

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.