

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