

**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.