

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.