimant under his light-duty restrictions, after he had sustained an injury and missed several months of work. Despite the employer placing the claimant on leave and paying his insurance premiums, he is deemed unemployed as he is not performing work for the employer. Because the claimant is willing to work but the employer does not have that type of work available, the claimant was discharged but not for misconduct. **(Claimant Illness or Disability)**

[17-AT-10849-BR](#) - The claimant’s failure to do anything more than call the doctor’s office for over a month to get the required FMLA paperwork to the employer by the deadline provided resulted in him not providing the necessary documentation to excuse his absences. Because he did not provide the necessary documentation, his discharge was for unapproved or excessive absenteeism, and thus misconduct. **(Claimant Illness or Disability)**

[16-AT-08299-BR](#) - Claimant has permanent medical restrictions; therefore separated due to compelling family circumstances. Distinguished from 15-AT-05754 BR. **(Claimant Illness or Disability)**

[16-AT-01150 BR](#) - Claimant's act of quitting in anticipation of moving to California with her future spouse does not fall within the guidelines of compelling family circumstances. **(Move With Spouse)**

[15-AT-08655-BR](#) - Claimant did not tell Employer about medical issues; did not ask for accommodations; did not present medical documentation to support medical issues; quit without good cause. **(Claimant Illness or Disability)**

[15-AT-06568-BR](#) - After release from hospital, claimant did not contact EMP and did not provide medical evidence to support inability to work; quit without good cause. **(Claimant Illness or Disability)**

[15-AT-05754-BR](#) - Claimant on medical leave; has not quit or been discharged but is on leave. Denied under 2-210. **(Claimant Illness or Disability)**

[15-AT-05353-BR](#) - Four days absence in last week of employment not excessive and is not a separation due to compelling family circumstances. **(Claimant Illness or Disability)**

[14-AT-09745 BR](#) - Denied when moved to California to marry, did not transfer with spouse. **(Move With Spouse)**

[12-AT-2860 BR](#) - Moving to Spouse not same as moving with spouse. **(Move With Spouse)**

[11-AT-06255 BR](#) - Unreasonable to ask for leave in certain indefinite situations; uncontroverted testimony can satisfy medical verification requirement. **(Immediate Family)**

2-404.1 ALL PRECEDENTIAL CASES

[15-AT-10904-BR](#) - Section 2-404.1(B) applies only if the temporary employee has been advised of the obligations and provided a separate copy. **(Application of Section B)**

[14-AT-005132 BR](#) Section 2-404.1 does not specify a length of time for temporary assignment. **(Temporary Assignments)**

[14-AT-004547-BR](#) Temporary-to-permanent assignment is an audition and not a temporary assignment under the Act. **(Temporary to Permanent Assignments)**

2-503 All PRECEDENTIAL CASES

[19-AT-06622-BR](#) - The employer's protest to the Notice of Application for Unemployment Compensation was filed untimely. The employer indicated this was due to the Notice being sent to the wrong address, though the employer did not change his address of record until after the Notice's mailing. Because the Notice was mailed to the correct address, and because the protest was late due to the employer's failure to check the mail on a timely basis, good cause is not found and the employer is excluded as an interested party to the claim. **(Timely Protest)**

[15-AT-10322 BR](#) - Employer attorney failed to file a timely protest; no good cause if due to negligence of the party's representative. **(Timely Protest)**

[15-AT-08866 BR](#) - Employer has responsibility for providing correct address of record. **(Employer Address)**

[15-AT-04644 BR](#) - Employer must respond in writing to protest a claim. **(Written Protest)**

2-205.1 ALL PRECEDENTIAL CASES

[18-AT-09153-BR](#) - During her application for unemployment benefits, The claimant initially indicated in an August 1st letter that she no longer felt able to work due to physical and emotional problems. On August 13th, the claimant reported herself as able to work again. The Hearing Officer found the claimant's testimony at hearing to be contradictory to her previous statement to the Commission when she was unaware that she could be denied benefits, and therefore unpersuasive. The Board of Review finds the claimant's second statement not inherently incredible, considering a person's physical and emotional state may change over time. Based on the claimant's sworn testimony, the claimant was able and available to work beginning August 13th. **(Medical Limitations/Availability Limitations)**

[17-AT-012910-BR](#) – Claimant provided contradictory answers to the Commission and during the hearing regarding her ability and availability to work. Because of the inconsistency of the information, there is insufficient evidence to disturb the decision to deny benefits. **(Medical Limitations/Availability Limitations)**

[17-AT-02659-CO-BR](#) - Claimant's lifting restriction does not prevent him from working in at least one type of job in which he has previous work experience. Therefore, Claimant is able and available to work. **(Medical Limitations)**

[15-AT-01325 BR](#) - Certain level of education or experience not required for basic skill jobs. **(Education and Work History)**

V. **All Precedential Cases Continued**
c. By Docket Number

VI. Legal Authority Documentation

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 11-AT-06255-BR

In Re: Claim of: .

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **FEBRUARY 24, 2011**

DECISION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, CLYDE STEVENS, affirming the Commission's determination by finding the claimant voluntarily left his employment, and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter comes for review in its regular order on the assignment docket. It is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The Appeal Tribunal Hearing Officer's Findings

The Appeal Tribunal Hearing Officer found the claimant's mother suffered from diabetes, arthritis, fibromyalgia, and had also suffered a stroke. The Hearing Officer also found the claimant resigned from his position on December 1, 2010, without requesting a leave of absence from the employer.

Section 2-210 of the Employment Security Act of 1980 Allows Claimants Separated from Work for "Compelling Family Circumstances" to Receive Unemployment Benefits if Otherwise Eligible

Section 2-210, Title 40, Okla. Stat., as amended, provides "an individual shall be eligible to receive unemployment benefits, if monetarily and otherwise eligible, if the claimant was separated from work due to compelling family circumstances." "Compelling family circumstances" is defined by Section 2-210(4)(b) as including when "the claimant was separated from work due to the illness or disability of an immediate family member..." Immediate family member" includes the "claimant's...parents..." under Section 2-210(1). Section 2-210(2) defines "Illness" as a "verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant paid or unpaid leave."

The Employment Security Act of 1980 Should be Construed to Assist the Parties, Rather than Punish Them for Technical Violations

The Board of Review has consistently held that the Employment Security Act of 1980 should be construed to assist the parties, rather than punish them for technical violations. This construction is supported by the "Declaration of State Public Policy" found in Section 1-103, Title 40, Okla. Stat., as amended.

The Claimant's Mother Suffered from an "Illness" Under Section 2-210(2)

The claimant provided uncontroverted testimony his mother, who lives in California, suffered from diabetes, arthritis, fibromyalgia, and had suffered a stroke. Furthermore, the claimant provided uncontroverted testimony his mother would require constant care, per her physician's advice. This testimony fulfills part of the requirements of Section 2-210(2), "a verified illness which necessitates the care of the ill person...."

Section 2-210(2) also requires the "verified illness which necessitates the care of the ill person" be "for a period of time longer than the employer is willing to grant paid or unpaid leave...." The Appeal Tribunal Hearing Officer interpreted this language as a mandate the claimant must request leave, paid or unpaid, from the employer prior to separating from work, in order to satisfy Section 2-210(2)'s definition of "illness."

The Appeal Tribunal Hearing Officer's findings and the claimant's uncontroverted testimony support a conclusion the claimant's mother could live for years in her current state. No employer can be expected to provide leave, paid or unpaid, for an indefinite period of time, especially one that is likely to last for years. Requiring a claimant to ask their employer for leave - when the claimant's job separation is to care for a family member who will require care for an indefinite period of time, which could last years - would only allow an employer the opportunity to provide self-serving testimony that the employer is willing to grant an indefinite period of leave, when no reasonable employer would be able to do so.

The Board of Review finds it is unreasonable to require the claimant to ask for leave, paid or unpaid, in situations such as this. Furthermore, the Board of Review finds requiring the claimant to do so would controvert the intent of Section 2-210, which allows claimant's benefits in unfortunate situations where the claimant is forced to voluntarily separate from his or her work due to the illness or disability of either the claimant or their immediate family member.

The Claimant was Separated from Work Due to Compelling Family Circumstances when He Resigned to Care for His Ill Mother; and Therefore the Decision of the Appeal Tribunal Should be Reversed

The claimant was separated from his work due to the illness of his mother, who qualifies as an immediate family member under Section 2-210(1). His mother suffers from illnesses which will require care for the rest of her life, a period likely to last years, which is longer than any reasonable employer can be expected to offer leave, paid or unpaid; an "illness" under Section 2-210(2). Because the claimant was separated from his employer due to his mother's illness, this qualifies as a "compelling family circumstance" under Section 2-210(4)(b). Therefore, the claimant was separated from his work due to a "compelling family circumstance," and because the claimant is "monetarily and otherwise eligible" the claimant is eligible to receive unemployment benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-210, Title 40, Okla. Stat., as amended as the applicable section; and the claimant is allowed benefits effective DECEMBER 26, 2011.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within ten (10) days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 4-8-11 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 12-AT-02860-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **JANUARY 08, 2012**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter comes for review in its regular order on the assignment docket. It is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant quit his job because he married a woman who is in the Air Force stationed at Tinker Air Force Base. He moved from McAlester to be with his new wife. He asserts that he should be eligible for benefits under Section 2-210(c). That Section states the claimant shall be eligible for benefits if his spouse "was transferred or obtained employment in another city or state . . . and the claimant separates from employment in order to move to the new employment location of the spouse." That does not apply to the claimant's situation because his spouse was not transferred to a new employment location. She was already stationed at Tinker Air Force Base at the time he married her. He also asserted that he should be eligible for benefits under Section 2-210(e), which says the claimant shall be eligible if he separated from employment to move with his spouse to a new location if the spouse was a member of the U.S. Military, was discharged under honorable conditions with a service-connected disability, and took up residence at a location more than 50 miles away from the claimant's former employer for the purpose of reentering civilian life. This situation does not apply to the claimant, either.

After considering all the evidence, the Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable, that same should be adopted by the Board of Review as asserted and that the Appeal Tribunal decision should be affirmed.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 03/02/12 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 14-AT-04547-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **FEBRUARY 17, 2014**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, ., affirming the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held by the Appeal Tribunal, the Appeal Tribunal decision, and the records of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was assigned to a temporary-to-permanent position at Whirlpool through Key Group on September 11, 2013. Whirlpool used Key Group to provide prospective employees who would "audition" for the job on a 90-day probationary period. If Whirlpool was satisfied with the employee's work, the employee would be hired permanently. But on December 10 or 11, the claimant was released by Whirlpool due to horseplay in the assembly line area, and attendance problems.

At hearing, much discussion occurred about if the claimant had asked for another assignment after his release from Whirlpool, if he had worked on another assignment, and if he was eligible for rehire. Evidence indicates he did ask for another assignment on or about December 12, and was told there was something available on December 16. The testimony is not clear about whether he actually worked that day, however. He showed up and was "up there" about 30 minutes. Again, it is not clear if he was at Key Group for 30 minutes or at the assignment for 30 minutes. The employer said that notes in the claimant's file indicate the customer cancelled that job order. The claimant said one of the Key Group employees told him he was not needed on the assignment after all, and that nothing else would be available until after the first of the year. It appears the claimant did not work that day. That is backed up by both the claimant and the employer stating at the beginning of the hearing that the claimant's last day of work was either December 10 or 11, at which time he was discharged by the client.

The Board of Review finds that since the claimant was hired for the purpose of auditioning for a permanent job, he was not a temporary employee as defined in Section 2-404.1. The client discharged him for horseplay and attendance problems. The claimant denied engaging in horseplay or having attendance issues. The employer's witness at hearing had no firsthand knowledge of the client's assertions. Accordingly, the Board finds the employer did not meet the burden to show the claimant was discharged for misconduct.

After considering all the evidence, the Board of Review concludes that although it does not agree with all of the findings of fact and conclusion(s) previously adopted by the Appeal Tribunal, it does agree that the claimant was discharged but not for misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 14-AT-08489-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **MAY 28, 2014**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter comes for review in its regular order on the assignment docket. It is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant quit his job because the employer cursed him on a daily basis, and also would not pay him for his overtime. He put up with it for several months because he had children to support and needed the job. He spoke to the employer about the way he was treating him, but the employer only treated him worse after that. The Hearing Officer found that since the claimant had put up with the bad treatment for several months, he had "accepted" those working conditions, and therefore he did not have good cause to quit.

The Board of Review finds that there is nothing in the statutory scheme of the Oklahoma Employment Security Act that requires the claimant to either quit at the first sign of mistreatment or within a certain time period after the mistreatment begins, or be denied unemployment benefits. The claimant tried to continue to work for this employer in spite of his treatment of him, because he needed the job. In determining good cause for quitting, Section 2-405(2) states that it can include substantially unfair treatment of the employee or the creating of substantially difficult working conditions by the employer. Being cursed at every day and not being paid for work performed certainly amount to substantially unfair treatment and substantially difficult working conditions. The Board finds the claimant did have good cause connected to the work for quitting.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective March 30, 2014.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-29-14 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **14-AT-09745-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #|

Date of Appeal to Board: **JULY 8, 2014**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter comes for review in its regular order on the assignment docket. It is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant quit her job in May 2014 because she had married in March 2014 and wished to move to California to be with her husband. Section 2-210 provides that a claimant may be allowed benefits if his or her spouse was transferred or obtained new employment in another city or state, and the claimant separates from employment in order to move to the spouse's new employment location. That was not what happened in this case. The claimant's new husband did not move to California after they married because he was transferred or obtained new employment; he had always lived in California. Accordingly, the claimant is not eligible under the provisions of Section 2-210. Therefore her job separation falls under Section 2-404. She certainly had good personal reasons for quitting, but she did not have good cause connected to her work.

After considering all the evidence, the Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable, that same should be adopted by the Board of Review as asserted and that the Appeal Tribunal decision should be affirmed.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-8-14 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-09475-UCFE-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **JULY 16, 2015**

OPINION

The **BOARD OF REVIEW** considered the findings and decision of the Appeal Tribunal Chief Hearing Officer, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on **JULY 8, 2015**, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on **JULY 8, 2015**, which found the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the Appeal Tribunal decision and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was scheduled to have a hearing at 9:20 a.m. on July 8, 2015. At 9:38 a.m., the claimant called the Appeal Tribunal saying that he had missed the hearing because he had been asleep. He was told to send a written request to reopen the case. Two hours later, he sent an email to the Appeal Tribunal saying he had missed the hearing because he had overslept. The Appeal Tribunal issued a decision on July 14, 2015, denying his request for the hearing to be reopened because oversleeping is not considered to be good cause for missing a hearing. On July 16, 2015, the claimant sent an email stating that he missed the hearing because he was traveling through mountains and did not have cell phone service for a short period of time coinciding with the time the hearing was scheduled to begin. The Board of Review finds the claimant's contradictory statements cast doubt on his credibility. Additionally, the explanation he gave only minutes after the hearing was to take place is more likely to be accurate than the explanation he gave over a week later after having been told his first reason did not constitute good cause to reopen the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-3-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-01700-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **DECEMBER 19, 2014**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was working as a General Manager earning \$3000.00 per month plus bonuses. Due to dissatisfaction with her job performance, the employer told her that she was going to be moved back to sales department where she had worked previously. That position payed \$9.00 per hour. The claimant declined the new position due to the significant pay cut. The Board finds that this did constitute good cause for quitting her employment with 10Gym, LLC.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective October 19, 2014.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 3-6-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-03602-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **FEBRUARY 10, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant worked as a customer service representative. The employer provided her with a personal phone as a part of her benefits package. She was required to pay for any additional fees she might incur, and was also required to keep her account in good standing with the company or face termination. She had previously had problems with her phone being suspended, and was facing another suspension at the time of the incident which led to her discharge. Knowing that her job was in jeopardy, she called customer service on her own personal time while away from the job site in order to get the situation resolved. During the call, she was spoken to rudely by the representative, called "sir" repeatedly even though the claimant informed the representative that she was not a "sir," and was kept on the phone over 45 minutes. She asked to speak to a supervisor but was met with even more rude behavior from the representative. The claimant became upset and used a profanity. When the incident was reported, the claimant was discharged.

While the claimant had received warnings about certain aspects of her work performance, she had not been warned about the use of profane language. Further, the incident occurred while she was away from the workplace and was not on duty. Section 2-406(B) states that misconduct connected to the work shall be limited to eight specific acts. Under the circumstances described, the claimant's behavior did not meet the definition of misconduct in the statute.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective December 7, 2014.

DOCKET NO. 15-AT-03602-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 4-14-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-04644-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **MARCH 6, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, , affirming the Commission's determination by finding the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The Notice of Application for Unemployment Compensation (Notice) was mailed to the employer on January 8, 2015. The employer received the Notice prior to January 20, which was the deadline for filing a protest to the claim. On January 16, a representative from the Oklahoma Employment Security Commission (OESC) called the employer and left a voice mail asking for information about the reason for the claimant's job separation. The OESC routinely makes such a call to the employer if a protest has not been received by the 8th day of the protest period. In the voice mail, the OESC representative said the information was needed no later than January 21. The employer's representative testified that he knew he had 10 days from the mailing date of the Notice to file a protest. However, he interpreted the call from the OESC as giving him an extension to that 10-day period. He did not provide a written protest until January 21, one day past the deadline to be considered as an interested party to the claim. He objected to being excluded as an interested party because the voice mail from the OESC gave a different date for his response.

The statute states that a written objection to a claim must be filed within 10 days after the date the Notice was mailed. It states that only a response given in accordance with those instructions will serve to make the employer an interested party to the claim. It also informs the employer that it may be called for information, but it does not say that a response to the call will make the employer an interested party if the written response is filed after the 10-day deadline. The employer did not establish that it was beyond its control to have filed a timely protest. Therefore, the Board of Review does not find good cause for the untimeliness of the protest.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

Continued on Page 2

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 3-27-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-05353-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **MARCH 25, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming but modifying the Commission's determination by finding the claimant was separated from employment due to compelling family circumstances, and allowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for missing too much work. During his last week of work, he missed four days. The last three days he missed were due to pain from a bad tooth, which he had extracted that week. The claimant presented documentary evidence that he had the dental work done that week, and the employer stated he had no reason to doubt the claimant on this matter. The employer also said the claimant gave notice of his absences by texting, which was not an acceptable form of contact. However, the claimant testified that he was not aware of such a policy. The employer provided a document showing the claimant had been advised of company policies, but that document did not specify what the company policy was regarding notification by texting.

The Commission originally found the claimant was discharged from employment but not due to misconduct, and allowed benefits in accordance with Section 2-406. The Appeal Tribunal changed the applicable statute to Section 2-210, and said the claimant should be allowed benefits because he was separated from work due to compelling family circumstances. The Board does not find that the claimant's job separation falls within the scope of Section 2-210. It was not medically necessary for the claimant to stop working or change occupations; he simply needed to take three days off for a dental problem. The Board finds that his job separation is more correctly adjudicated under Section 2-406. The claimant was discharged, but not due to misconduct as it is defined in that statute.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED** but **MODIFIED** to show Section 2-406 as the appropriate Section of Title 40.

DUCKET NO. 15-AT-05353-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 5-5-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-05754-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **APRIL 6, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant is on medical leave from this employer because of an on-the-job injury which causes her to be unable to perform her normal job duties. The employer does not have any other work that would accommodate her medical restrictions. The claimant has been separated, at least temporarily, from work due to her disability. However, the employer has not discharged her, nor has she quit. The Board determines that the claimant's job separation fits best within Section 2-210, "Separation from work due to compelling family circumstances." But in order to be eligible for benefits under Section 2-210, it would be necessary for the claimant to be off work for a period of time longer than the employer is willing to grant paid or unpaid leave. Thus the claimant is ineligible for benefits indefinitely, for as long as these circumstances exist.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED** but is **MODIFIED** to show Section 2-210 as the applicable Section of Title 40.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 6-16-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-05835-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **APRIL 9, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, , reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer objected to the Hearing Officer finding good cause for the claimant's untimely appeal. During the appeal period, the claimant was in and out of the hospital due to a serious health condition. She was incapacitated and under the effects of morphine during this time. The employer felt that the claimant's sister, acting as her caregiver, should have taken the responsibility and the initiative to ensure the claimant's appeal was filed on time. The Board of Review does not find it appropriate to hold a relative responsible for a claimant filing an appeal. In the "Rules for the Administrative of the Oklahoma Employment Security Act," Rule 240:10-13-37 defines good cause as a situation beyond the control of the parties, and specifically mentions a disabling personal illness as an example of such a situation. The Board agrees with the Hearing Officer that the claimant had good cause for the late filing of her appeal.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 5-29-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-06185-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **APRIL 17, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant had received several warnings for negligence and failure to follow company policy. He admitted to these errors. In the last incident, he made unauthorized changes to a program which caused an expensive piece of equipment to be destroyed. His actions were either intentional or grossly negligent as he had been shown how to do the work and had previously done it correctly. The claimant was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disqualified from receiving benefits effective week ending February 14, 2015, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 05-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-06358-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **APRIL 22, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, ..., affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged because the employer believed the claimant did not take his prescribed medicine in the recommended dosage. The claimant was prescribed some cough syrup but spilled most of it the first night he had it. He brought the almost empty bottle with him to work the next day and finished it. He threw the bottle in the trash and his supervisor retrieved it. When he saw the prescription had been filled only the day before, the supervisor reported it to the plant manager. The claimant was then discharged because the plant manager believed the claimant had abused the prescription by not taking the appropriate dosages, which was against the company drug policy.

Section 2-406 indicates that the burden of proof rests with the employer to establish misconduct as it is defined in Title 40. Misconduct must be shown by evidence submitted at the hearing and by the testimony of witnesses. Here, the Hearing Officer's decision had to be based only on witness testimony, as no relevant evidence was introduced. The only person with firsthand knowledge of the events, particularly the spillage of the cough syrup, was the claimant. He testified he took the medication at the appropriate intervals and at what he believed was the appropriate dosage. No testimony was presented to refute that of the claimant. As such, the testimony of the claimant must be taken as true. The acts of the claimant do not meet the definition of misconduct.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective March 1, 2015.

