

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.