

BOARD OF REVIEW
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 53345
OKLAHOMA CITY, OK 73152

Docket No. **18-AT-07890-BR**

In Re: Claim of:

APPELLANT

EMPLOYER

Date of Appeal to Board: **AUGUST 10, 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 his 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 submitted documentation to the Board of Review that was not entered into the record at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore that documentation could not be considered by the Board when examining this case.

The claimant was employed as a General Manager. On May 24, 2018, he was contacted by the manager on duty who told the claimant he was unable to come to work. The claimant was not scheduled to work, but immediately went to the workplace. Once there, he learned the cook was also unable to work that day. The claimant went to extraordinary measures in an attempt to conduct the employer's business, which included opening the store and preparing a catering order. The claimant was not successful in getting the store opened on time or in getting the catering order done at the specified time, but that does not diminish the fact that he exhibited a great deal of responsibility towards the employer's interests. His failure to get everything done on time, under the circumstances that occurred that day, does not constitute misconduct as defined in Section 2-406.

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 June 3, 2018.