DOCKET NO. 15-AT-06358-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-30-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-06568-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **APRIL 27, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant was separated from employment due to compelling family circumstances, and allowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was admitted into the hospital in January due to a possible grand mal seizure. The employer visited her in the hospital and told the claimant to let her know when she was ready to come back to work. Once released from the hospital, the claimant did not believe that she was able to return to teaching at a daycare center. She did not contact the employer and did not attempt to return to work. No medical evidence was presented at the hearing to show she is unable to work. While the claimant may not feel able to return to her former job, the testimony given at the hearing indicates that the claimant was not discharged but instead voluntarily left her last employment without good cause connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-404 as the applicable Section of Title 40. Benefits are denied effective week ending February 28, 2015, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-22-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-06582-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **MAY 1, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, finding the employer failed to show good cause for non-appearance at the hearing scheduled on APRIL 2, 2015, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on APRIL 2, 2015, which found the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer missed the original hearing because a train blocked the entrance to the rail yard where his office is located. His paperwork with the hearing information on it was in his office. He testified that he did not call anyone to ask if they could look at the paperwork and give him the number to call for the hearing because he did not think of doing so. He also testified that trains came through and blocked the yard on a daily basis. The Hearing Officer found that his failure to call in for the hearing was not beyond his control because he should have anticipated the possibility of being blocked by the train and could have taken the paperwork with him when leaving his office the previous day; or, in the alternative, he could have called someone to retrieve the information from his office.

In his appeal to the Board of Review, the employer said that even if he had called the office manager and asked her to retrieve the information from his desk, she would not have been able to do so because his office was locked and she does not have a key. However, he did not offer that information at the hearing while under oath, so the Board could not take that into consideration. The employer also told the Board of Review that he has no control over the time that the trains will come through the yard, seeming to indicate that he could not have anticipated a train coming through at that time of day. However, at the hearing he testified that it happens everyday. The Board also notes that trains usually run on a schedule that would have given the employer a good idea of what time one might be in the yard. Upon review of the testimony, the Board of Review agrees with the Hearing Officer that it was within the employer's control to have participated in the April 2nd hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that the same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 6-22-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-06640-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **APRIL 28, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant was discharged for making a false statement on her application. She answered "no" to the question asking if she had previously worked for any state agency. She asserted the application was falsified by an unknown person and that the signature on it was not hers. She admitted she did not list her employment with the Department of Corrections on the application because there was not room for it; there was only enough space to include her last seven employers. However, she did submit a copy of her resume listing employment at the Department of Corrections, and the Director of Muskogee County Child Welfare Services testified he was aware of her previous employment with that agency prior to her being hired with Muskogee County Department of Human Services. Since the employer knew about her employment with the Department of Corrections, the discrepancy in her application, however it occurred, cannot correctly be called fraud, dishonesty or intentional misconduct. There does not appear to be any intent to deceive. While the employer may have had good business reasons to discharge her, the burden of establishing the discharge was due to misconduct has not been met.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective March 1, 2015.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-22-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-08031-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **JUNE 9, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left his last employment with good cause connected to the work and allowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant quit his job after being asked to present a doctor's excuse for missing work for one day. He was upset because normally an employee was not asked for a note until after two or three days of absences. This request was apparently made due to attendance problems. He also quit because he alleged that he had to work in dangerous conditions. He testified he had to work in areas where water was leaking, creating the potential for electrocution. The employer's witnesses all testified that when leakage caused water to be in the work area, the workers were removed from that area and it was roped off. The claimant may have felt afraid, but there is no evidence to show he was in any danger. The claimant did not establish good cause connected to the work for quitting.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending April 25, 2015, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-7-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 14-AT-08374-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: MAY 19, 2014

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter comes for review in its regular order on the assignment docket. It is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The Appeal Tribunal found that the claimant voluntarily resigned his employment without good cause and denied his unemployment benefits. However, based on the evidence presented, there was nothing voluntary about his resignation. "Voluntary" as been defined as "Resulting from free choice, without compulsion or solicitation" or "gratuitous." (See Black's Law Dictionary, Sixth Edition.)

It was required of the claimant here that he resign in order to obtain workers compensation benefits, benefits the claimant was entitled to under Oklahoma law. The claimant had no choice, if he was to accept the workers compensation benefits to which he was undeniably entitled. The actions of the employer amounted to a discharge, to which no evidence of misconduct has been offered. As such, benefits are allowed.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-406 as the applicable Section of Title 40. The claimant is allowed benefits effective March 23, 2014.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-18-14 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-08545-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **JUNE 26, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, . , finding that good cause was not shown for the untimely filing of the employer's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission (OESC), the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer argued that its appeal should be accepted as timely because it was only two days late. The employer cites the case of R&R Engineering Co., Inc. v. Board of Review, 322 P.3d 471 (2014 OK CIV APP 26), in which the Court ruled that an employer response that was eight days late should still suffice to make the employer an interested party in the claim.

That facts of that case differ from the one at hand. In R&R Engineering, the employer had filed a timely protest to the claim, but was then asked to send more specific information within two days regarding the reason for the claimant's job separation. The employer did not send the specific details until eight days had passed. The Court ruled the employer should still be considered an interested party. It is noted that the time limit to file a protest within 10 days is set by statute, and R& R Engineering did comply with that requirement. The two-day deadline to submit additional information was not set by statute but was set by the OESC in order to get the information as quickly as possible.

In the case now before the Board of Review, the employer did not file its protest to the claim within the 10-day period allowed by law. The OESC sent the employer a Notice of Determination informing it that its protest was late. The employer then had 10 days in which to appeal that Determination. The employer's appeal was filed two days after the appeal period set by statute. Since the employer did not establish that it was beyond its control to have filed the appeal on time, the Appeal Tribunal did not find good cause for the late submission and dismissed the appeal.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted. It is therefore ordered by the Board of Review that the decision of the Appeal Tribunal is hereby **AFFIRMED**.

DOCKET NO. 15-AT-08545-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-20-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-08655-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: JUNE 25, 2015

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant was separated from employment due to compelling family circumstances, and allowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant testified that he quit his job because he felt the stress of managing the store was adversely affecting his health. The Hearing Officer stated it was undisputed that the claimant quit on the advice of his doctor. However, the employer testified that while the claimant had mentioned stress about his mother's health, he never mentioned stress over medical issues related to the job. He did not ask for any accommodation to his job, and never presented any medical statements to verify his health condition. He told the employer he was quitting because he had found another job. In fact, the record shows that the claimant did not mention that he quit due to medical issues until after the determination was made finding him ineligible for unemployment benefits. Section 2-210 requires that to be eligible for benefits, an individual must show that it was medically necessary for him to stop working or change occupations due to a verified illness or disability. The evidence presented in this case does not establish that it was necessary for the claimant to quit this job for these reasons. The Board of Review finds that the claimant quit his job without good cause connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-404 as the applicable Section of Title 40. The claimant is disallowed benefits effective week ending May 9, 2015, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

DOCKET NO. 15-AT-08655-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-17-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

**BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152**

Docket No. 15-AT-08734-UCFE-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board. **JUNE 29, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, , affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for unsatisfactory performance. The evidence indicates that throughout the course of her employment, the she put forth significant effort at her position. She performed at the required level on multiple occasions. On some occasions, which tended to coincide with a heightened number of transactions to be posted, she was unable to obtain the required level of performance. However, the effort put forth by the claimant was sufficient to overcome a finding of neglect of duty. The employer may have had good business reasons for terminating her, but her actions or inactions did not rise to such a level as to be considered misconduct.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective May 3, 2015.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-10-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-08736-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **JUNE 30, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant quit this job because she was being subjected to coworkers yelling and cursing. She talked to her supervisor about this situation several times. The supervisor would report the complaints to Human Resources. After these reports, the coworkers would improve for a short time but then revert to the objectionable behavior. The Hearing Officer made a finding that the claimant was working in a hostile work environment, but then said the claimant should have taken her concerns to someone higher in the chain of command. The Hearing Officer found the claimant did not take all available steps to remedy the problem and therefore did not have good cause for quitting.

The Board of Review agrees that the claimant was in a hostile work environment. She reported the problems to her supervisor several times. She should not be held responsible for having to go over her supervisor's head to get this situation corrected. The Board finds that the claimant did have good cause connected to the work for quitting.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective May 10, 2015.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 9-15-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-08866-BR**

In Re: Claim of: .

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **JULY 2, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer argued the Notice of Application for Unemployment Compensation (Notice) was sent to an incorrect address, which caused its protest to be late. Records show that at the time the Notice was mailed in February 2015, the employer's address of record with the Oklahoma Employment Security Commission (OESC) was in St. Petersburg, Florida. That is where the Notice was mailed. Personnel in that office then forwarded the Notice to the employer's office in Henrietta, New York. By the time it was received there, the 10-day protest period had passed. In March, the employer changed its address of record with the OESC to Henrietta, New York. While the situation was unfortunate, the fact remains the Notice was mailed the correct address at the time, and it was within the employer's control to have procedures in place so that it could have sent a timely protest.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

DOCKET NO. 15-AT-08866-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-20-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-09323-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **JULY 10, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In the claimant's appeal to the Board of Review, she said that she quit to move with her husband who had been offered a job over 300 miles away in Harrison, Arkansas. But at the hearing, the claimant's husband testified under oath that he did not have a job offer. He said that he retired from his job and moved to Arkansas to take care of his elderly mother and help out on her farm. The claimant testified that she quit her job in order to move with her husband. The claimant's change of story at this point is not credible. The Board of Review must base its decision on the sworn testimony given at the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant is disallowed benefits effective week ending May 23, 2015, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-20-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-10322-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **AUGUST 12, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer argued that good cause should be found for its failure to file a timely protest to this claim, because it was actually its attorney's mistake that caused the protest to be late. Good cause is defined in Rule 240:10-1-2 in the "Rules for the Administration of the Oklahoma Employment Security Act" as "reasons beyond the control of the party seeking relief." Rule 240:10-11-24 goes into more detail, stating that, "Good cause is defined as a situation beyond the control of the parties. Situations considered beyond the control of the party may include, a disabling personal illness, death in the immediate family, jury duty, military obligations or any other circumstance that would make it impossible for a party to . . . comply with a requirement of . . . the Employment Security Act of 1980, or any determination or notice served on the party. Good cause will not be found if the failure to act is due to the negligence or inattentiveness of the party or the party's representative or attorney-at-law." That definition is also given in Rule 240:10-13-37. It is clear the employer received the Notice of Application for Unemployment Compensation well within the 10-day protest period, so it was within its control to have filed a timely objection. It is unfortunate the employer's attorney did not file it within the statutory time period, but it was within his control, as the employer's chosen agent, to have done so. Accordingly, the Board of Review does not find good cause for the employer's late protest.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED**.

DOCKET NO 15-AT-10322-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 9-8-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-10547-BR**

In Re: Claim of: _____

APPELLANT

EMPLOYER

SSA # _____

Date of Appeal to Board: **AUGUST 18, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant's appeal to the Board of Review was one day late. He said it was late because he had to go out of state to take his elderly father-in-law to a medical appointment. Under the circumstances, the Board finds good cause for the late appeal.

The claimant's appeal to the Appeal Tribunal was late. He testified that it was late because he thought he had a week to file the appeal from the time he received the Notice of Determination in the mail. The Determination plainly stated that he had ten days from its mailing date in which to file an appeal. The claimant's misunderstanding was unfortunate but he did not establish that it was beyond his control to have filed the appeal on time.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED**. The appeal is dismissed for want of jurisdiction.

Continued on Page 2

DOCKET NO. 15-AT-10547-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 9-8-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-10904-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **AUGUST 21, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, . , affirming the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer asserted in his appeal that the claimant did not appear for the hearing, and that the Hearing Officer should not have ruled against the employer without any direct testimony from the claimant. The Board of Review finds the claimant did indeed appear at the hearing and did offer sworn testimony.

The employer also argued the claimant was not discharged, but instead quit when she did not contact them for another assignment on June 17. However, the claimant said she did contact the employer on June 17, and presented documentary evidence of such contact (Claimant Exhibit 1).

Section 2-404.1(B) addresses the topic of a temporary employee leaving work voluntarily. It provides for disqualification if a temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. But the provisions of that subsection apply only if the temporary employee has been advised of the obligations and provided a copy of a separate document written in clear and concise language that states unemployment benefits may be denied for failure to comply. There was no evidence presented to show the employer gave the claimant such a document. The best evidence shows the claimant's assignment ended and she contacted the employer for another assignment the following day, but none was available at that time.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted. It is therefore ordered by the Board of Review that the decision of the Appeal Tribunal is hereby **AFFIRMED**.

DOCKET NO. 15-AT-10904-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 9-29-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-10954-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **AUGUST 20, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant was separated from employment due to compelling family circumstances, specifically domestic violence, and allowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant had established a history of attendance problems which exceeded the employer's leave policy. She had been warned several times. On the day of separation, the claimant failed to attend work because she overslept. She was terminated at that time for excessive absences.

The Board is mindful of the horrible effects of domestic violence. However, in this situation there simply was no evidence presented at the hearing that domestic violence was a factor in the claimant's separation. Section 2-210(d) addresses a claimant separating from employment due to domestic violence which causes her to reasonably believe that her continued employment would jeopardize her safety. The claimant did not quit her job because of domestic violence. She was discharged due to excessive absences and tardiness.

Misconduct is defined under Section 2-406, Title 40, as "1. Any intentional act or omission by an employee which constitutes a material or substantial breach of the employee's job duties or responsibilities or obligations pursuant to his or her employment or contract of employment; 2. Unapproved or excessive absenteeism or tardiness . . ." The claimant's attendance problems constituted a material breach of her job responsibilities and obligations, as well as excessive absenteeism and tardiness. She was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby ~~REVERSED~~ and MODIFIED to show Section 2-406 as the applicable Section of Title 40. The claimant is disqualified from receiving benefits effective week ending July 4, 2015, and indefinitely until she becomes re-employed and earns wages ~~equal to or in excess of ten times~~ her weekly benefit amount.

DOCKET NO. 15-AT-10954-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-15-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-10954-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **AUGUST 20, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant was separated from employment due to compelling family circumstances, specifically domestic violence, and allowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant had established a history of attendance problems which exceeded the employer's leave policy. She had been warned several times. On the day of separation, the claimant failed to attend work because she overslept. She was terminated at that time for excessive absences.

The Board is mindful of the horrible effects of domestic violence. However, in this situation there simply was no evidence presented at the hearing that domestic violence was a factor in the claimant's separation. Section 2-210(d) addresses a claimant separating from employment due to domestic violence which causes her to reasonably believe that her continued employment would jeopardize her safety. The claimant did not quit her job because of domestic violence. She was discharged due to excessive absences and tardiness.

Misconduct is defined under Section 2-406, Title 40, as "1. Any intentional act or omission by an employee which constitutes a material or substantial breach of the employee's job duties or responsibilities or obligations pursuant to his or her employment or contract of employment; 2. Unapproved or excessive absenteeism or tardiness . . ." The claimant's attendance problems constituted a material breach of her job responsibilities and obligations, as well as excessive absenteeism and tardiness. She was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby ~~REVERSED~~ and MODIFIED to show Section 2-406 as the applicable Section of Title 40. The claimant is disqualified from receiving benefits effective week ending July 4, 2015, and indefinitely until she becomes re-employed and earns wages ~~equal to or in excess of ten times~~ her weekly benefit amount.

DOCKET NO. 15-AT-10954-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-15-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-11030-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **AUGUST 24, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was not separated from employment due to compelling family circumstances, and disallowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was off work due to an injury. She was released to return to work on May 29, 2015. When she gave her employer the medical release, she was told she could not return to work until she was released by Workers Compensation. The medical release was completed on a Workers Compensation form. The claimant received one more payment from Workers Compensation after her release, and has not received any payments since then. The evidence indicates that she has been released to work, although with restrictions, and the employer has not allowed her to return to work. The claimant has been discharged, but not due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-406 as the applicable Section of Title 40. The claimant is allowed benefits effective June 14, 2015.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-30-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-11075-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **AUGUST 31, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged because a co-worker clocked the claimant in for work. The evidence indicates this practice occurred from time to time throughout the course of the claimant's employment. In fact, the evidence presented shows this practice was approved by the claimant's former supervisors. At no time was the claimant advised that this practice was prohibited. The employee manual (Employer Exhibit 1) does not designate this practice as prohibited. The greater weight of the evidence presented does not establish that the claimant acted dishonestly or wrongfully, and does not support a finding of misconduct.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective July 5, 2015.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-27-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-11264-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **AUGUST 28, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's bookkeeper listed details on his letter of appeal to the Board of Review that were not testified to at the hearing. The Board must base its decision on the sworn testimony given at the hearing. The facts are that the bookkeeper did receive the Notice of Determination well within the 10-day appeal period, but did not send a timely protest due to both being absent from work and being busy with other duties. While unfortunate, the task could have been assigned to another employee. Since the employer's bookkeeper did receive the Notice of Determination prior to the appeal deadline and was aware of that deadline, the Board of Review does not find good cause for the untimely appeal.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 9-16-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-11358-BR**

In Re: Claim of:

APPELLANT

SSA #

Date of Appeal to Board **SEPTEMBER 4, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, , affirming the Commission's determination by finding the claimant's request to have her claim backdated was denied in accordance with Section 2-203, Title 40, Okla. Stat., as amended; and Rule 240:10-3-23(b) in the *Rules for the Administration of the Oklahoma Employment Security Act*.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was separated from employment with Serco, Inc., in March 2015. She chose not to file for benefits at that time because she thought she would be disqualified based on the reason for separation. She then went to work for Jack in the Box for a few hours on June 9th. She filed for unemployment benefits on June 11th. She asked that her claim be backdated to her job separation that took place in March.

The Rule cited in the first paragraph above states that the effective date of a claim shall be the first day of the calendar week in which the claimant first files the claim. Since the claimant filed on June 11th, the effective date of her claim must be the first day of that week, which was Sunday, June 7th. It is unfortunate that she delayed filing her claim, but she has shown no reason beyond her control for her failure to file sooner.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 10-1-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-11425-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board. **SEPTEMBER 3, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant's job required him to obtain CLEET certification within six months of his hire date. When the claimant did not get the certification within that time frame, the employer granted an extension. After two years had gone by, the claimant had completed portions of the process, but never got the certification. The employer finally discharged the claimant for his failure to meet his job requirements.

Section 2-406(B)(8) provides that a violation of a policy or rule enacted to ensure orderly and proper job performance or for the safety of self or others may be considered as misconduct. Section 2-406(C) provides that any misconduct defined in subsection B shall not require a prior warning from the employer. As long as the employee knew or should have known that a rule or policy of the employer was violated, the employee shall not be eligible for benefits.

The claimant knew that he was required to obtain CLEET certification within six months of hire. He did not do so. The fact that the employer "cut him some slack" and extended the time for the claimant to get certified did not remove the requirement from the terms of his employment. The evidence shows the claimant was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending July 11, 2015, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

DOCKET NO. 15-AT-11425-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 11-19-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-11847-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **SEPTEMBER 18, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant voluntarily left her last employment with good cause connected to the work and allowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant was a licensed Certified Nursing Assistant (CNA). She was originally hired as a licensed Certified Medication Aide (CMA). That position required that she also be a licensed CNA. The claimant had to take off work due to stress-related problems. She felt the stress was caused by her work as a CMA. The employer allowed her to return to work as a CNA in order to reduce her job-related stress. The claimant was given the same schedule, number of hours and pay as she had before the change. The claimant told the employer that she would not be able to do the CNA job because the tasks were too physical for her, and did not return to work after that. She did not present any medical statements saying that she was unable to work as a CNA. The evidence shows that the claimant voluntarily quit her job, and has not shown good cause connected to the work for doing so.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disqualified from receiving benefits effective week ending August 1, 2015, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

DOCKET NO 15-AT-11847-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 11-25-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-12854-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **OCTOBER 15, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The Board of Review finds the claimant's appeal to the Appeal Tribunal was late because she was homeless and did not have transportation to go to the Post Office to check her mail. Under the circumstances, the Board finds it was beyond her control to have filed her appeal on time.

The Board of Review concludes that this case should be remanded to the Appeal Tribunal to issue a new decision shall be issued addressing the merits of the case using all records, testimony and evidence contained in the file. It is not necessary to reconvene the hearing as the Hearing Officer did take testimony on the merits of the case.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REMANDED to the Appeal Tribunal as instructed above.

COPIES TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 11-19-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-09158-BR

In Re. Claim of:

Date of Appeal to Board: JULY 10, 2015

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming but modifying the Commission's determination by finding that claimant was overpaid benefits in the amount of \$3526.00 for weeks ending August 23, 2014 through October 18, 2014 due to administrative error, which may be deducted from future benefits payable to the claimant. The determination was in accordance with Section 2-613, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission (OESC), the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was off work for some time due to an injury. He was released to return to work in July 2015. For some reason, the employer would not put him back to work or even communicate with him. In August, the claimant decided to file for unemployment benefits. He received benefits from the end of August until mid-October. At that time, a new employee at the employer's place of business realized that the claimant should have been allowed to return to work in July. The claimant was called to work and the employer decided to give him back pay to make amends for its failure to allow him to return to work earlier. The OESC found the claimant to be overpaid unemployment benefits during the weeks for which he received back pay.

Section 2-105.1 of Title 40 states that back pay received by a claimant shall be subtracted from the benefit amount drawn by him in each week in which he is placed on furlough or work stoppage by his employer, when such furlough or work stoppage is due to a lapse in appropriations, funding or budget shortfall affecting the employer. Those are not the reasons the claimant was off work. Accordingly, the Board of Review finds the back pay should not be subtracted from his benefits, nor should he be overpaid for that amount.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The Commission is instructed to rescind the claimant's overpayment.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 15-AT-01325-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **NOVEMBER 28, 2014**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant is not able and/or available to work and therefore is not eligible for benefits as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant has restrictions on the type of work he can perform due to a lower back injury. His most recent employment was as a heavy equipment operator. He is released for light duty work, but the employer has none available. He has been seeking employment in some type of light duty occupation, such as cashiering. The Hearing Officer found that since he has no experience in that area, he is not able to work. However, he does have significant experience as a weighmaster, and is seeking work in that capacity, also. Additionally, the Board of Review does not find that a certain level of education or experience is necessarily a prerequisite to obtain a job as a cashier. The claimant does have a high school education and so should possess the basic skills needed for a cashiering job. Accordingly, the Board finds that the claimant is able to perform some work duties in keeping with his education and experience.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is REVERSED. The claimant is eligible for benefits effective October 12, 2014, as long as he meets all other requirements of Title 40.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **15-AT-08135-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **JUNE 12, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer did not participate in the hearing. The administrator said this was due to the Notice of Telephone Hearing being mailed to their corporate address instead of their physical address. The record shows that the Notice was correctly mailed to the employer's address of record on file with the Commission by employer account number. While it is unfortunate that the corporate office did not forward the Notice to the administrator, it is considered to be within the control of the company to handle its mail in a timely manner. Therefore, the Board of Review cannot find good cause to reopen this matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-1-15 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **16-AT-08791-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **JULY 6, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant's appeal to the Board of Review was a day late. She said it was because of flooding in Lawton. Her car suffered major damages and she was unable to get a ride to the Post Office until a day after the appeal period expired. Under the circumstances, the Board finds it was beyond her control to have filed the appeal on time, and so she had good cause for the untimely appeal to the Board.

Her appeal to the Appeal Tribunal was also untimely. She said she received the Notice of Determination in a timely manner, but she did not read the instructions fully about her appeal deadline. She was unaware she only had 10 days in which to appeal the Determination. That is not considered to be a situation beyond her control. Therefore she did not have good cause to file that appeal late.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-1-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-01150-BR

In Re: Claim of:

CLAIMANT

EMPLOYER

SSA #

Date of Commission's Appeal to Board: **DECEMBER 14, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Director, _____, reversing and modifying the Commission's determination by finding the claimant was separated from employment due to compelling family circumstances, and allowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was employed as a teacher. In October 2014, her fiancé obtained work in California and moved there. In January 2015, the claimant informed her employer that she was getting married and would not be returning to work there for the fall semester. She worked until the spring semester ended in May 2015 at which time she quit. She was married in July 2015 and moved to California.

Section 2-210 states that a claimant who separates from work due to "compelling family circumstances" is eligible for benefits. "Compelling family circumstances" may include moving with a spouse who has been transferred to or obtained employment outside the claimant's commuting distance. The Appeal Tribunal found that because the claimant continued to be paid until September 2015, she was still employed through that date. Accordingly, the Appeal Tribunal ruled that since she was employed at the time she married, her job separation was due to compelling family circumstances.

Although the claimant's pay was divided up so that she was paid each month for a year, she was not performing services after school was out in May. The fact that she was still receiving payments did not make her employed. It is common for a person to leave a job and not receive his or her final pay until some days or weeks later. She could have immediately accepted employment elsewhere even though she still had pay coming to her from Edmond Public Schools. She resigned in January 2015, and actually separated from employment in May, two months before she was married. She quit in anticipation of moving with her future spouse. Although she certainly had a good personal reason for quitting, it did not fall within the guidelines of Section 2-210.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-404 as the applicable Section of Title 40. The claimant is disallowed benefits effective week ending September 26, 2015, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER
OESC LEGAL DEPT
ADJUDICATION CTR

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 1-25-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-03082-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JANUARY 28, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was a deputy sheriff. He signed a Code of Conduct which provided in part that, "I am expected to follow all laws, both on and off duty, and conduct myself in such a manner as to avoid charges/convictions . . ." and "I understand that I am expected to refrain from any behavior, which could reflect negatively on MCDC [Muskogee County Detention Center]." Further, it stated, "I understand . . . I am subject to call when needed." (Employer Exhibit 1.)

The claimant was discharged due to a criminal arrest for DUI (driving under the influence). The claimant admitted he was driving under the influence of alcohol, although at the time of the hearing he had not yet had his court date or been convicted. The Hearing Officer found that merely being arrested for DUI does not reflect negatively on the Sheriff's office. The Board believes that it does. Additionally, the claimant was in no condition to be called to duty if needed. The Board finds that the claimant did violate the Code of Conduct and his discharge was due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is denied benefits effective week ending December 12, 2015, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-05951-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **APRIL 18, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer reversing the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged because the employer felt the claimant's acts of saying he did not have time to be in a meeting and leaving that meeting early constituted misconduct. He had worked there for almost 30 years and had never received a warning about his work performance. His actions were not a material or substantial breach of his job duties, responsibilities or obligations to his employer. The Board of Review does not find that his discharge was due to misconduct as defined in Section 2-406(B).

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective February 14, 2016.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 5-27-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-06097-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: JUNE 27, 2016

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant's wages from Skyline Directional Drilling are not exempt from unemployment taxes and should be added to her claim for benefits in accordance with Section 1-208, Section 1-209, Section 1-210, Section 1-228, and Section 2-207, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

Section 1-210(14) suggests that a rebuttable presumption supporting employment relationship existed in this case. Section 1-210(15) does not exclude the employment of the claimant from being considered an employment relationship. All of the following assertions were rebuttable:

1. The claimant had an employment agreement - she was an "at will" employee.
2. The claimant made no capital contributions to the company.
3. The company directed the claimant's work.
4. The claimant could not bind the company to any agreement.
5. The claimant received no guaranteed payment from the company.
6. The claimant had taxes withheld from her checks.
7. The claimant's income was not based on company profits.

The Commission asks for the matter to be remanded for further hearing so that Skyline Directional Drilling ("Skyline") can be present and participate in the proceedings. If the Commission wanted to produce evidence to rebut presumption of employment, someone from Skyline could have been brought to testify or rebut or deny the claimant's testimony. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Since Skyline could have been called to testify at the hearing, the Board does not find it appropriate to reopen the matter to obtain such testimony now.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **16-AT-06103-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **APRIL 22, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged due to attendance issues. She had been warned several times about her tardiness in reporting to work. In the last incident, she missed her entire shift and did not call in until two hours after the end of that shift. She testified that she had overslept due to the effects of her prescription medication for depression. She had never told the employer that she was taking such medications, nor had she informed the employer about her illness. She did not request any accommodations for her illness, even when the employer told her that she was being terminated due to her continual attendance problems. She was discharged for unapproved or excessive absenteeism or tardiness, which constitutes misconduct under Section 2-406(B)(2).

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending January 9, 2016, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-06203-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: APRIL 26, 2016

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Chief Hearing Officer, finding the employer failed to show good cause for non-appearance at the hearing scheduled on APRIL 11, 2016, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on APRIL 12, 2016, which reversed and modified the Commission's decision and found that the claimant was discharged from his last employment but not for misconduct connected with the work and allowed benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer sent a fax on April 18 stating that he missed the hearing because he was "unavailable due to my work schedule for the phone hearing. I was out of town in the field on a job site." This explanation was perhaps overlooked by the Appeal Tribunal, which then sent him a letter asking him to explain why he missed the hearing. The employer responded on April 26, saying that he "was in a position where I was unavailable. I was out of town in the field where my cell phone did not receive a signal." The response seems to have been missed by the Appeal Tribunal because it rendered a decision on April 27 saying that no response had been received, and therefore good cause had not been shown to reopen the hearing.

The Board of Review finds the employer did provide an explanation for the reason he missed the hearing. However, the reason did not amount to a situation beyond the employer's control, since he was aware of the date and time the hearing was to take place. He could have either rearranged his work schedule, or asked the Appeal Tribunal for a continuance of the hearing due to his work. Since he has not shown that it was beyond his control to have participated in the hearing, the Board agrees that good cause to reopen the case has not been shown.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152**

Docket No. 16-AT-06415-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **APRIL 28, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for excessive absenteeism and performance issues. Her attendance could be described as erratic. She continually refused to follow specific instructions from her supervisors, which resulted in her work having to be repaired and in monetary damage to the employer. Excessive absenteeism is considered to be misconduct under Section 2-406. Additionally, her intentional failure to follow instructions or, at the very least, her indifference to or neglect of her duties constituted a material and substantial breach of her job duties and responsibilities to her employer. The evidence shows the claimant was discharged due to misconduct connected with her work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending February 27, 2016, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-25-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and postage of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-06415-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **APRIL 28, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for excessive absenteeism and performance issues. Her attendance could be described as erratic. She continually refused to follow specific instructions from her supervisors, which resulted in her work having to be repaired and in monetary damage to the employer. Excessive absenteeism is considered to be misconduct under Section 2-406. Additionally, her intentional failure to follow instructions or, at the very least, her indifference to or neglect of her duties constituted a material and substantial breach of her job duties and responsibilities to her employer. The evidence shows the claimant was discharged due to misconduct connected with her work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending February 27, 2016, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-25-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and postage of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-06727-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MAY 4, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant argues that he did not quit his job, but was discharged. He admits that he turned in his two-week notice. The employer decided to accept the notice immediately and did not allow him to work out the notice period. The fact remains the claimant initiated the job separation when he turned in his notice. A job separation under these conditions does constitute a resignation, not a discharge.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 3-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 6-27-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-07947-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 17, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant quit her job because she was not being paid on a regular basis. The owner had not paid her for over two months at the time she finally quit. The claimant has shown good cause connected to the work for quitting.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective March 6, 2016.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-1-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-08213-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **JUNE 17, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged after working less than five months because he had not yet obtained his Commercial Driver's License (CDL), which was a requirement for the job. He tried four times to get his license but failed the test each time. He was diligent in his efforts but simply could not pass the test. While the employer certainly may have had good business reasons for discharging him, no evidence of misconduct has been shown.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective April 24, 2016.

COPY TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7-14-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-08370-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **JUNE 27, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant was discharged for insubordination. She and a co-worker were having a disagreement. Her manager asked her to come into his office, but she refused to do so. He asked again and she refused a second time. She said she refused because she had been in many "unproductive and intimidating" meetings with him in the past, and she did not want to have another meeting. She was then discharged. Her refusal to comply with a reasonable request of her employer did constitute misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **REVERSED**. The claimant is disqualified from receiving benefits effective week ending April 30, 2016, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-08409-UCFE-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 21, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant was employed as an Aerospace Engineer at Tinker Air Force Base. He was charged with four criminal charges regarding domestic abuse, which was not alleged to have occurred on base or to have been job-related. Because of these charges, the employer ultimately made the decision to deny the claimant access to the base. Because the claimant had no access to the base, he could not do his job. The criminal charges have not been tried and substantiated. At best, the employer's decision based on the charges was premature. At this time, before determination of charges, misconduct has not been established as the reason for discharge.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective April 24, 2016.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-08485-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JUNE 23, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for violating written company policy and protocol regarding money transfers. She had received a call from a woman stating that she was with the corporate office. The woman instructed the claimant to process two sizeable money transfers even though the written policy stated that money transfers were not to be conducted unless the person requesting the transfer was at the store. When the district manager called the claimant asking about the transactions, he specifically asked her if the person was in the store. She replied that the person was there. The employer later learned the transactions were fraudulent, that the claimant had violated written policy and then did not tell the truth about it. The claimant was then discharged.

The claimant asserted she was not guilty of misconduct because she reasonably believed the call had come from the corporate office and seemed to be legitimate. But such a situation is exactly the reason the employer had a written policy in place regarding money transfers. If the claimant had simply followed the written policy, then she would not have had to make a judgement call that could have resulted in a large loss of money for the employer. Her actions were a breach of her job duties, responsibilities and obligations pursuant to her employment. Afterwards, when questioned by her district manager, she was dishonest about it. The evidence shows she was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending May 7, 2016, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-09266-UCX-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **JULY 15, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In her appeal to the Board of Review, the claimant said the reason her appeal was late was because the Post Office delivered the Appeal Tribunal Decision to the wrong address. At the hearing, however, she offered no such testimony. She testified under oath that her appeal was late because she had been out of town for two weeks and she did not return home until the appeal period had expired. Before she returned home, her mother told her that she had received mail from the Commission. She did not ask what the mail was about.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-9-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-09488-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **JULY 27, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Chief Hearing Officer, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on JULY 14, 2016, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on JULY 15, 2016, which found the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant said she missed the hearing because of stress caused by the death of her father a week prior to the hearing, frustration over not being able to find a job, financial worries, and medical issues. She did not ask for a postponement of the hearing. While it is certainly understandable that she was under stress and preoccupied with all these issues, she did not establish that it was beyond her control to have called in for the hearing. In fact, she did call in about two hours after the scheduled start time for the hearing, but by that time it was too late for her to participate.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-9-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-09770-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: JULY 25, 2016

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on JUNE 28, 2016, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on JUNE 9, 2016, which found the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

On June 24, 2016, the claimant requested that his hearing of June 27 be rescheduled due to a job interview. Since his hearing was actually scheduled for June 28, not June 27, his request was denied. The claimant did not explain that the interview was a three-day process. If he was selected for the second interview, it would take place on June 28. When he called the Appeal Tribunal on June 28 to provide further explanation, he had already missed his hearing.

A show cause hearing was held on July 25 so that the claimant could testify about the reason he missed the June 28 hearing. He testified that he did not explain about the three-day interview process because he felt it was "unnecessary" and that he did not think the Appeal Tribunal needed to know that information. The Hearing Officer ruled that the claimant did not take reasonable steps to appear for the hearing because he chose to withhold information that was fundamental to the decision of whether or not to grant his request for continuance.

Based on the information the claimant provided to the Appeal Tribunal in his continuance request, the decision to deny that request was reasonable and proper. If the claimant had more fully explained his reason for making the request, no doubt the request would have been granted. However, the fact remains that the claimant missed the June 28 hearing because he was in a job interview. That has traditionally been considered to be good cause for non-appearance at a hearing.

The Board of Review concludes that the Appeal Tribunal decision should be reversed. This case should be remanded to the Appeal Tribunal for a full hearing after which a new decision shall be issued addressing first the show cause issue for the hearing scheduled for June 9, 2016; and then, if necessary, the merits of the case using all records, testimony and evidence contained in the file.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REMANDED to the Appeal Tribunal as instructed above.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **16-AT-11510-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **SEPTEMBER 16, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming but modifying the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged when the employer learned that the claimant's driver's license had been suspended. The claimant was required to inform the employer of the suspension but had not done so. His license was mistakenly suspended by the Department of Public Safety as the result of an error by the Kay County Court Clerk's Office. Notice of this suspension was sent to the claimant's parents' home. The claimant did not receive this notice. Therefore, he was not aware that his license had been mistakenly suspended. No rule has been cited that would charge the claimant with constructive notice of suspension. Because of the claimant's lack of knowledge, he could not reasonably notify his employer of the suspension. For that reason, misconduct has not been shown.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective July 24, 2016.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-12050-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 3, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for failure to wear the required uniform to a customer's place of business. He said that he forgot to wear the uniform pants because he normally did deliveries, not clean-outs. An isolated incident of failure to wear such gear by an employee who had worked for the employer for nine years does not rise to the level of misconduct as defined in Section 2-406 (B).

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective August 7, 2016.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **16-AT-12413-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 21, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant intentionally did not report earnings and as a result received benefits to which he was not entitled in the amount of \$4580.00, which must be repaid plus interest. Since the overpayment was found to be due to fraud, the claimant is ineligible to receive benefits effective week ending September 3, 2016, and the next following 51 weeks. The determination was done in accordance with Section 2-402 and Section 2-613, Title 40, Okla. Stat., as amended.

This matter is submitted on the Appeal Tribunal decision and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant did not call in for the hearing. He had obtained work in Colorado but did not change his address with the Commission, so he did not get the Notice of Hearing. Since it was not beyond his control to have changed his address or to have someone check his mail, the Board of Review does not find good cause to reopen this matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The record shows the claimant has repaid the overpayment, but he is still ineligible for benefits effective week ending September 3, 2016, and the next following 51 weeks.

COPIES TO: CLAIMANT
EMPLOYER
BPC INVESTIGATIONS

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok Stat.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-12674-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **OCTOBER 7, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, finding the employer failed to show good cause for non-appearance at the hearing scheduled on SEPTEMBER 12, 2016, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on SEPTEMBER 12, 2016, which found the claimant was discharged from her last employment but not for misconduct connected with the work. Benefits were allowed in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the Appeal Tribunal decision and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer did not appear for the hearing. The employer's representative was ill on the day of the hearing, and although she tried to get to the office in time to participate, she was unable to do so due to uncontrollable vomiting. Under the circumstances, the Board finds good cause for the employer's non-appearance.

The Board of Review concludes that the Appeal Tribunal decision should be reversed. This case should be remanded to the Appeal Tribunal for a full hearing after which a new decision shall be issued addressing the merits of the case using all records, testimony and evidence contained in the file.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REVERSED and REMANDED to the Appeal Tribunal as instructed above.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-00291-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 12, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The Commission disallowed benefits by finding the claimant voluntarily quit when the employer discovered that she had pawned a school laptop. The Commission found the claimant quit in anticipation that she would be discharged for the incident. The Appeal Tribunal found that the claimant quit because she did not want to transfer to another school. No testimony was taken regarding the laptop. The Board finds there is confusion about the reason for separation.

Additionally, the claimant was not allowed to question _____, the Executive Director of Human Capital. The employer had Mr. _____ present at the hearing but did not have him testify. The claimant was not allowed to question him because the employer had not done so. Employer's Exhibit 1 appears to have a handwritten comment made by Mr. _____ regarding the claimant's eligibility to work for _____. The claimant should have been allowed to call a witness who was present for the hearing and available to testify.

The Board of Review concludes that this case should be remanded to the Appeal Tribunal to reconvene the hearing for the purposes of (1) clarifying the reason for separation, and (2) to allow the claimant to question Mr. _____ regarding her eligibility to continue working for the school system if she had not resigned. Afterwards, a new decision shall be issued addressing the merits of the case using all records, testimony and evidence contained in the file.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REMANDED to the Appeal Tribunal as instructed above.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-08299-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 20, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer. affirming the Commission's determination by finding the claimant was not separated from employment due to compelling family circumstances, and disallowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

As a result of an injury the claimant suffered on the job, she has been placed on permanent medical restrictions, which the employer is not willing to or is unable to accommodate. Because her restrictions are permanent, by definition they will not change over time. As such, the claimant has been separated from her employment due to compelling family circumstances as defined in Section 2-210.

This decision is distinguishable from the Board's decision in 15-AT-05754-BR, which dealt with a claimant unable to work due to temporary restrictions. In that case, it was contemplated that the claimant's restrictions would be removed at a later time, allowing the claimant to return to her employment.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective April 24, 2016, as long as she meets all other eligibility requirements.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-31-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-12548-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 13, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged when he forgot to honk the horn on his forklift when going around a corner. In the past, he had been told to honk if he saw people present in the area. Two days prior to his termination, he was told to honk every time he went around a corner, even if there was no one else present. There was no harm or damage done to any person or property in this incident. The only evidence presented shows the claimant made a one-time mistake, which does not amount to misconduct as defined in Section 2-406.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective August 21, 2016.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok Stat.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-12765-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **OCTOBER 21, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing and modifying the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant voluntarily accepted an early retirement incentive plan. There was no testimony given that layoffs were imminent. There was no evidence that she quit due to bad working conditions. The plan was offered to her, but she was not required to take it. Her departure from Cimarex Energy Company was strictly voluntarily, and she did not show good cause connected to the work for quitting.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending July 30, 2016, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-611, Title 40, Ok. Stat.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-00361-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 7, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

According to the claimant's unrefuted testimony, she quit her job after being repeatedly harassed by her supervisor. This harassment constituted unfair treatment which meets the definition of good cause set out in Section 2-405.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **REVERSED**. The claimant is allowed benefits effective September 11, 2016.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-10411-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **SEPTEMBER 28, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Chief Hearing Officer, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on JULY 6, 2017 in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on JULY 20, 2017 which found the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on JULY 28, 2017. The Board of Review received communication from the claimant faxed on SEPTEMBER 28, 2017, appealing the decision to the Board of Review. She states that she made a mistake and that due to her living in a rural area, this was her first opportunity to use a fax. Since the decision mailed to the claimant gives several different ways to appeal, this cannot be considered good cause. This appeal was not filed within the time provided by law and the appellant has not shown good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown.”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-10849-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **AUGUST 14, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant injured his hand and was unable to work. The employer gave him Family and Medical Leave Act (FMLA) paperwork to be completed by his doctor. The claimant gave the paperwork to his doctor and paid for it to be completed. After some time had passed, the employer told the claimant that the FMLA paperwork had not been received. The claimant contacted his doctor's office and was told that the paperwork had been faxed to the employer, and was told it would be faxed again.

After more time went by, the employer informed the claimant that the FMLA paperwork still had not been received. He was told that if the paperwork was not received by June 7, he would be terminated. The claimant again contacted his doctor's office, and was told the paperwork had been sent for the third time. However, the employer never received the required documentation and subsequently discharged the claimant.

It was the claimant's responsibility to ensure that his employer received the FMLA paperwork. He did contact his doctor's office about it. However, after being told that his job was in jeopardy due to the employer having not received the paperwork, the claimant should have escalated his efforts to get the documentation into his employer's hands. For instance, the claimant could have gone to the doctor's office and picked up a copy of the papers so that he could have delivered it to the employer in person. He was given more than a month to get the required paperwork to his employer, but did nothing more than call the doctor's office. Since he did not provide the documentation necessary to excuse his absences, he was discharged due to unapproved or excessive absenteeism.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is denied benefits effective week ending June 24, 2017, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-12069-BR**

In Re: Claim of:

CLAIMANT

EMPLOYER

Date of Appeal to Board: **SEPTEMBER 25, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on SEPTEMBER 12, 2017. The Board of Review received communication from the claimant postmarked on SEPTEMBER 25, 2017, appealing the decision to the Board of Review. The claimant's appeal was late. The claimant stated that she has found employment and couldn't be on the phone at work. Filing an appeal to the Board of Review does not require the use of a phone. This appeal was not filed within the time provided by law and the appellant has not shown good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses. or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-12231-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **SEPTEMBER 19, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing and modifying the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant sustained a serious injury which caused him to miss work several months. He was then released for light duty. As the employer did not have a position that met his restrictions, the claimant was placed on leave. The employer has continued to pay the claimant's insurance premiums and will allow him to work as soon as he is fully released to perform his job duties.

The employer cited Rule 240:10-3-29 in "The Rules for the Administration of the Oklahoma Employment Security Act" as argument that the claimant should be denied benefits. That Rule states that if the employer will allow the claimant to return to work once his doctor releases him for work, then the claimant is deemed to be job attached and not separated from employment. In this case, the evidence shows that although the claimant does have restrictions on the type of work he can do, he has nevertheless been released to work with those restrictions. The employer does not have work available within those restrictions. Therefore, that Rule does not apply in this case, nor does Section 2-210. Although the employer has continued to pay the claimant's insurance premiums, the claimant is not performing any services for the employer and is deemed to be unemployed. Since the claimant is willing to work within his restrictions but the employer does not have that type of work available, the Board finds that the claimant has been discharged. Since the discharge was not due to misconduct, benefits are allowed.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-12381-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **OCTOBER 4, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the employer on SEPTEMBER 22, 2017. The Board of Review received communication from the employer faxed on OCTOBER 4, 2017, appealing the decision to the Board of Review. The employer states that the appeal was late because the office manager was off work and she failed to advise other office personnel of the time sensitive documents. While unfortunate, this oversight on the part of the employee does not constitute good cause. This appeal was not filed within the time provided by law and the appellant has not shown good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-12544-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 15, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on SEPTEMBER 27, 2017. The Board of Review received communication from the claimant faxed on NOVEMBER 15, 2017, appealing the decision to the Board of Review. This appeal was not filed within the time provided by law. The claimant said her appeal was late because it took her some time to contact other employees for information regarding her separation. However, it was not necessary for her to do that in order to file an appeal. Since it was within her control to have filed her appeal on time, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown.”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-12881-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 26, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Chief Hearing Officer, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on OCTOBER 4, 2017, in accordance with Rule 240:10-13-40 of "The Rules for the Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on OCTOBER 4, 2017. That decision found that good cause was not shown for the untimely filing of the claimant's appeal to the Appeal Tribunal, and dismissed the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the Appeal Tribunal decision and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal and the Board of Review pertaining to this appeal.

The claimant's appeal to the Board of Review was late. He first mailed his appeal to the Board on October 17, which would have been timely filed. However, he mailed it to the Board's street address rather than the post office box. The post office refused to deliver it and returned it to the claimant. While the claimant should have used the post office box number to mail his appeal, the Board notes that letters have been delivered to the street address until recently. In this specific case, the Board finds good cause for the late appeal.

The claimant did not call in for the hearing on October 4. He sent a letter to the Appeal Tribunal stating that he was busy working at a new job and "completely forgot to call in." The Appeal Tribunal found that forgetting is not considered to be good cause for missing a hearing. He then appealed to the Board of Review, again stating that he was very busy at work on the day of the hearing. But this time he said that he was in the middle of a pre-bid conference that was "dropped in [his] lap . . ." about 30 minutes prior to the hearing. He was not comfortable telling his employer that he needed to call in for an unemployment hearing instead of doing his work, so he missed the hearing.

There is quite a bit of difference in completely forgetting about the hearing, and not being able to call in because he was working. In this case, the claimant said the conference "was dropped in [his] lap . . ." indicating that the assignment was unexpected. But if he had intended to participate in his hearing, it seems that he would have already asked the employer for permission to do so more than 30 minutes ahead of time. Since he had not made those arrangements, the Board is persuaded that the claimant did not participate in the hearing because he had forgotten about it, as he stated in the first letter he sent in asking for a new hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-12910-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **OCTOBER 13, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was not able and/or available for work during the week ending June 10, 2017, through the week ending September 2, 2017, and therefore was not eligible for benefits for those weeks as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant gave contradictory answers, both in the written statements provided to the Commission and in her sworn testimony at the hearing, pertaining to her ability to work due to the mental stress of her father's murder and the subsequent trial. She also gave contradictory answers about her availability to work due to the District Attorney's request that she attend the trial. Because of the inconsistency of the information she provided, the Board does not have enough evidence to change the Appeal Tribunal's decision.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 11-21-17 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-13142-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 16, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was not separated from employment due to compelling family circumstances, and disallowing benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant worked for this employer as a cook for close to three years. He developed problems with his neck, which caused his doctor to place restrictions on his ability to work. He has a weight restriction of lifting no more than 10 pounds and a limit on his right arm rotation. The claimant worked at this job for over a year with these restrictions. But when he called in to say he was going to the doctor on August 10, 2017, the employer told him that he would not be put on the work schedule again until he brought a full medical release with no restrictions. The employer felt the claimant's condition was getting worse and he did not want to be liable for any further injury to the claimant. The claimant said the restrictions are permanent; it is possible that surgery might resolve the problems but the claimant's insurance has denied his request for the surgery twice. Therefore, at least for the foreseeable future, the claimant will continue to have these restrictions.

Since the evidence shows that the claimant has worked for over a year with these same restrictions, and now the employer refuses to let him work under the same conditions, the Board of Review finds that the claimant is not still "job attached." Since the employer initiated the job separation, the claimant has been discharged. Because no evidence was presented to show misconduct connected to the work, the claimant is allowed benefits.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-406 as the correct statute. The claimant is allowed benefits effective August 27, 2017

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-00260-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 7, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was terminated for mistakenly preparing a surgical consent form that was not Medicaid approved, which resulted in a loss of money for her employer. This was an isolated incident. No evidence was presented to show this act was intentional, malicious, dishonest or a material breach of the claimant's job duties. It was simply a mistake. The claimant's actions do not meet the definition of misconduct set out in Title 40, Section 2-406.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective September 4, 2016.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-00375-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 22, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily quit her last employment without good cause connected with the work and denying benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant appeared at the first hearing and offered testimony about her job separation. The hearing was continued to another date to obtain more information. The claimant did not participate in the second hearing because she made a mistake about the time it was to take place. Under these circumstances, the Board of Review does not find good cause to reopen the hearing at this point.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-00863-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **FEBRUARY 3, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on NOVEMBER 10, 2016. The claimant filed an appeal on FEBRUARY 3, 2017. This appeal was not filed within the time provided by law. The claimant said his appeal was late because he did not understand the procedure until he got in touch with the Service Center. He could have contacted the Service Center within the 10-day appeal period rather than waiting over two months to do so. Since the claimant did not establish that it was beyond his control to have filed his appeal on time, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-01447-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **DECEMBER 9, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant was discharged for being habitually late and for poor work performance. The employer testified the claimant did not work well with her co-worker with whom she shared job duties, and that she did not do her work correctly. The claimant admitted that she had been warned about these things. Employer's Exhibit 1 verifies the employer's contention that the claimant was frequently late. The Board of Review finds the employer did meet the burden of showing the claimant was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is denied benefits effective week ending September 24, 2016, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-01879-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JANUARY 17, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, granting the withdrawal of the employer's appeal to the Commission's determination finding the claimant was discharged from last employment but not for misconduct connected with the work, and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

In the appeal from TALX UCM Services to the Board of Review, the representative said the employer did not withdraw its appeal, but instead requested a continuance. The reason for the request was because the claimant appeared with his attorney. Accordingly, the employer's spokesperson at the hearing, the Human Resources Director, did not want to proceed without an attorney. The Human Resources Director could have arranged for an attorney to appear at the hearing, just as the claimant did. It appears the only reason the Human Resources Director did not have an attorney present was simply because she did not realize the claimant was going to have an attorney represent him. That is not good cause to grant a continuance. When the Hearing Officer informed the Human Resources Director that she was not going to grant a continuance, and asked if the employer wanted to withdraw its appeal, the Human Resources Director said yes. The Hearing Officer asked the Human Resources Director if she realized that if she did withdraw, that she could not come back later and file another appeal or have the case reopened. The Human Resources Director replied that she understood. It was her choice not to go forward with the hearing. The fact that the employer has now changed its mind regarding the withdrawal is not good cause to reopen this matter.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal to dismiss the appeal is **AFFIRMED**.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-02278-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **DECEMBER 27, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant offered testimony that she resigned due to health issues related to a chemical used at her place of employment. This testimony was not refuted. The claimant bears the burden, upon resigning, of proving her leaving was for good cause. Good cause has been defined by Oklahoma law (40 O.S. 2-405) as including a job working condition that has changed to such a degree that it is so harmful to the individual's health that leaving work was justified. The only testimony provided to the Appeal Tribunal indicates that the claimant's resignation was initiated by a health-related issue brought on by chemicals used at the workplace. As such, good cause has been established for the claimant quitting her job.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective October 23, 2016.

COPY TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-02447-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **DECEMBER 21, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for excessive absenteeism. The employer's policy stated that over five absences in a 12-month period were considered to be excessive. She had been absent six times in a 12-month period. The claimant's last absence was due to a medical emergency with her fiancé. The employer's policy did provide that emergency situations or those situations beyond the employee's control may be exempt from the policy at the employer's discretion. (Employer Exhibit 1.) While her absences were excessive under the employer's policy, Webster's New College Dictionary defines excessive as "exceeding what is proper, normal, or reasonable." Under these specific circumstances, the claimant's last absence was not improper or unreasonable. While the employer may certainly have had good business reasons for discharging the claimant, the evidence as presented did not establish that the claimant was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective October 23, 2016.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-02659-CO-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JANUARY 2, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant not able to work and not eligible for benefits as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant sustained an injury which resulted in a lifting restriction of 25 pounds. While he is not able to perform the functions of his last job as a sanitation worker, he is able to perform other types of work. He has experience working in fast food establishments, and that type of work does not always require heavy lifting. The Board of Review finds that the claimant is able to work in at least one type of job in which he has previous work experience.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is eligible for benefits effective November 6, 2016.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-02792-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **MARCH 28, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on JANUARY 5, 2017. The Board of Review received communication from the claimant faxed on MARCH 28, 2017, appealing the decision to the Board of Review. This appeal was not filed within the time provided by law. The claimant said the appeal was late because she went out of town around January 1st to care for an ailing aunt. She did not return to her home and get her mail, which included the Appeal Tribunal decision, until the middle of March. The claimant's hearing was held on January 4. The Hearing Officer told her that the decision would be mailed to her within 10 to 14 days, and that she would only have 10 days in which to appeal to the Board of Review if she wished to do so. The claimant was aware that she would need to check her mail or at least call the Appeal Tribunal to find out the outcome of the hearing, but she did not do so. Even after reading the decision in the middle of March, she still delayed filing her appeal until the end of the month. The claimant has not established that it was beyond her control to have filed her appeal in a more timely manner. Therefore, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the 10-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

COPIES TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-02912-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JANUARY 17, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing and modifying the Commission’s determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant’s attorney submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, “If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand.” Therefore the new documentation could not be considered by the Board when examining this case.

In his appeal to the Board of Review, the claimant’s attorney asserted the claimant did not receive due process because the attorney was not notified of the hearing. The record shows the claimant was notified. There is nothing in the record to indicate the claimant had informed the Appeal Tribunal she had an attorney or that she wanted notice sent to an attorney. At the hearing, the claimant was asked if she had received a packet of documents from the Appeal Tribunal. She said she did receive them, but that she had sent them to her attorney. When the Hearing Officer asked why the attorney had not called in for the hearing, the claimant said she did not know, and that she was unaware that he was supposed to call. The Hearing Officer then asked the claimant if she had expected the attorney to participate in the hearing, and she said no. The Board of Review concludes that since the claimant did not let the Appeal Tribunal know that she wished to have notification sent to an attorney, and she did receive notification herself, she did receive due process.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-03443-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JANUARY 27, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was originally mailed to the claimant on January 10, making the claimant's fax to the Board of Review on January 27 an untimely appeal. However, the claimant submitted the envelope that the Appeal Tribunal decision was mailed in, showing a postmark date of January 23. There appeared to be a problem with the claimant's address. The Board of Review can only surmise that the Appeal Tribunal decision was re-mailed to the claimant on January 23, making her fax of January 27 a timely appeal. Therefore, the Board of Review accepts the appeal as valid and timely.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant worked for this employer for over 13 years. Her last position was as an Assembler. In 2016 the claimant accumulated an excessive number of points as a result of assembly errors, and was terminated for that reason. The Appeal Tribunal found her actions to rise to the level of misconduct, citing Section 2-406 (B)(3): "Indifference to, breach of, or neglect of the duties required which result in a material or substantial breach of the employee's job duties or responsibilities . . ." However, it appears that the claimant put forth significant effort at her position. She performed at the required level on multiple occasions. On some occasions she was unable to reach the required level of performance. However, the effort put forth by the claimant was sufficient to overcome a finding of neglect of duty. (See 15-AT-08734-UCFE-BR in the OESC Precedent Manual.)

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective November 20, 2016.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-03443-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JANUARY 27, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was originally mailed to the claimant on January 10, making the claimant's fax to the Board of Review on January 27 an untimely appeal. However, the claimant submitted the envelope that the Appeal Tribunal decision was mailed in, showing a postmark date of January 23. There appeared to be a problem with the claimant's address. The Board of Review can only surmise that the Appeal Tribunal decision was re-mailed to the claimant on January 23, making her fax of January 27 a timely appeal. Therefore, the Board of Review accepts the appeal as valid and timely.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant worked for this employer for over 13 years. Her last position was as an Assembler. In 2016 the claimant accumulated an excessive number of points as a result of assembly errors, and was terminated for that reason. The Appeal Tribunal found her actions to rise to the level of misconduct, citing Section 2-406 (B)(3): "Indifference to, breach of, or neglect of the duties required which result in a material or substantial breach of the employee's job duties or responsibilities . . ." However, it appears that the claimant put forth significant effort at her position. She performed at the required level on multiple occasions. On some occasions she was unable to reach the required level of performance. However, the effort put forth by the claimant was sufficient to overcome a finding of neglect of duty. (See 15-AT-08734-UCFE-BR in the OESC Precedent Manual.)

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective November 20, 2016.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-03654-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **FEBRUARY 10, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed on JANUARY 27, 2017. The Board of Review received an appeal from the claimant faxed on FEBRUARY 10, 2017. The appeal was not filed within the time provided by law. The claimant's attorney said the appeal was late because she used the wrong statute to calculate the ten-day appeal period. In the "Rules for the Administration of the Oklahoma Employment Security Act," Rule 240:10-1-3 explains how to compute any period of time allowed by the Act. In this case, the mailing date of the Appeal Tribunal decision is not included as one of the ten days. All intervening days between the beginning and end of the time period are counted unless the tenth day falls on a weekend or holiday. In that event, the period runs until the end of the next day which is not a weekend or holiday. Rule 240:10-13-37 states that good cause is a situation beyond the control of the parties, and that good cause will not be found if the failure to act is due to the negligence or inattentiveness of the party's attorney. Since the claimant has not shown that it was beyond her control to have filed the appeal on time, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-03792-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JANUARY 31, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In her letter of appeal to the Board of Review, the claimant complained that the hearing was unfair and that the Hearing Officer would not let her speak on her own behalf. The Board of Review finds the hearing was conducted fairly and that the claimant was able to present her case well.

The claimant resigned due to dissatisfaction with her working conditions. She testified at length about the difficult working environment created by the general manager's treatment of her. Her testimony was not denied or rebutted by the employer. The employer said the claimant did not "escalate" her complaints by talking to upper management or Human Resources. However, the claimant said that she did talk to another manager who said that she would talk to upper management on behalf of the claimant and "take care of it." When nothing improved after several months, the claimant resigned. The Board of Review finds the claimant had good cause connected to the work for quitting.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective November 13, 2016.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-05098-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **MARCH 7, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment with good cause connected to the work and allowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was hired as a full-time salesperson. The employer was dissatisfied with her sales performance and found that she was not able to perform that job as required. She was discharged from that job, but was offered a job as part-time position covering the lunch break for other employees. She accepted the new position, but quit after one day to seek full-time work.

The claimant was discharged from her job, but she did not file a claim for benefits at that time. She accepted a new position but quit shortly afterward. The claimant may have had good personal reasons for quitting, but looking for a better job is not considered to be good cause for quitting under Section 2-404.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is denied benefits effective week ending January 14, 2017, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-05210-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MARCH 8, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for attendance issues. After being warned that her job was in jeopardy, she had to miss work two consecutive days due to being unable to get to work due to snow storm. The severe weather event was outside of her control and as such should not be considered as misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective January 15, 2017.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-05397-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **MARCH 14, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant failed to personally appear, when required by the Oklahoma Employment Security Commission, at a location for a purpose relevant to the individual's unemployment claim, job search, or reemployment services and therefore was disqualified from receiving benefits as provided by Section 2-420, Title 40, Okla. Stat., as amended, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was scheduled to attend a reemployment service (50% Eligibility Review Interview or ERI) to be held on January 12. On January 5, he was notified by the US Postal Service that he had been hired effective January 21. He called the Workforce office on January 5 and reported that he had obtained work. When he did not attend the ERI on January 12, the Workforce office mistakenly turned him in for missing the meeting, and he was disqualified for benefits.

The purpose of the ERI is to review the claimant's work search efforts and provide assistance with the work search. The claimant had obtained a job which was to begin in less than two weeks and had reported it to the Workforce office. The claimant should not have been denied benefits for missing the ERI.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective January 8, 2017.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-05589-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **MARCH 11, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant quit her job with _____ when her request for vacation time was denied. She had previously requested time off to go on a humanitarian relief trip scheduled for March 2016. Her request was approved but then the organization she was going with had to postpone the trip. She told her employer the trip had been rescheduled for August. A few weeks before she was to go on the trip, the employer told her that her time off was declined because she had already been gone too much. She still had vacation time available to take, so she had not taken excess leave. Money had been donated to her for the purpose of being used for this specific relief effort and all of the reservations had already been made. The evidence as presented shows that the claimant had good cause for quitting the job.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective January 22, 2017.

COPIES TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-05604-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **MARCH 24, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant voluntarily quit his last employment for good cause connected with the work and allowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's witness registered for the hearing but when the Hearing Officer called him, the person answering the phone said the witness was out making sales calls and would not be back until later. The employer has not shown any reason beyond its control for failure to participate in the hearing. Therefore, the Board of Review does not find good cause to reopen this matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 5-10-17 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-05915-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MARCH 28, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission (OESC), the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant did not call in for the hearing. He said that he talked to someone at the OESC who told him he did not have to call in for the hearing because he had already been allowed benefits. The Board believes there must have been some sort of misunderstanding as it is not credible that someone would have said that to him. Additionally, both the information booklet about appeal hearings that was sent to him prior to the hearing and the Notice of Telephone Hearing itself state how important it is to participate in the hearing. The booklet states that the Hearing Officer will make a decision based on the sworn testimony given at the hearing. It contains a whole paragraph talking about the consequences of failing to appear for the hearing. The Notice says that if a claimant has been allowed benefits but the Appeal Tribunal decision reverses and denies benefits that the claimant will be overpaid.

Based on the facts given above, the Board of Review does not find good cause for the claimant failing to call in for the hearing. The Board concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-05931-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **APRIL 14, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____ finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant tried to file his appeal by telephone on the last day of the appeal period. He was unable to get through by telephone, apparently due to problems with the agency's phone system. Along with the telephone number, the Notice of Determination also gave a fax number, a mailing address where he could have sent his appeal, and an email address he could have used. The claimant did not establish that it was beyond his control to have used one of the other methods to file his appeal.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-06501-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **APRIL 11, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the Appeal Tribunal decision and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant did not call in for the hearing which was held on April 3. She said that she had been living with her mother, and her mother did not tell her that she had received a Notice of Telephone Hearing ("Notice") in the mail until four days after the hearing date. She also changed her address on April 5, but that would not have had any bearing on her receipt of the Notice that was mailed to her on March 23. While it is unfortunate that her mother did not give her mail to her, the fact remains that the Notice was correctly mailed to her address of record, and there is no evidence to show that it was not received at that address prior to the hearing. Under the circumstances, the Board of Review does not find good cause for the claimant's failure to appear for the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted. It is therefore ordered by the Board of Review that the decision of the Appeal Tribunal is hereby **AFFIRMED**.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on _____ personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-06635-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **APRIL 24, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding there were not sufficient wages in covered employment during the base period and claimant is not entitled to benefits as provided by Section 2-207, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on APRIL 7, 2017. The Board of Review received communication from the claimant emailed on APRIL 24, 2017, appealing the decision to the Board of Review. This appeal was not filed within the time provided by law. The claimant said his appeal was late because he was waiting to get some information from an attorney. Since he has not established that it was beyond his control to have filed his appeal on time, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown.”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-06689-R-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board **JUNE 13, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on APRIL 3, 2017, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on APRIL 3, 2017, which found the claimant was discharged from his last employment for misconduct connected with the work and denied benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

After being found eligible for unemployment benefits, the claimant accepted a new job in Arizona. He apparently moved his family before having a new address. He placed his mail on hold and made the move, which took several days. Once he had made arrangements for a house, he discovered that his mail would be delivered to a community mail-box for which a new key had to be made. That process took another week. Due to delays before he could access his mail, he did not receive the Notice of Telephone Hearing until after the hearing had taken place. It is also noted that his first day on the new job was also the date of the hearing. The Board of Review finds that he had good cause to miss the hearing.

The Board of Review concludes that the Appeal Tribunal decision should be reversed. This case should be remanded to the Appeal Tribunal to issue a decision addressing the merits of the case using all records, testimony and evidence contained in the file. There is no need to reconvene the hearing as the Hearing Officer has already taken testimony from both the claimant and the employer.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REMANDED to the Appeal Tribunal as instructed above.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok Stat

CERTIFICATE OF MAILING

I certify on 8-14-17 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-06953-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **APRIL 27, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The claimant's appeal to the Board of Review was late. He stated that he did not receive the Appeal Tribunal decision. Therefore, the Board of Review finds good cause for the late appeal.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant did not call in for the hearing because he had a disagreement with a friend the evening before the hearing, and the friend destroyed his telephone. While that is unfortunate, the claimant could have gone somewhere else to use the telephone. The Board of Review does not find good cause to reopen this matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is AFFIRMED. The claimant is disqualified from receiving benefits effective week ending February 11, 2017, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-07025-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MAY 9, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer _____, reversing the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on APRIL 26, 2017. The Board of Review received communication from the claimant faxed on MAY 9, 2017, appealing the decision to the Board of Review. This appeal was not filed within the time provided by law. The claimant said his appeal was late because the business he used to send faxes had changed its hours and closed at 10:00 p.m. instead of midnight. By the time he found another place to send the fax, the appeal deadline had expired. While it is unfortunate that the business changed its hours, the claimant could have attempted to fax earlier in the evening, or could have placed his appeal in the mail. He also could have hand-delivered his appeal during working hours. The claimant did not establish that it was beyond his control to have filed the appeal on time. Therefore, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown.”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-08467-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JUNE 7, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the employer on MAY 22, 2017. The Board of Review received communication from the employer faxed on JUNE 7, 2017, appealing the decision to the Board of Review. This appeal was not filed within the time provided by law. The employer said that she was unfamiliar with the claims process and did not realize the importance of timely filing. She also said the Post Office takes around five days to deliver mail to her from Oklahoma. While that is unfortunate, the fact remains that she did receive the Appeal Tribunal decision within the 10-day appeal period and has not shown a reason beyond her control for failure to respond within the time allowed by law. Therefore, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-08584-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board **MAY 30, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for poor job performance. She had worked there for almost three years and had been a good employee. But in December 2016, she began making errors. She said she was having trouble concentrating on her work due to the serious health concerns of her father, her daughter, and her nephew; her grandfather also passed away during this time. No evidence was submitted to show that the claimant intentionally was performing poorly, or that she was indifferent to or neglectful of her duties. While the employer may have had good business reasons for discharging the claimant, the burden of showing the claimant was guilty of misconduct was not met.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective April 16, 2017.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8/14/17 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-08749-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JULY 11, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, granting the withdrawal of the employer's appeal to the Commission's determination which had found the claimant was able and available to seek and accept work, and therefore was eligible for benefits as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's representative at the hearing on May 30, 2017, told the Hearing Officer that she wished to withdraw from the hearing because her witness was not answering the telephone. The Hearing Officer did not prompt her to make that request; it was voluntary. The Appeal Tribunal issued a decision on May 31 granting the request for withdrawal and dismissing the appeal with prejudice. On June 12, the employer mailed a request asking for the hearing to be reopened. The employer said the witness had not answered the telephone when called for the hearing because she had written down the date of the hearing incorrectly. On June 16, the Appeal Tribunal issued a letter to the employer informing the company that the request was denied because the appeal had been dismissed with prejudice.

The employer now asks that the Board of Review grant its request to reopen the case because it did not realize that it had forfeited its right to reopen when it voluntarily withdrew the appeal. It is unfortunate that the employer did not realize the consequences of its request, but the fact remains that the case was dismissed with prejudice. It is noted that even if the case had been dismissed without prejudice, the explanation given for the witness's absence would not be considered as good cause to reopen the case.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal to dismiss the appeal is AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-08749-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JULY 11, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, granting the withdrawal of the employer's appeal to the Commission's determination which had found the claimant was able and available to seek and accept work, and therefore was eligible for benefits as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's representative at the hearing on May 30, 2017, told the Hearing Officer that she wished to withdraw from the hearing because her witness was not answering the telephone. The Hearing Officer did not prompt her to make that request; it was voluntary. The Appeal Tribunal issued a decision on May 31 granting the request for withdrawal and dismissing the appeal with prejudice. On June 12, the employer mailed a request asking for the hearing to be reopened. The employer said the witness had not answered the telephone when called for the hearing because she had written down the date of the hearing incorrectly. On June 16, the Appeal Tribunal issued a letter to the employer informing the company that the request was denied because the appeal had been dismissed with prejudice.

The employer now asks that the Board of Review grant its request to reopen the case because it did not realize that it had forfeited its right to reopen when it voluntarily withdrew the appeal. It is unfortunate that the employer did not realize the consequences of its request, but the fact remains that the case was dismissed with prejudice. It is noted that even if the case had been dismissed without prejudice, the explanation given for the witness's absence would not be considered as good cause to reopen the case.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal to dismiss the appeal is AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-08963-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 12, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on MAY 10, 2017, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on MAY 11, 2017, which found the claimant was discharged from her last employment for misconduct connected with the work and denied benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant did not appear for the first hearing. She had been denied under Section 2-205.1 due to the Commission finding she was not able to work. She appealed that determination; but before a hearing could be set, the Commission vacated the determination by finding it was done in error. When the claimant received notice of another appeal, she was confused and called the Commission for an explanation. The representative she spoke with told her that she did not have to call in for the hearing because she had already been allowed benefits.

In this case, the claimant admitted that she had not read all of the documentation she received about the hearing. She did not understand the portion that she did read. She called the Commission for help in understanding the documents, and was told it was not necessary for her to call in for the hearing. While it is somewhat difficult to believe that someone said that to her, she is the only person with first-hand knowledge of the call who testified at the hearing. Since the claimant did not understand the paperwork, she had to rely on the information given by the Commission employee. Accordingly the Board finds that the claimant has shown good cause for her non-appearance at the original hearing.

The record indicates that the Hearing Officer did take testimony on the job separation at the June 7th hearing. Therefore the Board of Review concludes that this case should be remanded to the Appeal Tribunal to issue a new decision addressing the merits of the case using all records, testimony and evidence contained in the file.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REMANDED to the Appeal Tribunal as instructed above.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-09137-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board **JUNE 12, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant had worked for the employer for at least 18 years. During that time the claimant was subjected to harsh treatment verbally. Until his final day the claimant had tolerated it as best he could. However, on April 27, 2017, the claimant made the decision that he was not going to take any more abuse, and quit his job.

Good cause for quitting one's employment is defined in Section 2-405 of Title 40. Subsection 1 indicates that good cause could be that one's employment "changed" to the point that an employee's health, safety or morals were being adversely affected. However, the statute does not imply that if such change occurs and an employee does not quit immediately, that change has to be accepted by the employee for the remainder of the employment. Subsection 2 states that substantially unfair treatment of the employee is also good cause for quitting work. It does not state that if the employee has always been treated unfairly that the employee must accept such treatment forever. The Board of Review finds that the claimant did have good cause connected to the work for quitting this job.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **REVERSED**. The claimant is allowed benefits effective April 30, 2017.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **17-AT-09181-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 16, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant disagrees with B&H Construction being used as his last employer, because he worked for Lamunyon Drilling for 12 days after he quit B&H. Section 2-503 of Title 40, Oklahoma Statutes, requires that an individual must work for an employer at least 15 working days in order for that employer to be considered as the "last" employer. Consequently, B&H Construction must be considered as the claimant's last employer.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8/28/17 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 17-AT-09383-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board **JUNE 23, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Chief Hearing Officer, finding the employer failed to show good cause for non-appearance at the hearing scheduled on JUNE 14, 2017, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on JUNE 14, 2017. That decision reversed the Commission's determination by finding the claimant was discharged from his last employment but not due to misconduct connected with the work, and allowed benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer stated she missed the hearing due to a recent change of address which caused her not to receive the Notice of Telephone Hearing in a timely manner. When the Notice of Telephone Hearing was mailed to the employer on June 2, 2017, it was mailed to the employer's address of record with the Commission. The record shows the address was not changed with the Commission until June 21. When the employer sent its written protest to the claim on May 18, it made no mention of needing its mail sent to a new address. The Board of Review notes, however, that in the return address section of the protest envelope, the employer wrote its address as "8752 .". The correct address appears to be "8257 .". So even if the Commission had noticed and tried to use the address given by the employer, it still would have been incorrect. Ultimately it was the employer's responsibility to have its correct address on file with the Commission. Accordingly, the Board of Review agrees that the employer has not shown good cause for failure to appear for the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-00285-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 7, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on OCTOBER 27, 2017. The Board of Review received a fax from the claimant on NOVEMBER 7, 2017, appealing the decision to the Board of Review. This appeal was not filed within the time provided by law. The claimant said he thought he had 10 working days in which to appeal, rather than 10 calendar days as specified in the Appeal Rights section on the Appeal Tribunal Decision. Since it was within the claimant's control to have filed his appeal on time, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-00554-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 21, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on NOVEMBER 9, 2017. The Board of Review received an email from the claimant on NOVEMBER 21, 2017, appealing the decision to the Board of Review. This appeal was not filed within the time provided by law. The claimant said she has been dealing with some medical issues, such as surgery in October and then strep throat and bronchitis after that. She also said that she did not receive the Appeal Tribunal decision until November 20th, which was the last day she could file a timely appeal. She did not give any reason for failing to email her appeal on November 20th rather than waiting until November 21st, and she did not explain how her illnesses kept her from emailing her appeal one day earlier. Since she has not shown that it was beyond her control to have sent her appeal on time, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-01433-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **DECEMBER 29, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant is denied benefits because he does not reside within a state or country with which Oklahoma has entered into a reciprocal or cooperative agreement, as provided by Section 2-203(D), Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on DECEMBER 12, 2017. The Board of Review received communication from the claimant emailed on DECEMBER 29, 2017, appealing the decision. This appeal was not filed within the time provided by law. The claimant said it was late due to (1) being ill with acute bronchitis and (2) his failure to receive the decision in a timely manner. He is living in Malaysia and depending on another person to scan and email his important mail to him. For some reason this person mailed the Appeal Tribunal decision to him rather than emailing it, which caused him to receive it late. The Appeal Tribunal decision was mailed to the address the claimant provided to the Hearing Officer at his hearing; he has not provided the Commission with his address in Malaysia. Since the Appeal Tribunal decision was mailed to his address of record and there is no evidence to show that it was not received at that address in a timely manner, the Board of Review does not find that it was beyond his control to have filed his appeal on time. Therefore, the Board does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of Notice thereof to the parties' last known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISION TO BOARD OF REVIEW: The Board of Review shall review the record on such further appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME. The ten-day period provided for appeals pursuant to the provisions of the Employment Security Act of 1980 may be waived for good cause shown."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-01778-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **DECEMBER 29, 2017**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In its appeal to the Board of Review, the employer pointed out that Section 2-406 was not the correct Section of Title 40 to be used in this case, and stated that Section 2-404.2(B) should have been used. The Board of Review partially agrees; however, the correct statute is actually Section 2-404.2(A).

The claimant was hired in July 2017 to fill in for an administrative assistant who was on maternity leave. The term of employment was originally to be for one month but was extended because the administrative assistant experienced some complications with the birth of her child. At the end of October 2017, the claimant was told she was no longer needed, as the administrative assistant was ready to return to work.

Section 2-404.2(A) states, "When an employer employs a worker for a limited duration of time *specified by the employer*, the worker is considered to have been laid off due to lack of work at the end of the time period set by the employer, provided that the worker's separation was due only to the completion of the work or the expiration of the time period." Section 2-404.2(B) states, "When an employer employs a worker for a limited duration of time *specified by the worker*, the worker is considered to have voluntarily quit work at the end of the time period set by the worker, provided that the worker's separation was due only to the expiration of the time period." [Emphasis added.] This statute went into effect in 2003, subsequent to the court case cited by the employer.

In this case, the employer is clearly the one who specified the period of time for the claimant to work. In fact, the claimant showed that she was willing to work even longer than originally agreed to when she accepted the opportunity to extend her employment because the administrative assistant was not able to return to work when expected.

The employer expressed dismay that its unemployment insurance rate would significantly increase because of this case. Based on the period of time the claimant worked there, this employer would not be in her base period and therefore would not be chargeable at this time. The employer also said that if the claimant is granted benefits that it would have a chilling effect on hiring temporary employees such as interns or other seasonal employees. Legal interns are generally full-time students in law school, who normally would not be eligible for unemployment benefits based on the fact that they are not available for other work. To be eligible for benefits under Section 2-205.1, they would have to be willing to quit school or to rearrange the hours they are in school, which is generally not easy to do in law school.

Additionally, if the employer truly has seasonal employees, it can apply to the Commission for designation as a seasonal employer as explained in Section 2-422. That statute prohibits payments to seasonal workers outside of the normal seasonal work period.

Finally, the employer stated that receipt of severance pay is often considered grounds for denial of unemployment benefits. The employer said that even though it was under no obligation to do so, it gave the claimant \$1000.00 of severance pay with her final check. The Commission will be instructed to investigate and to issue a determination on this matter.

The Board of Review finds no misconduct on the part of the claimant, nor does it find that she voluntarily quit this job. She stayed as long as the employer was willing to let her stay, and left only when told to do so because the administrative assistant was returning to work. Under Section 2-404.2(A), this is considered to be a lack of work. Public policy provides for the payment of unemployment benefits to persons who are unemployed through no fault of their own. The payment of benefits on this claim is not against public policy. To hold otherwise could encourage people to remain unemployed rather than accepting work, even if it is only temporary in nature.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED, but MODIFIED to show Section 2-404.2(A) as the applicable statute. The claimant is allowed benefits effective October 29, 2017.

Notice: the Commission should issue a determination regarding the claimant's receipt of severance pay.

COPIES TO: CLAIMANT
EMPLOYER
ADJUDICATION UNIT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 3/30/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-02210-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **JANUARY 11, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant is not available for work and not eligible for benefits as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In his appeal to the Board of Review, the claimant stated that he should be eligible for benefits under Section 2-210. That statute has to do with being separated from work due to compelling family circumstances, such as being required to care for an ill family member. However, that is not the issue before the Board. The issue being appealed was discussed at the Appeal Tribunal hearing held on January 9, 2018. The subject of that hearing was the claimant's availability to seek and accept work while caring for his mother who is seriously ill. At the time the claimant appealed the Appeal Tribunal decision that was issued after that hearing, a hearing had not been held on the reason he was separated from his last employer. Therefore the Board cannot address that matter at this time.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant is disqualified from receiving benefits effective week ending November 18, 2017, until such time as the claimant becomes available to seek and accept work in keeping with his education, training and experience.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-02212-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JANUARY 20, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant said her appeal to the Appeal Tribunal was late because she had moved out of state. Her mail was being forwarded to her and so she did not receive the Appeal Tribunal decision until the appeal period had expired. The Appeal Tribunal found that she did not have good cause for her late appeal because she did not advise the Commission of her new address after she moved.

While the Benefit Rights Interview states that claimants must notify the Commission if they have a new address, it states that the reason for this is that payment could be delayed or that they may not receive notification regarding the outcome of pending issues. In the booklet "Re-employment Assistance for the Unemployed - Informational Booklet for Workers Who Are Unemployed," it states that claimants must report an address change "*prior to filing your weekly claim.*"

In the present case, the claimant exhausted her benefits in June 2017. She obtained employment and moved out of state in September 2017. Since she was no longer filing weekly claims and had no reason to think there was a pending issue on her claim, she did not think she was required to change her address with the Commission. Under this specific set of circumstances, the Board of Review finds the claimant did have good cause for filing a late appeal. The Appeal Tribunal decision is hereby reversed. This matter should be remanded to the Appeal Tribunal to issue a decision addressing the merits of the case using all records, testimony and evidence contained in the file. There is no need to hold another hearing as the Hearing Officer took testimony on the merits of the case at the January 8th hearing.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REMANDED to the Appeal Tribunal as instructed above.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-02761-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **FEBRUARY 16, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was employed as a general manager. As a part of his duties, he was required to input inventory counts into the company's computer system. The claimant mistakenly transposed the inventory count numbers, which led to an error in the computer's stated inventory. No evidence was presented to show that the employer suffered monetarily from this mistake or that the claimant's mistake was intentional or reckless. As such, the claimant's actions do not rise to the level of misconduct defined in Section 2-406.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective December 10, 2017.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 4/13/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-02798-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **FEBRUARY 12, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged because she failed to complete an annual survey that was necessary for the library to receive its funding. When the employer discovered the problem, the claimant was given a written warning and advised any more violations would result in further discipline. The employer then made several attempts to complete the survey but it was too late, and the library incurred a large loss of funding. After becoming aware of the severe financial impact of the claimant's failure, the employer decided to terminate the claimant.

The Hearing Officer ruled that when an employee has been previously disciplined for an infraction, a subsequent decision to terminate the employee for the same infraction is not considered to be due to misconduct. The Board of Review could find no statute, policy or precedent case that says that, however. The claimant was capable of completing this state-mandated task, as she had done it in the past. She knew or should have known the importance of the completion of the survey. Her failure to complete this critical task was a substantial breach of her job duties, responsibilities or obligations, and was a neglect of the duties required of her. Therefore, this does qualify as misconduct. The statute says that such misconduct shall not require a prior warning from the employer, as long as the employee knew or should have known that a policy or rule was being violated. In this case, the employer re-evaluated the disciplinary action taken against the claimant after discovering the infraction could not be remedied. The law did not require the employer to give the claimant a warning at that point. The Board of Review finds that the claimant was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disqualified from receiving benefits effective week ending December 9, 2017, and indefinitely until she has become re-employed and earned wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-02996-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **FEBRUARY 11, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment due to misconduct connected to the work and disallowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant objected to a signed statement from a potential witness not being entered into the hearing record, when the employer was allowed to have witness statements entered. She said the Hearing Officer would not admit her witness statement because it was hard to read and was not notarized. The claimant stated that the employer's witness statements were not notarized either but were allowed to be placed in the record.

The handwritten statement presented by the claimant was indeed hard to read. Even if it had been notarized, its admission would be doubtful as the person who made the statement was not at the hearing to be sworn in and cross-examined. The document that was entered on behalf of the employer was an Investigative Report which was a record kept in the course of a regularly conducted activity of a business, and so it was an exception to the hearsay rule.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-03456-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **MARCH 2, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant does not have any additional wages to be credited to his base period, as provided by Section 1-202.2 and Section 2-207, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant contends that his wages from the fourth quarter of 2017 should be included in his base period. He was not monetarily eligible using the standard base period, so he was allowed to file with an alternative base period. An alternative base period consists of the most recent four completed calendar quarters immediately preceding the first day of his benefit year. Since he filed his claim on Wednesday, January 3, 2018, he argues that the fourth quarter of 2017 would be the last of the four completed calendar quarters in his alternative base period.

In the "Rules for the Administration of the Oklahoma Employment Security Act," Rule 240:10-3-23(b) states that the effective date of an initial claim shall be the first day of the calendar week in which the individual files the claim. The first day of the calendar week is Sunday. The Sunday before Wednesday, January 3, 2018, was December 31, 2017. Therefore, the claimant's effective date was December 31, 2017. The fourth quarter of 2017 was not completed at the time the claimant filed his initial claim, and so it cannot be included in his base period.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04052-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **APRIL 10, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was overpaid benefits in the amount of \$6120.00 due to claimant error, in accordance with Section 2-613, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

When the claimant filed his initial claim, he gave Directv Customer Services as his last employer. Notice was provided electronically to the employer's third party representative, Barnett Associates, through the State Information Data Exchange System (SIDES). The employer responded to the Notice with details about the claimant's separation. The Notice of Telephone Hearing was not provided electronically but was mailed to Barnett Associates, which did not appear at the hearing. The Board of Review then received a letter from TALX UCM Services, another third party representative, saying the employer did not appear at the hearing because they did not receive the Notice of Telephone Hearing. It also listed the employer as AT&T Services, Inc. Further investigation revealed that the claimant had indeed been paid at different times by both Directv Customer Services and AT&T Services, Inc. However, his wages were last reported under AT&T Customer Services, Inc., which also used TALX UCM Services as their third party representative. The Board of Review notes that Directv is either owned by or is a subsidiary of AT&T.

After holding a hearing regarding the claimant's job separation, the Appeal Tribunal denied benefits to the claimant. An overpayment was then established for the benefits the claimant had received prior to the denial. The overpayment was processed as being due to claimant error, stating that it was due to the claimant providing the incorrect last employer when he filed his initial claim.

The Board of Review finds that since the claimant was denied benefits based on his job separation, he was correctly found to have been overpaid. However, there is no evidence that the claimant intentionally listed an incorrect last employer when he filed for benefits. He had worked for this employer since 2013, and his wages during that time were reported under three different accounts numbers: one for Directv and two for AT&T. Although he may have selected the wrong account number when he filed his initial claim, the employer did receive the notification that the claimant had filed. The employer did file a protest but did not mention that the account number needed to be changed. The Board of Review finds that the claimant did not attempt to deceive the Commission about his correct last employer. The claimant was overpaid due to a reversal rather than claimant error.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED, but MODIFIED to show the reason for the overpayment should be changed from claimant error to reversal. The claimant shall not liable to repay the overpayment, but may do so if he desires. He may be liable to have the overpayment deducted from future benefits. The overpayment will not accrue interest.

THE COMMISSION IS INSTRUCTED TO AMEND THE REASON FOR THE OVERPAYMENT.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04530-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **APRIL 10, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's attendance policy provides for discharge if six points are accumulated in a rolling six month period. One point was given for an absence and two points were assessed for a no call, no show. The claimant had accrued four points as of January 31, 2018, after working there less than four months. She was absent due to illness on February 1, but did call in. She was again absent due to illness on February 2, but did not call in that day. Because she did not call, her point total exceeded the amount allowed by policy, and she was discharged. Although her absences were due to illness, which was beyond her control, she was not discharged simply because she was absent from work. It was her failure to call in to report her absence that caused her to exceed the allowable point total. Her failure to report the absence was within her control. Since she did not follow a known and reasonable policy, her discharge is considered to be due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is denied benefits effective week ending February 10, 2018, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 06/08/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04564-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **APRIL 13, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming but modifying the Commission's determination by finding that due to administrative error, the claimant was overpaid benefits in the amount of \$2010.00. The determination was in accordance with Section 2-613, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The overpayment was set up as being due to claimant error. No evidence was presented to show why this was done as claimant error rather than administrative error. In his decision, the Hearing Officer specifically stated that the overpayment was due to administrative error. In the absence of any evidence to the contrary, the Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant was overpaid \$2010.00 due to administrative error. She is not liable to repay the sum, but may have it deducted from future benefits. The overpayment shall not accrue interest.

Notice to Commission: The overpayment should be amended to show it was due to administrative error.

COPY TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 06/07/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04566-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **APRIL 13, 2018**

OPINION

The claimant had an unemployment claim effective February 19, 2017. The Commission issued a determination on March 1, 2018, finding the claimant was discharged from her last employment due to misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. She appealed that determination on March 6, 2018. The Appeal Tribunal held a hearing and then affirmed the Commission's determination on April 3, 2018 (Docket # _____).

During this process, the claimant's benefit year expired. She filed a new claim effective February 25, 2018. Since she had no intervening employment, she remained ineligible for benefits due to her disqualification in the previous benefit year. The Commission issued a new determination on March 12, 2018, informing her that she was still denied benefits. Her appeal on the old benefit year was carried forward to the new claim. On April 3, 2018, the Appeal Tribunal issued a decision affirming the disqualification.

Since the Board of Review affirmed the Appeal Tribunal decision on Docket # _____, and the claimant has not had any intervening employment, the denial is still in effect for the new benefit year.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED**. The claimant is denied benefits effective week ending March 3, 2018, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 06/07/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04673-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MAY 10, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on APRIL 9, 2018. The claimant filed an appeal to the Board of Review on MAY 10, 2018. This appeal was not filed within the time provided by law. She said her appeal is late because she did not receive the Appeal Tribunal decision and did not find out she had been denied until the appeal time had passed. She said she moved and her previous landlord had been saving her mail for her, but then accidentally threw it all away. However, the claimant has been using the same address since she filed her claim in February. It appears she received the Notice of Determination mailed to that address on March 12, and also received the Notice of Telephone Hearing mailed to that address on March 22. At the end of the hearing, the Hearing Officer told the parties to expect a decision in the mail within 10 to 14 days. The hearing was held April 5, but the claimant did not contact the Commission until more than a month later on May 9. The Board finds the claimant has not shown that it was beyond her control to have filed the appeal in a more timely manner. Therefore, good cause has not been shown to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown...."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04740-BR**

In Re: Claim of:

CLAIMANT

EMPLOYER

ORDER APPROVING ATTORNEY FEES

This matter comes before the Board of Review upon the application of the claimant's attorney, _____, for attorney fees in the amount of \$500.00 for services rendered in behalf of the claimant.

The Board of Review has examined the application filed on MAY 7, 2018, and all the files and records in the office of the Appeal Tribunal pertaining to the claimant's application for unemployment benefits.

Board of Review Rule 240:15-1-8 states in part: When a claimant for unemployment benefits is represented by an attorney at law, the Board of Review must approve the fee of the attorney. The approval of the attorney fee will be on a quantum meruit basis, provided that the maximum amount of the fee shall not exceed 20% of the claimant's maximum benefit amount.

The Board of Review finds that the attorney's request does not exceed 20% of the claimant's maximum benefit amount. The Board concludes that the application should be granted. The claimant has the sole responsibility for the payment of all attorney fees assessed by the attorney and approved by the Board of Review.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the application of _____ for attorney fees in the amount of \$500.00 is hereby APPROVED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04840-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **APRIL 16, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant did not refuse an offer of suitable work and allowing benefits in accordance with Section 2-418, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was laid off on February 23 when the employer eliminated the night shift. She was offered new work on the day shift which she declined due to her school attendance during the day. She then filed for unemployment benefits on February 24. Since the offer of work was made prior to the claimant filing for benefits, the Commission had no jurisdiction to deny benefits for the refusal of that job offer.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant is allowed benefits effective February 18, 2018, as long as she meets all other eligibility requirements.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 06/07/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04867-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **APRIL 23, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for allowing staff to use his manager's register card to do voids/deletes on the drive-through register. The claimant testified he was aware this was against company policy but that it was "common practice" within the store. The employer noticed an inordinate amount of money being lost and conducted an investigation, at which time the claimant's policy violation was discovered. He was issued a written warning, after which he stopped allowing staff to use his card. However, the employer terminated him a few days later after deciding his actions warranted such an action.

The Appeal Tribunal decision stated that since the claimant did not violate the policy after having been warned about it, the subsequent decision to terminate him for the same infraction that caused the warning is not considered to be due to misconduct connected to the work. As the Board of Review has previously stated, it can find no statute, policy or precedent case that says that (Docket No. 18-AT-02798-BR). The claimant knowingly violated the employer's policy. The statement that others in the store also violated the policy does not absolve the claimant of his responsibility to adhere to the employer's requirement of not giving access to his card. By statute, the claimant's violation of a policy enacted to ensure orderly and proper job performance does constitute misconduct. The statute does not even require a warning at all as long as the claimant knew or should have known that the policy was being violated. The Board finds that the claimant was discharged for misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disqualified from receiving benefits effective week ending February 24, 2018, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04871-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board **MAY 8, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on APRIL 23, 2018. The Board of Review received an appeal from the claimant postmarked on MAY 8, 2018. This appeal was not filed within the time provided by law. The claimant said he does not read well and sometimes needs assistance understanding his mail. However, he had just gone through an appeal hearing regarding the reason he filed a late appeal to the Appeal Tribunal, so he knew or should have known the importance of filing his second appeal on time. Since he did not show that it was beyond his control to have filed his appeal on time, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown....”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-04991-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **APRIL 29, 2018**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

One of the reasons the claimant quit her job was due to having obtained custody of two of her young grandchildren. One of the grandchildren has medical conditions which require a great deal of the claimant's attention. This made it difficult for the claimant to perform her job duties which required her to travel away from home several days a week and to be on call 24 hours a day. The claimant asserted that she should be allowed benefits under Section 2-210 because of this. However, in order for Section 2-210 to apply, the claimant has to establish that she needed to care for her grandchildren for a period of time longer than the employer was willing to grant leave to her. There is no evidence that the claimant requested such leave. In addition to the need to care for her grandchildren, the claimant also quit because of a rude email she received from the owner. That was the moving factor in her decision to quit when she did.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-05345-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 6, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for lack of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on APRIL 30, 2018. The Board of Review received communication from the claimant faxed on JUNE 6, 2018, appealing the decision. This appeal was not filed within the time provided by law. He stated that he lost track of time due to family matters and health problems. This explanation does not show that it was beyond his control to file his appeal within the 10-day response time, however. Therefore the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown....”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-05480-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MAY 16, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on MAY 2, 2018. The Board of Review received communication from the claimant emailed on MAY 16, 2018, appealing the decision. The appeal was not filed within the time allowed by law. He said his appeal was late because he was out of town working and did not collect his mail until May 14. Instead of filing his appeal by email at that time, he chose to wait until the following day to call the Appeal Tribunal. He says he was told to call back the next day to speak to someone else. There are several methods listed on the Appeal Tribunal decision for filing an appeal to the Board of Review; but calling the Appeal Tribunal is not one of those methods. He has not presented any reason to show it was beyond his control to have emailed his appeal on May 14, rather than emailing it on May 16. Therefore, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown....”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-05835-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MAY 18, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on APRIL 16, 2018, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on APRIL 17, 2018. That decision reversed and modified the Commission's determination and found the claimant voluntarily left her last employment without good cause connected to the work and disallowed benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant argued that she did not participate in the hearing because she did not receive the Notice of Telephone Hearing. She did not receive that Notice because she moved and the Postal Service does not forward mail from the OESC. She put in a change of address with the Postal Service but did not notify the Commission. She stated that it is not fair that our mail is not forwarded by the Postal Service. However, she was notified at the time she filed her claim that it would not be forwarded and that she must inform the Commission of any change in her address. This is done in the Benefit Rights Interview that all claimants are given at the time they file their initial claim, and is also covered in the booklet entitled, "Reemployment Assistance for the Unemployed." Claimants are informed during the Benefit Rights Interview that it is important that they read that booklet and are told how to access it.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant did not show good cause for non-appearance at her hearing. She is disqualified from receiving benefits effective week ending February 24, 2018, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-05917-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **MAY 23, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant not able to work and not eligible for benefits as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant's doctor has stated the claimant is unable to work and the claimant did not disagree with that statement at the hearing. When asked if there was any type of work he thought he could perform, the claimant was unable to name anything. Unfortunately, the law requires that a person must be able to work in order to be eligible for unemployment benefits. The claimant may consider taking steps to see if he is eligible for Social Security disability payments.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPY TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 6-29-18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-06194-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 2, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged for failure to complete an assigned duty. She had been directed by her supervisor to remove and shelve a "break pack" before her shift ended. She was unable to do so because she was called away by the assistant store manager to work on another assignment. The actions of the claimant, in obeying a command by the assistant store manager, did not constitute misconduct.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective April 8, 2018.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7/26/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

1 Docket No. **18-AT-06748-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JUNE 22, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the employer's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The Human Resources Director filed the late appeal to the Appeal Tribunal. She did not appear at the hearing to offer sworn testimony on this issue. However, she stated in her appeal to the Board of Review that the appeal was late because she was out of the office during the week the appeal was due. This is not considered to be a situation beyond the control of the employer, as arrangements could have been made for someone other than the Human Resources Director to handle important mail in her absence.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted. It is therefore ordered by the Board of Review that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 7/12/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-07231-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JULY 17, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, , finding that good cause was not shown for the untimely filing of the employer's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In his letter of appeal to the Board of Review, the employer's Unemployment Coordinator stated that he had faxed the appeal on time but apparently it was not received by the Appeal Tribunal or the Commission. He referred to a fax confirmation sheet that was in the appeal packet as proof of his statement. Unfortunately, he did not appear at the hearing to give testimony regarding this issue. The employer did have two other witnesses at the hearing, but neither of them offered this explanation as the reason the appeal was late. The Senior Human Resources Generalist testified the appeal was late because the person the Notice of Determination was addressed to was out of the office. She did not offer the fax confirmation sheet as an exhibit and appeared not to be aware of its existence. The Board of Review must consider the sworn testimony and exhibits that were offered at the hearing when making its decision. The employer is advised to always ensure that first-hand witnesses appear for any future hearings.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-07344-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **JULY 18, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming but modifying the Commission's determination by finding the claimant has reasonable assurance of returning to employment at an educational institution while employed by an educational service contractor, and denying benefits as provided by Section 2-209.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In her appeal to the Board of Review, the claimant cited portions of what she referred to as Section 2-209.1 as the basis of her appeal. However, she was actually citing Section 2-209, "Benefits for employees of governmental or nonprofit employers." The portions of law she referred to deal with employees who work as teachers or administrators at educational institutions. The claimant was actually employed by Great Western Campus Dining as a cook at Murray State College. Therefore, Section 2-209 does not apply to her; but Section 2-209.1(A) and (B)(2) does apply to her situation. That Section addresses "Benefits for employees of educational service contractors." According to this Statute, she is not eligible for benefits.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant is ineligible for benefits in accordance with Section 2-209.1 for the weeks ending May 26, 2018, through August 4, 2018.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-07890-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **AUGUST 10, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not entered into the record at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore that documentation could not be considered by the Board when examining this case.

The claimant was employed as a General Manager. On May 24, 2018, he was contacted by the manager on duty who told the claimant he was unable to come to work. The claimant was not scheduled to work, but immediately went to the workplace. Once there, he learned the cook was also unable to work that day. The claimant went to extraordinary measures in an attempt to conduct the employer's business, which included opening the store and preparing a catering order. The claimant was not successful in getting the store opened on time or in getting the catering order done at the specified time, but that does not diminish the fact that he exhibited a great deal of responsibility towards the employer's interests. His failure to get everything done on time, under the circumstances that occurred that day, does not constitute misconduct as defined in Section 2-406.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective June 3, 2018.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-08064-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **SEPTEMBER 4, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer affirming the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

No one from TALX appeared at the hearing. In the appeal to the Board of Review, the employer's representative with TALX asked for the hearing to be reopened because the Notice of Telephone Hearing (Notice) she received showed the hearing was to take place on September 10, rather than August 10. The record shows that a Notice was mailed with the September 10th date on it, but a corrected Notice was mailed two days later with the August 10th date. Neither of the Notices were mailed to TALX, but were sent directly to the employer. The employer did call in and participated in the hearing. The employer did not ask for the hearing to be postponed until a representative from TALX could be present. Since the employer did appear, did offer testimony and did not ask for a postponement of the hearing or even mention the absence of the TALX representative, the Board of Review does not find good cause to reopen this matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-08514-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **AUGUST 30, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged after being charged with driving under the influence (DUI), a charge that resulted in the revocation of his driver's license. The employer based its decision to discharge the claimant on its employment policy (the Support Collective Bargaining Agreement, Article VI, Section 4, Part B, #14) which states that suspension or dismissal may occur if an employee receives "A DUI conviction which leads to a felony conviction OR revocation of a driver's license OR other vehicular convictions which lead to revocation, suspension, non-renewal or uninsurability for any employee who drives a District-owned vehicle." (See Employer Exhibit 3.)

On April 9, 2018, the claimant was granted a modification of his revocation which allowed him to operate a vehicle owned by his employer, subject to the employer's approval. Nonetheless, the claimant's driver's license was still revoked. (See Employer Exhibit 1, Final Order dated April 9, 2018, which states, "The Court finds the revocation should be sustained.") Therefore, the claimant was in violation of the employer's written policy and was terminated for such. Misconduct has been shown as the reason for the termination.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is denied benefits effective week ending June 30, 2018, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-08872-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **SEPTEMBER 15, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from his last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant's attorney based her appeal on the fact that the claimant had subpoenaed documents for the hearing which the employer did not provide. However, the Hearing Officer gave the attorney the opportunity to present an offer of proof regarding what the claimant asserted would be shown on those documents. Therefore, the Board of Review does not find the absence of the documents was detrimental to the claimant's case.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-08992-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **SEPTEMBER 14, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In the appeal to the Board of Review, the employer pointed out that the dates of the claimant's employment were listed incorrectly on the Order of Decision. The Board of Review agrees. At the hearing, both parties agreed that the claimant's dates of employment were from April 28, 2018, through July 5, 2018.

The claimant left work sick on July 2, 2018. At that time he was told he was to provide a doctor's release upon his return in order to be allowed to work. When he returned to work on July 4, he offered the employer his hospital discharge papers, which were unacceptable due to the fact they did not contain a release to return to work. The claimant returned to the work site on July 5 and was told to remain there until the job superintendent, Tommy Skidmore, arrived to speak to him. After waiting approximately 10 minutes, the claimant left.

Conflicting evidence exists as to whether the claimant possessed a release to return to work on July 5th. Witnesses for the employer testified that no such release was provided. The claimant produced a release for the first time at the hearing, over the employer's objection, which was admitted and relied on by the Hearing Officer. However, this release was dated August 3rd. Clearly, the claimant did not possess this release when he appeared at the work site on July 5th. Further, it was reasonable for the employer to want to discuss the issue with the claimant but the claimant's actions did not allow this to occur. Given the evidence contained in the record, the employer's burden of proving misconduct has been met.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is denied benefits effective week ending July 14, 2018, and indefinitely until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-09153-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **SEPTEMBER 19, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant not able to work and therefore not eligible for benefits as provided by Section 2-205.1, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant filed for benefits on July 18, 2018. She indicated that she was able to work at that time. On August 1, she reported to the Commission that she was experiencing some physical and emotional problems to the extent that she no longer felt able to work. Then on August 13, she reported that she was again able to work. The Hearing Officer found that the claimant's statement was self-serving because it was made after she had been denied benefits, and ruled that she was not actually able to work.

The claimant was denied benefits based on her own admission on August 1st that she did not feel able to work. There was no medical statement showing that a doctor said she could not work; it was her own personal feeling. She testified that she wrote the August 1st statement at a time when she was under stress. The Board of Review does not find that her subsequent statement on August 13th was inherently incredible, as a person's physical and emotional state can change over time. The only evidence available as to the claimant's ability to work is her sworn testimony. Accordingly, the Board of Review finds that the claimant was again able to work as of August 13th.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective the week beginning August 12, 2018.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-09514-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **SEPTEMBER 26, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding there were not sufficient wages in covered employment during the base period and claimant is not entitled to benefits as provided by Section 2-207, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In his appeal to the Board of Review, the claimant stated that he wants to subpoena two witnesses who worked for last employer to testify regarding this matter. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." He could have requested subpoenas for those individuals prior to his hearing with the Appeal Tribunal. The Board of Review could not consider their testimony now since they were not put on record at the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 18-AT-09646-BR

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **OCTOBER 3, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat. This matter is submitted on the recording of the hearing held by the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review.

In her appeal to the Board of Review, the employer's wife/Vice President of the company offered specific reasons that the protest to the claimant's unemployment claim was late. She also presented documentation of medical appointments. However, she did not appear at the hearing to offer her testimony under oath and the documents were not entered into the record at the hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240-15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Since her testimony and documentation were not presented at the hearing, they could not be considered by the Board when examining this case.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 11/02/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 18-AT-09784-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 10, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant failed to accept suitable work and disqualifying her for benefits in accordance with Section 2-418, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The original job offer was made to the claimant in person on July 23, prior to the date she filed her initial claim for benefits on July 30. She was to let the employer know if she would accept the offer by July 27. She did not contact the employer to accept the offer. However, she cannot be denied benefits for refusing a job offer made prior to filing for benefits. The employer then sent the claimant a letter by certified mail, again offering her the job. The claimant received the letter on August 15, but once again did not contact the employer to accept the offer. The Board of Review finds that after the claimant filed for benefits, she was offered the same job that she was offered on July 23. The offer was not received until August 15. Therefore, the claimant should not be denied benefits until that week.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED, but MODIFIED to show the disqualification begins with the week ending August 18, 2018, and continues indefinitely until the claimant has become re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-10043-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **OCTOBER 23, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In the employer's appeal to the Board of Review, he stated that the claimant was discharged for failing to call in for five days while he was in jail. While that certainly could be considered misconduct, the employer testified at the hearing that the claimant was discharged because he was arrested on felony charges. The Board of Review must base its consideration of this case on the sworn testimony given at the hearing. Since the arrest was not connected to the employment, and the claimant has not been convicted, the Board must agree with the Appeal Tribunal and finds that arrest without conviction does not amount to misconduct connected to the work.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-10193-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board **OCTOBER 28, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on SEPTEMBER 17, 2018, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on SEPTEMBER 17, 2018. That decision found the claimant was employed full-time during the week ending February 17, 2018, and therefore was not eligible for benefits for that week as provided by Section 1-217, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant said he did not call in for the hearing because he did not know the date and time of the hearing until after it had taken place. The Notice of Telephone Hearing was mailed September 6, but he was working out of town from September 6 to September 17. He filed his appeal on August 18 and testified that he was expecting to receive a hearing notice. His wife was home while he was away and received the Notice in the mail, but did not open it. He apparently did not ask her to let him know when he received the Notice, and now says it would have been illegal for her to open his mail. In light of the fact that he was expecting to receive notice of his hearing, he could have given his wife permission to open his mail. If he did not want her to open it, he could have simply asked her to tell him if he received a letter from the Oklahoma Employment Security Commission (OESC). At that point, he could have called the OESC and asked for the date and time of his hearing. Alternatively, he could have obtained a mailing address where he was working and informed the OESC of that address. As stated in the "Information Booklet for Workers Who Are Unemployed," it was the claimant's responsibility to keep the OESC informed of his current mailing address at all times. The booklet explains, "You may be mailed important documents and/or instructions to follow that, if action is not taken, might delay your claim or cause a denial of benefits." The Board of Review concludes that the claimant did not establish good cause for non-appearance at the hearing scheduled for September 17, 2018.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-10224-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **OCTOBER 25, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the employer's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In his appeal to the Board of Review, the employer stated he did not know he should have a first-hand witness at the hearing to testify about when the Notice of Determination was actually received. He said he had a case previously where his appeal was late and it was not required that he have such a witness to get the untimeliness excused. The Board of Review finds that in the particular case he mentioned, the Notice of Determination was mailed to the employer on August 22. The employer asserted that he did not receive that Notice until Friday, August 22, and did not respond until Tuesday, September 4. The 10th day after the Notice was mailed was Saturday, September 1. The following Monday, September 3, was Labor Day. When the 10th day of an appeal period falls on a weekend or holiday, the appeal period is extended to the next working day. Therefore, in the prior case mentioned by the employer, the appeal was not late and no testimony was taken on that issue, making a witness unnecessary. In the present case, the appeal actually *was* late, and the employer did not present a witness who could have testified that the Notice was received after the appeal period expired. Therefore, it must be presumed that the Notice was received before the appeal period expired. The employer did not present good cause for filing an untimely appeal.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-10307-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 07, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was employed from October 30, 2017, until August 21, 2018. At the time of separation, the claimant had exceeded the employer's attendance point limit, which provided that an employee was subject to termination if their attendance points reached 20. The bulk of the claimant's attendance points were attributable to her caring for her parents, who suffered from significant health issues. Because of this, the claimant made inquiry into the potential for leave under the Family and Medical Leave Act, but was told by her supervisor that she did not qualify. The employer also had another program which may have provided a 30-day unpaid leave period but that program was not mentioned to the claimant by her supervisor. Instead, the supervisor told the claimant that she "would work with her."

In the final event, the claimant missed three days due to her mother having surgery. She notified the employer in advance of these absences and was only told to turn in paperwork explaining the absences. Given that the claimant had been told the employer would work with her while she dealt with her ailing parents, and further given that no mention was made of possible termination because of her final absences, it was reasonable for the claimant to conclude that her job was not in jeopardy. A subsequent decision to terminate the claimant may have been a sound business decision by the employer but, given the facts set out above, the actions of the claimant did not amount to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective August 26, 2018.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-00102-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **NOVEMBER 6, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding the employer failed to show good cause for non-appearance at the hearing scheduled on SEPTEMBER 28, 2018, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on OCTOBER 1, 2018. That decision found the claimant voluntarily left her last employment with good cause connected to the work and allowed benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's witness testified the employer did not appear at the hearing on September 28 because she did not receive the Notice of Telephone Hearing ("Notice") until October 2. The witness apparently works for the employer at a location in Oklahoma. The employer's address of record is in St. Louis, Missouri. The Notice was mailed to the office in St. Louis on September 13, but the witness at the hearing did not know when it was received there. While the witness may have received the Notice late from the corporate office, there was no evidence presented to show the employer did not receive the Notice at the address of record prior to the hearing.

The employer did provide a copy of an Appeal Tribunal envelope showing a postmark of September 26, and asserted the Notice was mailed in that envelope. If so, that could explain why the employer did not receive the Notice until October 2. However, the record shows the claimant mailed documents to the Appeal Tribunal on September 25, which were received there on September 26. The record also shows the Appeal Tribunal mailed copies of those documents to the employer on September 26, which explains the postmark on the copy of the envelope submitted by the employer. The copy looks as if the envelope was larger than the standard 9.5" by 4.25" window envelope that is used to mail a Notice of Telephone Hearing, and it also is not a copy of a window envelope. Based on the available evidence, the Board of Review cannot conclude the envelope contained the Notice. Instead, it apparently contained copies of the claimant's documents. Since the employer did not present a first-hand witness from the office in St. Louis who would have initially received the Notice, the Board cannot find the Notice was not received at the corporate office prior to the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-00213-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **NOVEMBER 09, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the employer's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's representative with UCAC asked that the hearing be reopened so she could testify. She said she did not appear for the hearing because she did not realize the timeliness of the appeal was going to be discussed. The Notice of Telephone Hearing, which was sent to UCAC, did state that one of the legal issues that would be covered was whether there was good cause to waive the filing period for appeals. Under the circumstances, the Board of Review does not find good cause to reopen this matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The appeal is dismissed.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 11/26/18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-00221-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 02, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In her appeal to the Board of Review, the claimant asked for her union representative, to be allowed to testify on her behalf. The record shows that the claimant had subpoenaed for her hearing, but did not appear. The address that the claimant provided to the Appeal Tribunal for apparently was incorrect. The employer did not recognize the address and the claimant did not explain why she used that particular address. The Hearing Officer asked if she wished to proceed with the hearing without, and the claimant said she wanted to go forward. Therefore, the Board of Review does not find good cause to reopen the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-00260-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **NOVEMBER 08, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, , finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In the claimant's appeal to the Board of Review, he said that when he went out of town he was unaware he could be mailed any time-sensitive paperwork that he might need to respond to. When he filed his initial claim for benefits, he was instructed to read the material online entitled, "Informational Booklet for Workers Who Are Unemployed." The booklet explained that important documents or instructions may be mailed and that if action was not taken in a timely manner, it could delay the claim or cause a denial of benefits. It also explained that the reason he was separated from work would be investigated, and that a determination would be mailed telling him if benefits were allowed or denied. It informed him that if he disagreed with the determination, he would have 10 calendar days from the mailing date in which to file an appeal. The Board finds the claimant should have been aware that he could be receive time-sensitive mail from the Commission.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant did not show good cause for the untimely filing of his appeal, and so the appeal is dismissed.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-00822-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **DECEMBER 12, 2018**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant did not receive the Notice of Determination in the mail. This was due to the lot number being left off of her address. When she filed her weekly claim online she did find out that she had been denied benefits, but was told she would be receiving a written determination in the mail. She was also informed that she would have 10 days in which to file an appeal, but was not told when the appeal period began. After waiting a few days to receive the determination in the mail, she finally decided to file the appeal online. Since the claimant was told she would be receiving a determination in the mail explaining why she had been denied and her appeal rights, and she did not receive it, the Board of Review finds good cause for her filing her appeal one day late.

The Board of Review concludes that the Appeal Tribunal decision should be reversed. This case should be remanded to the Appeal Tribunal to issue a new decision addressing the merits of the case using all records, testimony and evidence contained in the file. It is not necessary to reconvene the hearing since the Hearing Officer took testimony on the job separation issue at the December 6th hearing.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that this case is REMANDED to the Appeal Tribunal as instructed above.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 12-21-18 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-01088-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 25, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on DECEMBER 6, 2018. The Board of Review received a fax from her on OCTOBER 25, 2019, appealing the decision. This appeal was not filed within the time provided by law. She said it was late because she did not receive the decision in the mail due to a change of address. She gave the Hearing Officer her new address at the hearing, and the decision was mailed to her only two days later. She did not give the Commission another address until October 13, 2019, ten months later. It was the claimant's responsibility to keep the Commission advised of her current address. Additionally, the Hearing Officer told her at the conclusion of the hearing that his decision would be mailed within 10-14 days, probably sooner. But she waited ten months to contact the Commission about the decision when she did not receive it in the mail. Since the claimant did not establish that it was beyond her control to have filed her appeal in a more timely manner, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown...."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-01554-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JANUARY 11, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the employer's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In the employer's appeal to the Board of Review, the Director stated that he was taken by surprise at the hearing when questioned about the reason his appeal to the Appeal Tribunal had been late. Testimony was given that the late appeal was caused by a "mistake" or an "oversight." But in the Director's letter to the Board of Review, he stated that he did not receive the Notice of Determination (NOD) in a timely manner. He said his appeal was filed within 10 days of receipt of the NOD and so should be considered timely.

The Notice of Telephone Hearing listed the issues to be covered at the hearing, one of which was "whether there is good cause to waive the filing period for appeals." The Board of Review finds that the employer knew or should have known that issue would be discussed at the hearing. The law requires that an appeal be filed within 10 days of the mailing date of the NOD, not within 10 days of receipt of that NOD. No testimony was given under oath about the date the NOD was received, nor was it mentioned in the employer's appeal letter to the Appeal Tribunal. The Board of Review must base its Opinion on the sworn testimony given at the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. Good cause was not established for the employer's late appeal to the Appeal Tribunal, and therefore the appeal is dismissed.

COPIES TO: CLAIMANT
EMPLOYER

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-02043-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **FEBRUARY 25, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant failed to file claims for benefits in accordance with such regulations as prescribed by the Commission, in accordance with Section 2-203, Title 40, Okla. Stat., as amended; and in accordance with Rule 240:10-3-23 in "The Rules for the Administration of the Oklahoma Employment Security Act." This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was denied benefits for the weeks ending July 28, 2018, through December 1, 2018, because she did not file claims for those weeks. The Rule cited in the first paragraph of this Opinion states that a weekly claim must be filed within 14 calendar days from the week ending date of the claim. The claimant stated that she did not file claims for those weeks because she was not aware she was supposed to file weekly claims. However, when she filed her initial claim on July 23, 2018, she was given a Benefit Rights Interview (BRI) which informed her of the need to file weekly claims. At that time, she responded that she understood the requirement. She now says that she did not receive the BRI in July; however, the record shows that she received it in July and again when she reopened her claim in December. While it is unfortunate that it now appears she did not really understand what was required to receive payment, the fact remains that she did not file claims for those weeks within the time allowed by law.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant is denied benefits for the weeks ending July 28, 2018, through December 1, 2018.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-02581-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **FEBRUARY 18, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the employer on FEBRUARY 5, 2019. The Board of Review received a fax from the employer that was sent on FEBRUARY 18, 2019, appealing the decision. This appeal was not filed within the time provided by law. The Senior Human Resources Generalist said the employer did not receive the decision until February 13th, and she was out of the office until February 18th. The decision was mailed to the employer's representative, TALX UCM Services. It appears TALX may have delayed sending the decision to the employer; however, it is not disputed that the decision was received by the employer within the 10-day appeal period. The employer could have chosen to have TALX file the appeal, or could have had another employee file the appeal in the absence of the Senior Human Resources Generalist. Since it has not been established that it was beyond the employer's control to have filed the appeal on time, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown...."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-02692-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **FEBRUARY 25, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the employer's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's appeal to the Appeal Tribunal was due no later than January 7, 2019. The appeal was filed on January 11. In his appeal to the Board of Review, the employer's Human Resources Assistant said the Notice of Determination was not received until January 8, after the 10-day appeal period had expired. However, at the hearing, the employer's Human Resources Administrator testified the Notice of Determination was received on January 5. The Board of Review must use the sworn testimony given at the hearing when making its decision.

Since the testimony was given that the Notice of Determination was received before the appeal period expired, the Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that the same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED**.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-02752-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **FEBRUARY 20, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer asserted that since the claimant knew he was hired for a temporary position, he was "at fault" for his termination. Section 2-404.2 of Title 40 of the Oklahoma statutes says that if an employer hires someone for a limited period of time specified by the employer, the worker is considered to have been laid off due to lack of work at the end of that time period. Since the employer initiated the job separation, it is considered to be a discharge, but not due to misconduct connected to the work. Therefore, the claimant is eligible for benefits under Section 2-406.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted. It is therefore ordered by the Board of Review that the decision of the Appeal Tribunal is hereby **AFFIRMED**.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 3/27/19 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-02955-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MARCH 01, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant does not believe that his appeal was late because he filed it within 10 days of when he received the Notice of Determination (NOD) on January 15. However, the NOD clearly states that an appeal must be filed within 10 days of the mailing date of the determination, which was January 10. He also asserts that when computing the 10-day time period, weekend days and holidays should not be counted as part of the 10 days.

"The Rules for the Administration of the Oklahoma Employment Security Act" cover time computation. Rule 240:10-1-3 states that in computing the period of time, the day the determination was mailed is not included in the computation. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, and holidays. If the last day of the time period falls on a Saturday, Sunday, or holiday, the time period is extended until the end of the next business day. In this particular case, the 10th day of the appeal period fell on January 20, which was a Sunday. The next day, Monday the 21st, was a federal holiday. Therefore, the last day for the claimant to file a timely appeal was Tuesday, January 22nd.

The claimant testified that he did not file his appeal until January 23rd because he had other things to do, and thought he had 10 days from the date he received the determination to file an appeal. He has not shown that it was beyond his control to have filed the appeal on time.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant did not have good cause for filing a late appeal to the Appeal Tribunal, and so the appeal is dismissed.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-03446-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **MARCH 22, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant had been missing work for medical reasons. Time was reported for her when she did not actually work, but she did not correct those records. She was aware that she was being paid for time not worked. She asked her supervisor if she was going to receive her monthly bonus. The supervisor told her that she would not receive a bonus, but that she would receive her regular pay even though she did not work all the hours reflected in her time cards. Due to her attendance issues, the Operations Manager reviewed the claimant's time cards and discovered the discrepancies between the hours that had been reported that she worked, and the hours she actually worked. She was then discharged for time clock fraud. Since the claimant was aware that her hours had been reported incorrectly, and did not report the error or attempt to get the issue corrected, this is considered to be misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **REVERSED**. The claimant is denied benefits effective week ending January 12, 2019, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-04342-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **APRIL 16, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant failed to accept suitable work and disqualifying him for benefits in accordance with Section 2-418, Oklahoma Employment Security Act. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant has worked for this employer in the past, within 60 miles of his home. On February 20, 2019, the employer offered him another job to begin on February 27th, which he told the employer he would accept. However, when he discovered the job was over 80 miles from his home, he told the employer that he was no longer willing to accept it.

Suitable work is defined in Section 2-408. It says that in determining if any work is suitable for an individual, the distance of available work from the claimant's residence should be considered. In "The Rules for the Administration of the Oklahoma Employment Security Act," Rule 240:10-1-2, it states that commuting distance is 50 miles from a claimant's place of residence. The Board of Review finds this was not an offer of suitable work due to the distance of the job from the claimant's residence.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is eligible for benefits effective January 13, 2019.

**COPIES TO: CLAIMANT
EMPLOYER**

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 5-29-19 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-05018-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **JUNE 26, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant is unable to work and disallowing benefits in accordance with Section 2-205.1, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on MAY 21, 2019. The Board of Review received an email from the claimant on JUNE 26, 2019, appealing the decision. This appeal was not filed within the time provided by law. The claimant said she faxed her appeal on May 31, 2019, and submitted a copy of her confirmation sheet. That document shows that although she did attempt to fax something to the Board of Review on that day, zero pages went through. She could have tried to fax it again, email it, or simply place it in the mail. Since she has not shown that it was beyond her control to have filed her appeal on time, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown...."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-05077-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **JUNE 04, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was very vague in his testimony at the hearing about when he received the Notice of Determination, and about when he may have been out of town and therefore unable to check his mail. He contradicted himself about whether or not he knew he had 10 days to file an appeal. In his appeal to the Board of Review, the claimant's attorney asserted the claimant received the Notice of Determination after 4:00 p.m. on the 10th day of the appeal period, and so did not have time to file the appeal until the following day. However, the record shows the appeal was not one day late; it was due by April 5th but was not filed until April 11th. Furthermore, if the claimant had received the Notice of Determination late in the afternoon on the 10th day, he could have filed it by email at any time before midnight and it would have been timely. The claimant apparently had access to email, as that is the method he used to file his appeal on April 11th.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant did not show good cause for his untimely appeal, and therefore it is dismissed.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-05731-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **JUNE 26, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Director, finding the employer failed to show good cause for non-appearance at the hearing scheduled on JUNE 18, 2019, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on JUNE 24, 2019. That decision found the claimant was discharged from her last employment but not for misconduct connected with the work and allowed benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The hearing was held on June 18. The following day, the employer called the Appeal Tribunal and said that he did not participate in the hearing because he failed to see that he was supposed to call in. In his appeal letter to the Board of Review, he stated that he did not call in because he was short-handed that day, and that he did not receive any calls reminding him that a hearing was going to be held. The Appeal Tribunal sends a Notice of Telephone Hearing to the parties, telling them to call in at least 10 minutes before the hearing is scheduled to begin. The Appeal Tribunal does not call the parties at any time to remind them of the day and time of the hearing. It appears the employer was busy and simply forgot the hearing was to take place that day. Since the employer has not established that it was beyond his control to have called in for the hearing, the Board of Review does not find good cause to reopen the matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-06322-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **AUGUST 5, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the employer on JULY 23, 2019. The Board of Review received an appeal from the employer faxed on AUGUST 5, 2019. This appeal was not filed within the time provided by law. The employer said the appeal was late because the Appeal Tribunal decision was mis-delivered to his neighbor, who brought it to him on August 2. However, if he had filed his appeal that day, it would have been timely. Since he received the decision within the 10-day appeal period, and has not shown that it was beyond his control to have filed an appeal on the day he received it, the Board of Review does not find good cause to waive the 10-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

“NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title.”

Section 2-606, Title 40, Okla. Stat., as amended provides:

“APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination....”

Section 2-614, Title 40, Okla. Stat., as amended provides:

“WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown....”

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-06331-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **AUGUST 1, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The Notice of Determination ("Determination") was mailed to the claimant on May 16. She filed her appeal on May 29, which was one day late. She had left town on April 30 and asked her son to check her post office box while she was gone. She testified the post office box was usually checked only once every two weeks. Sometime around May 21st, Skiatook was flooded. Some roads were impassable and she said her son was unable to get to the Post Office during the time of the flood. She did not know for sure the first date her son checked the post office box after the flood, but he sent her a picture of the Determination on May 29. She also did not know the last date the post office box was checked before the flood occurred. Having been mailed on May 16, it is likely the Determination was delivered to her post office box prior to the flooding. Since the claimant's son did not testify, and the claimant did not have any first-hand testimony about the dates the post office box was checked, she did not establish that it was beyond her control to have filed the appeal on time.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-06622-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **AUGUST 11, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer said his appeal was late because the Notice of Application for Unemployment Compensation was sent to the wrong address. However, the Commission's records show the Notice was mailed to the employer's address of record on May 9, 2019. The employer did not change his address of record for this business until July 2019. Since the Notice was mailed to the correct address, and the protest was late due to failure of the employer to check the mail on a timely basis, the Board of Review agrees with the Appeal Tribunal decision.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8/19/19 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-07546-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **OCTOBER 02, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, affirming the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

A representative from ADP Unemployment Group who had previously registered for the hearing was called by the Hearing Officer. That representative said the case had been re-assigned to co-worker. When the Hearing Officer called that co-worker, he was told that the hearing had been mistakenly calendared for the wrong date, and stated that the employer would not be participating in the hearing. When the appeal was filed to the Board of Review, a request was made to reopen the hearing. The Board of Review does not find good cause for the employer's failure participate in the hearing, and therefore does not find good cause to reopen the matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

**COPIES TO: CLAIMANT
EMPLOYER**

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-08125-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **SEPTEMBER 09, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer's hearing representative called in for the hearing and requested a continuance, stating that she had only received the Notice of Telephone Hearing the previous day, giving her little time to prepare for the hearing. The Notice was mailed to the correct address for the employer's representative, Employers Unity, in Denver, Colorado. The hearing representative is located in Las Vegas, Nevada. The reason that it took so long for the hearing representative to receive the Notice from the Denver office is unknown. However, she did receive it before the hearing. Under the circumstances described, the Board of Review does not find good cause to reopen the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-08440-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 22, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Director, finding the claimant failed to show good cause for non-appearance at the hearing scheduled on OCTOBER 1, 2019, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on OCTOBER 1, 2019. That decision found the claimant was discharged from his last employment for misconduct connected with the work and denied benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The Appeal Tribunal decision was mailed to the claimant on OCTOBER 11, 2019. The Board of Review received communication from the claimant emailed on OCTOBER 22, 2019, appealing the decision. This appeal was not filed within the time provided by law. He said his appeal was late because he kept getting an error message when he tried to email his appeal to the Board of Review. When considering the documentation he sent with his appeal, it appears he was putting a space between the "f" and the "r" in the email address. He did not attempt to send his appeal by mail or fax when unsuccessful with email. Since he did not establish that it was beyond his control to have filed his appeal on time, the Board of Review does not find good cause to waive the ten-day appeal period.

Section 2-605, Title 40, Okla. Stat., as amended provides:

"NOTICE OF REFEREE DECISION:....Such decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title."

Section 2-606, Title 40, Okla. Stat., as amended provides:

"APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW: The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination...."

Section 2-614, Title 40, Okla. Stat., as amended provides:

"WAIVER OF APPEAL TIME: All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown...."

The appellant failed to file a timely appeal from the Appeal Tribunal decision with the Board of Review within the time provided by law and has not shown good cause to waive the ten-day appeal period. Therefore, the Board of Review has no jurisdiction to try the issue involved on its merits.

IT IS THEREFORE THE ORDER OF THE BOARD OF REVIEW that this matter is DISMISSED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-08512-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **OCTOBER 1, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant voluntarily left her last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended. This matter is submitted on the Appeal Tribunal decision and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant's appeal to the Board of Review was late. She stated that it was because the Appeal Tribunal Decision was mailed to the wrong address, and she did not receive it in time to file a timely appeal. The Commission's records show that the claimant changed her address on September 11, but the Appeal Tribunal Decision which was mailed on September 17 was sent to her old address. Under the circumstances, the Board of Review finds good cause for her late appeal.

The claimant did not call in for the hearing. She said that she did not call because her phone was shattered, but she also said it was because she could not afford to buy minutes for her phone. It is unclear which reason is correct. She did not establish that it was beyond her control to have used someone else's phone or even to have used the phone at the local employment office. Therefore, the Board of Review does not find good cause for her non-appearance at the hearing, and does not find good cause to reopen the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED**. The claimant is disqualified from receiving benefits effective week ending July 13, 2019, and indefinitely until she has become re-employed and earned wages equal to or in excess of ten times her weekly benefit amount.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-08608-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 02, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer discharged the claimant for inappropriate conduct including gossiping and discussing confidential information. This was based on a report from the casino host who said this occurred in his office. The employer investigated and based the decision to terminate the claimant, as least partially, on a video surveillance tape. That tape did not have audio, however. The claimant was not allowed to see the video. At the hearing, she flatly denied gossiping or saying anything inappropriate, and stated that the host is the one who was asking her for personal information. She said he also blocked her from leaving the room.

The Hearing Officer stated that the surveillance video did not show that the host acted as the claimant testified he did. However, the Hearing Officer did not see the video because the employer did not submit it for the hearing. The claimant's testimony had as much credibility as that offered by the casino host. The Board of Review finds that the employer did not meet the burden of proof required to establish that the claimant was discharged due to misconduct.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective July 14, 2019.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-08964-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **OCTOBER 31, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Director, , finding the claimant failed to show good cause for non-appearance at the hearing scheduled on OCTOBER 14, 2019, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on OCTOBER 15, 2019. That decision found the claimant was discharged from his last employment for misconduct connected with the work and denied benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

The claimant's appeal to the Board of Review was late. He said he did not receive the Appeal Tribunal decision in the mail until after the 10-day appeal period had expired. He said that his mail service is not reliable and sometimes is even delivered to his father's house instead of his own. Under the circumstances, the Board of Review finds good cause for the late appeal.

This matter is submitted on the Appeal Tribunal decision and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant did not call in for the hearing. He said he received the Notice of Telephone Hearing, but did not understand what it meant when it said he was to register for the hearing. He thought it was referring to registering for work, which he had already done. It is unfortunate that he did not follow the instructions, but the Notice plainly stated that he must call in at least 10 minutes before the hearing. Since he has not shown that it was beyond his control to have called in for the hearing, the Board of Review does not find good cause to reopen this matter.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-09739-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 14, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, . , finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant stated that she called the UI Service Center seeking information on the status of her claim. The employee told her that the Commission's determination was being mailed to her that day and that she had been denied benefits. The claimant said the employee did not inform her of her right to appeal. While it appears that usually would occur, the Board of Review is not aware of any regulation or statute requiring that it be done since the appeal rights are included on the determination. When the claimant received the determination in the mail, she did not read it thoroughly because she was hurt that her case had been denied. She did not realize she had the right to appeal, but did begin searching for a lawyer to tell her what to do next. By the time she found a representative, , to help her, the appeal period had expired.

The claimant cited Board of Review Docket #17-AT-08963-BR as a precedent case establishing that the reason for her late appeal should be found to be good cause. In the cited case, the claimant was incorrectly told by a Commission employee that she did not have to call in for her hearing because she had already been allowed benefits. Since the Commission had given the claimant incorrect information, the Board of Review ruled that the claimant had good cause for non-appearance at the hearing.

In the present case, the UI Service Center employee did not tell the claimant that she could file an appeal. However, the claimant was not told that she could not or should not file an appeal; it was simply not discussed. The appeal rights were plainly given on the determination, and the claimant admitted she did not read it because she was upset. Accordingly, the Board of Review finds that the claimant did not show that it was beyond her control to have filed her appeal on time. Therefore, the claimant did not establish good cause for filing the appeal after the 10-day time period set by statute.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby **AFFIRMED**.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-09925-BR**

In Re: Claim of:

APPELLANT

Date of Appeal to Board: **NOVEMBER 08, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant stated his appeal was late because he believes he was sick during that period of time. He did not know when he received the Notice of Determination. He said four other people live at his address of record and any of them could have picked up the mail without telling him he had received a letter. The mail was usually placed on the piano and the claimant would have to look there for his mail. He did not explain how being sick would have prevented him from filing his appeal on time. Since he was not sure of when he received the Notice of Determination, was not sure of when he was sick, and did not explain why being sick would have prevented him from filing his appeal, the Board of Review finds that he did not establish that it was beyond his control to have filed his appeal on time.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS, THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED. The claimant did not show good cause for his untimely appeal and therefore the appeal is dismissed.

COPIES TO: CLAIMANT

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 12/05/19 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-10184-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **NOVEMBER 11, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, _____, finding that good cause was not shown for the untimely filing of the claimant's appeal and dismissing the appeal for want of jurisdiction in accordance with Section 2-603 and Section 2-614, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

In his appeal to the Board of Review, the claimant said his appeal was late because he had been out of town due to his wife having two deaths in her family. At the hearing, he testified he was out of town frequently because he was visiting his daughter who lives in Texas. Nothing was said about deaths in the family. The Board of Review must make its decision based on the sworn testimony given at the hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **19-AT-10313-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

Date of Appeal to Board: **NOVEMBER 20, 2019**

OPINION

The BOARD OF REVIEW considered the decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was hired by the employer as a teacher under process of emergency certification, which allows a person to teach no more than four semesters without a valid teaching certificate. During this two-year period a person such as the claimant must take and pass certain examinations if they desire to continue teaching. Teachers who fail to complete these examinations are not eligible to remain employed.

The claimant failed to complete the required examinations prior to the end of her contract period and on August 31, 2019 was discharged. Because this discharge was for a breach of job duties and responsibilities or obligations of her employer, the discharge was for misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is REVERSED. The claimant is denied benefits effective week ending September 07, 2019, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

**BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152**

Docket No. 15-AT-07662-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **JUNE 1, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, , reversing the Commission’s determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The employer submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, “If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand.” Therefore the new documentation could not be considered by the Board when examining this case.

The claimant was discharged for a positive drug test. It was the second time the claimant had tested positive. He was truck driver with a Commercial Driver’s License and knew the Department of Transportation regulations regarding driving while using drugs. He was given the test because he totaled a \$200,000 vehicle by driving off the road. He disputed the validity of the test, but declined to have a confirmation test done because it would have cost \$150 and he thought the results would be the same. Section 2-406.1(3) says, “When the claimant fails to request a confirmation test pursuant to Section 556 of this title, the claimant shall not be eligible for benefits.” Although there may be a question about the chain of custody, the claimant had the opportunity to request another test and did not do so. Therefore, he is not eligible for benefits according to the statute. The claimant was discharged due to misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is disallowed benefits effective week ending April 11, 2015, until he becomes re-employed and earns wages equal to or in excess of ten times his weekly benefit amount.

DOCKET NO 15-AT-07662-BR

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 8-7-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 14-AT-05132-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: MARCH 7, 2014

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant was discharged from her last employment but not for misconduct connected with the work and allowing benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records at the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review.

The Hearing Officer found that in this instance, the claimant should not be considered as a temporary employee of a temporary help firm because the job assignment lasted over a year. However, Section 2-404.1 does not specify a length of time after which an assignment is no longer considered to be "temporary." Black's Law Dictionary (6th Edition) does, however, provide some guidance. Black's defines "temporary" as "That which is in last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration." In this case, the claimant was working for a client of Terry Neese Personnel Services which had a contract with the federal government. This could certainly be considered as "special assignments and projects" under Section 2-404.1(A)(1). The claimant's assignment could last only as long as the contract was in effect. It was not a "temp-to-perm" situation. The contract was extended at least once, which meant the claimant was allowed to work perhaps longer than was originally thought. But when the contract ended, so did her job.

As an employee of Terry Neese Personnel Services, the claimant was required to contact that company within 24 hours of the end of her assignment, to indicate whether she was available for future assignments. Her assignment ended on Friday, January 3. Although the employer said she did not contact the company, the claimant testified that she did so and provided proof that she did call on Monday, January 6. (Claimant Exhibit 1.) The Board finds that excluding the weekends from the 24-hour requirement was reasonable; the claimant did contact the employer on the next working day following her lay off.

The employer said that the claimant did not say she was available for another assignment on January 6. The claimant stated that she may not have used the word "available" when she called that day, but she gave them her new address and verified they had her correct telephone number so they could contact her. She believed she had done what was required of her. The evidence shows that she did contact Terry Neese Personnel Services on the next working day following the end of her assignment and made sure they had her correct contact information. No logical reason for her doing that was presented, other than her desire to make herself available for another assignment.

After considering all the evidence, the Board of Review concludes that the claimant was a temporary employee of a temporary help firm. She did contact the employer after the end of her assignment as required by her agreement with the employer. The Board of Review finds the claimant is eligible for benefits in accordance with Section 2-404.1.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is AFFIRMED but MODIFIED to show Section 2-404.1 as the applicable Section of Title 40. Benefits are allowed effective December 29, 2013.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 5-19-14 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. 16-AT-04320-BR

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **MARCH 1, 2016**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming the Commission's determination by finding the claimant was discharged from her last employment for misconduct connected with the work and denying benefits in accordance with Section 2-406, Title 40, Okla. Stat., as amended.

This matter is submitted on the recording of the hearing held before the Appeal Tribunal, the Appeal Tribunal decision, and the records in the offices of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was discharged due to missing work without calling in. She had taken prescribed medication which caused her to oversleep. This had happened once before, but it was one year prior to the final incident. Under the circumstances, two absences one year apart do not meet the definition of "excessive." Therefore her discharge is not deemed to have been due to misconduct.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED. The claimant is allowed benefits effective January 3, 2016.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 5-2-16 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.

Benefits are Payable when Due

Cal. Dep't of Human Res. Dev. v. Java, 402 U.S. 212 (1971)

- History:** Claimant (and others similarly situated) filed a class action suit in U.S. District Court for declaration that California's law was unconstitutional and a violation of the Social Security Act. District Court agreed. California appealed to the U.S. Supreme Court. The U.S. Supreme Court affirmed.
- Facts:**
1. The Social Security Act "requires that state methods of administration be found 'to be reasonably calculated to insure full payment of unemployment compensation when due.'"
 2. California's law required that unemployment benefit payments be suspended while an employer's appeal to the award was pending.
 3. Appeals took approximately seven to ten weeks to process.
 4. Payments were immediately reinstated if claimant won at appeal.
- Issue:** Does suspending a claimant's benefit payments while the employer's appeal is pending violate the Social Security Act's requirement to pay benefits "when due"?
- Holding:** Yes. "[T]he congressional objective of [the Social Security Act is] getting money into the pocket of the unemployed worker at the earliest point that is administratively feasible." California's procedure, "which suspends payments for a median period of seven weeks pending appeal, appeal after an initial determination of eligibility has been made, is not 'reasonably calculated to insure full payment of unemployment compensation when due.'"

Procedural Due Process

Mathews v. Eldridge, 424 U.S. 319 (1976)

History: The Social Security Administration stopped Eldridge's disability benefit payments without first conducting an evidentiary hearing. Eldridge filed a constitutional challenge to the administrative procedure, citing a violation of due process. The District Court found that Eldridge's right to procedural due process had been violated and ordered that an evidentiary hearing must be held before his disability benefits could be terminated. The Fourth Circuit affirmed. The U.S. Supreme Court reversed.

Facts:

1. Eldridge was awarded Social Security disability benefits in June 1968.
2. In March 1972, Eldridge was directed by the state agency to provide information about his disabling medical condition. The state agency also requested and received medical reports about Eldridge's condition.
3. The state agency notified Eldridge that it had tentatively decided that he was no longer disabled and proposed to terminate his disability benefits.
4. Eldridge provided a written dispute to the state agency, but the state agency issued a determination that Eldridge's disability ended in May 1972. The Social Security Administration accepted the state agency's determination.
5. Eldridge's disability benefits were terminated before an evidentiary hearing was held.

Issue: Does the Due Process Clause of the Fifth Amendment require that a recipient be afforded an opportunity for an evidentiary hearing prior to the termination of Social Security disability benefits?

Holding: No. "(D)ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." "(D)ue process is flexible and calls for such procedural protections as the particular situation demands." When creating a process for decision-making, an agency must conduct an "analysis of the governmental and private interests that are affected." Three factors must be considered: (1) "[T]he private interest that will be affected by the official action." (2) "[T]he risk of an erroneous deprivation of such interest through the procedures used, and the probably value, if any, of additional or substitute procedural safeguards." (3) [T]he Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." In this case, "(r)equiring an evidentiary hearing upon demand in all cases prior to the termination of disability benefits would entail fiscal and administrative burdens out of proportion to any countervailing benefits." For this reason, there was no deprivation of due process under this procedure.

Shaw v. Valdez, 819 F.2d 965 (10th Cir. 1987)

- History:** Claimant filed a complaint alleging that Colorado's unemployment appeal procedures violated the Social Security Act's fair hearing requirements. The U.S. District Court of Colorado dismissed the complaint for failing to state a claim. Claimant appealed to the Tenth Circuit Court. The Tenth Circuit reversed and remanded the case.
- Facts:**
1. Colorado's unemployment appeal law required a notice of hearing that stated only the time and place of the hearing. The law did not require notice of the legal and/or factual issues to be covered at hearing.
 2. Claimant's former employer cited only one reason for his discharge when it initially protested the claim. The claimant did not receive a copy of the protest letter.
 3. Claimant's benefits were allowed, and the employer appealed. The claimant still did not receive a copy of the employer's protest letter.
 4. At the appeal hearing, the employer added several other reasons to its initial reason for claimant's discharge.
 5. Claimant's benefits were denied on appeal, and the higher appellate authority affirmed the denial.
- Issue:** Was claimant deprived a "fair hearing" in accordance with the Social Security Act as a result of Colorado's notice procedure?
- Holding:** Yes. "[T]he requirements of a fair hearing include notice of the claims of the opposing party and an opportunity to meet them....[S]ince [claimant] never received the employer's protest letter, he was faced with the virtually impossible task of preparing for *all issues* that might arise under Colorado's complex statutory scheme....[T]he generic notice provided [claimant] was, in substance, no notice at all....[Claimant] was entitled, as a matter of right, to know in advance all of the factual and legal issues that would be presented at hearing....[Colorado] could afford a fair hearing premised on fair notice by a brief statement of particular factual and legal points to be raised at the hearing, and here the protest letter itself could have been furnished with a warning to the parties that there would be no 'issue switching' at the hearing."

Substantive Due Process

Turner v. Dep't of Emp't Sec. and Bd. of Review of the Indus. Comm'n of Utah,
423 U.S. 44 (1975)

- History:** Claimant appealed a denial of her unemployment benefits through the administrative agency, and then to the Utah Supreme Court. The Utah Supreme Court ruled that the law was valid, affirming the denial of benefits. Claimant appeal to the U.S. Supreme Court. The U.S. Supreme Court vacated the decision and remanded the case to the Supreme Court of Utah.
- Facts:**
1. Utah's law denied unemployment benefits to pregnant women from 12 weeks before her expected due date until 6 weeks after childbirth.
 2. Claimant was pregnant. She filed for and received unemployment benefits until 12 weeks prior to her due date. Thereafter, she was denied until 6 weeks after childbirth.
- Issue:** Did Utah's law, which "establishes a blanket disqualification during an 18-week period immediately preceding and following childbirth," violate the claimant's Fourteenth Amendment liberty of "freedom of personal choice in matters of marriage and family life?"
- Holding:** Yes. Whether a particular woman can continue to work while she is pregnant is a decision that must be made on a case by case basis. "The Fourteenth Amendment requires that unemployment compensation boards...must achieve state ends through more individualized means when basic human liberties are at stake.... [T]he Utah unemployment compensation statute's incorporation of a conclusive presumption of incapacity during so long a period before and after childbirth is constitutionally invalid..."

Eligibility for Benefits

Copeland v. Okla. Emp't Sec. Comm'n, 1946 OK 138, 172 P.2d 420

History: Claimant was denied benefits. Appeal Tribunal and Board of Review affirmed. District Court affirmed. Claimant appealed to Oklahoma Supreme Court. The Oklahoma Supreme Court affirmed.

Facts:

1. Claimant did not have transportation and had never driven a car.
2. Claimant lived in Meeker, OK, a small town. No work was available in Meeker.
3. Claimant was offered suitable work in Norman, OK, with paid transportation from Shawnee, OK.
4. Claimant refused the offer of work because he did not have transportation, and he was unwilling or unable to move closer to the work location.

Holding: "Eligibility for receipt of benefits bears no relation to the needs of the claimant or the degree of calamity which he has suffered. The financial circumstances surrounding the unemployed worker are not mentioned as factors, however unfortunate or unfavorable they may be....[T]he burden is cast upon the [claimant] to provide himself with such transportation. When he has this burden and is unable to provide himself with such transportation, even through no fault of his own, he is not available for work....[W]here the claimant has definitely stated that he could not accept work because of his lack of transportation, he does not meet the requirements of the law."

Validity of the Unemployment Compensation Program

Chas. C. Steward Mach. Co. v. Davis, 301 U.S. 548 (1937)

- History:** Charles C. Steward Machine Co. ("employer") paid unemployment tax in accordance with the Social Security Act. The employer then filed for a refund from the Alabama Internal Revenue Commissioner ("Davis") and sued to recover its tax payment. The employer challenged the validity of the unemployment tax by alleging that there was a conflict between Alabama statute and the U.S. Constitution. The District Court dismissed the suit, and the Fifth Circuit affirmed. Because this decision resulted in a circuit split on the issue, and the issue involves a constitutional question, the Supreme Court granted certiorari and affirmed.
- Facts:** Section IX of the Social Security Act levied on employers (with some exceptions) an annual "excise tax, with respect to having individuals in his employ." Exceptions include, in part, employers with fewer than eight employees, "agricultural labor, domestic service in a private home, and some other smaller classes." The taxes collected are held in the Treasury of the United States and are not designated towards any particular expenditure. If an employer has paid into a state unemployment fund, it can claim up to a 90% credit with the federal government, as long as the state unemployment program has been certified by the Secretary of the Treasury as meeting certain minimum requirements.
- Issues:**
- 1A. Is the unemployment tax invalid because it taxes the employment relationship, which is considered a right rather than a privilege or luxury?
 - 1B. Is the unemployment tax a uniform excise tax throughout the United States?
 2. Are the defined exceptions in the Social Security Act "so many and arbitrary as to violate the Fifth Amendment"?
 3. Is the purpose of the Social Security Act "an unlawful invasion of the reserved powers of the states" in violation of the Tenth Amendment?
 4. By complying with the Social Security Act, does a state "yield[] to coercion and [abandon] governmental functions which [it is] not permitted to surrender"?
- Holdings:** 1A. No, the unemployment tax is not invalid. Historically, Parliament and the colonial government both passed excise taxes that taxed relationships such as marriages, births, burials, and employment of male servants. Additionally, the government is free to tax businesses, whether in whole or in part. Since employment is but a part of a business, the government is free to tax employment.

1B. Yes, the unemployment tax is a uniform excise tax throughout the United States. The Constitution states that "Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises." When the tax is not a direct tax, it must be uniform across the United States. Unemployment tax is not a direct tax on individuals. Because it is not a direct tax, it must be uniform across the States. The employment relationship exists because it was created by State law. Congress may impose a tax on the relationship.

2. No, the defined exceptions in the Social Security Act do not violate the Fifth Amendment. The Fifth Amendment does not contain an equal protection clause, like the Fourteenth Amendment. "But even the states, though subject to such a clause, are not confined to a formula of rigid uniformity in framing measures of taxation." For example, States are free to choose which properties are subject to taxation and at what rates, if subject to taxation at all. States may tax some business, but not others. And if States are free to be selective in levying taxes, then by even greater force of logic the United States government may be selective. The exemptions contained in the Social Security Act were chosen after considering policy and practicality. Therefore, they cannot be considered arbitrary. Additionally, such exemptions would survive an equal protection challenge under the Fourteenth Amendment, so they also survive a Fifth Amendment challenge. This issue was addressed at length in *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495.

3. No, the purpose of the Social Security Act does not unlawfully invade the powers reserved to the states. A state is free to enact its own unemployment laws and may revoke them at any time. The only caveat is that a state's unemployment scheme must be reviewed and approved by the Social Security Board. Approval by the Board does not prevent a state from revoking its unemployment laws. The state is not required to enter into an agreement with the federal government as to how to disperse the funds to the unemployed, or that the funds must be used only for specific purposes. A state does not relinquish any power by depositing its collected taxes with the federal government. A state may choose to deposit the funds with the federal government in order to reduce risk of loss or waste of the fund. When deposited with the federal government, the fund is backed by the security of the U.S. Treasury. The state is free to revoke its consensual participation in the federal unemployment program at any time, and to receive a refund of any funds it has deposited with the federal government.

4. No, a state's compliance with the Social Security Act is not the result of coercion. The Social Security Act and a state's unemployment scheme work in concert to alleviate the common concern of unemployment. When unemployment soared during the Great Depression, the states were not able to

relieve the crisis on their own, so the states sought help from the federal government. The federal government agreed to help and enacted the Social Security Act in response. The federal government may offer tax credits to the states as temptations or inducements to participate, but each state is free to make its own choice as to whether it will participate in the unemployment program. When a state elects to participate, it enacts its own statutes to administer the unemployment program. Since the state's own statutes would be an expression of the will of the people of that state, the state's participation cannot be found to be the result of undue influence or duress. Furthermore, by accepting the assistance offered through the Social Security Act, a state is not abandoning its governmental functions. The state is accepting help from the federal government to improve the general welfare of the public. At all times, the state retains the right to withdraw its participation in the unemployment program.

Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937)

History: Southern Coal & Coke Co. and Gulf States Paper Corporation ("employers") filed suit in the Middle District of Alabama to prevent the State of Alabama from collecting unemployment taxes. The District Court found in favor of the employers. The State of Alabama appealed to the Supreme Court of the United States. The Supreme Court reversed.

Facts: Alabama's Unemployment Compensation Act ("Act") was enacted to apply to certain employers as defined by the Act. "These employers include all who employ eight or more persons for twenty or more weeks in the year...except those engaged in certain specified employments." Other employers were excluded from the tax. Employers that were subject to the Act were required to pay a percentage of their monthly payroll into the state Unemployment Compensation Fund. The Act met all criteria for the unemployment program as set out in the Social Security Act. Southern Coal & Coke Co. and Gulf States Paper Corporation were employers that were obligated to pay unemployment taxes under the Act.

Issues:

1. Does "the Unemployment Compensation Act of Alabama infringe[] the due process and equal protection clauses of the Fourteenth Amendment"?
2. Is the Unemployment Compensation Act of Alabama "invalid because its enactment was coerced by the action of the Federal Government in adopting the Social Security Act...and because it involves an unconstitutional surrender to the national government of the sovereign power of the state"?

Holdings: 1. No, Alabama's Unemployment Compensation Act does not infringe the due process and equal protection clauses of the Fourteenth Amendment. The tax imposed by the Act "is of a type traditional in the history of Anglo-American legislation, [and] it is within state taxing power..."

The state is free to designate which groups are subject to pay the tax and which groups are exempt. The state need only provide a rational basis for its designations. The state's rational basis may include such justifications as administrative convenience and expense, or public interest in promoting, restricting or suppressing certain industries. Similarly, the state is free to designate which groups may benefit from the tax, and which groups are excluded, subject to the same rational basis test.

A state's "taxing power can be exerted only to effect a public purpose and does not embrace the raising of revenue for private purposes." Expenditures for the state's general welfare have "long and consistently [been] recognized" as valid. Since unemployment causes both social and economic problems, a state's decision to use its power to grant relief from the burdens caused by unemployment is a valid public purpose.

2. No. The Social Security Act does not have a coercive effect. "The United States and the State of Alabama are not alien governments. They coexist within the same territory. Unemployment within it is their common concern." The Social Security Act and Alabama's Unemployment Compensation Act represent "a cooperative legislative effort by state and national governments for carrying out a public purpose common to both, which neither could fully achieve without the cooperation of the other." Such cooperation is not prohibited by the Constitution.

Alabama's unemployment program is administered by the state in accordance with state law. If it wishes to do so, the state's legislature may repeal the Act and withdraw its contributions to the federal Unemployment Trust Fund. The state is then free to use those funds for any public purpose it deems worthy.