

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

Docket No. 11-AT-06255-BR

In Re: Claim of: .

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: FEBRUARY 24, 2011

DECISION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, CLYDE STEVENS, affirming the Commission's determination by finding the claimant voluntarily left his employment, and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter comes for review in its regular order on the assignment docket. It 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 Appeal Tribunal Hearing Officer's Findings

The Appeal Tribunal Hearing Officer found the claimant's mother suffered from diabetes, arthritis, fibromyalgia, and had also suffered a stroke. The Hearing Officer also found the claimant resigned from his position on December 1, 2010, without requesting a leave of absence from the employer.

Section 2-210 of the Employment Security Act of 1980 Allows Claimants Separated from Work for "Compelling Family Circumstances" to Receive Unemployment Benefits if Otherwise Eligible

Section 2-210, Title 40, Okla. Stat., as amended, provides "an individual shall be eligible to receive unemployment benefits, if monetarily and otherwise eligible, if the claimant was separated from work due to compelling family circumstances." "Compelling family circumstances" is defined by Section 2-210(4)(b) as including when "the claimant was separated from work due to the illness or disability of an immediate family member..." Immediate family member" includes the "claimant's...parents..." under Section 2-210(1). Section 2-210(2) defines "Illness" as a "verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant paid or unpaid leave."

The Employment Security Act of 1980 Should be Construed to Assist the Parties, Rather than Punish Them for Technical Violations

The Board of Review has consistently held that the Employment Security Act of 1980 should be construed to assist the parties, rather than punish them for technical violations. This construction is supported by the "Declaration of State Public Policy" found in Section 1-103, Title 40, Okla. Stat., as amended.

The Claimant's Mother Suffered from an "Illness" Under Section 2-210(2)

The claimant provided uncontroverted testimony his mother, who lives in California, suffered from diabetes, arthritis, fibromyalgia, and had suffered a stroke. Furthermore, the claimant provided uncontroverted testimony his mother would require constant care, per her physician's advice. This testimony fulfills part of the requirements of Section 2-210(2), "a verified illness which necessitates the care of the ill person...."

Section 2-210(2) also requires the "verified illness which necessitates the care of the ill person" be "for a period of time longer than the employer is willing to grant paid or unpaid leave...." The Appeal Tribunal Hearing Officer interpreted this language as a mandate the claimant must request leave, paid or unpaid, from the employer prior to separating from work, in order to satisfy Section 2-210(2)'s definition of "illness."

The Appeal Tribunal Hearing Officer's findings and the claimant's uncontroverted testimony support a conclusion the claimant's mother could live for years in her current state. No employer can be expected to provide leave, paid or unpaid, for an indefinite period of time, especially one that is likely to last for years. Requiring a claimant to ask their employer for leave - when the claimant's job separation is to care for a family member who will require care for an indefinite period of time, which could last years - would only allow an employer the opportunity to provide self-serving testimony that the employer is willing to grant an indefinite period of leave, when no reasonable employer would be able to do so.

The Board of Review finds it is unreasonable to require the claimant to ask for leave, paid or unpaid, in situations such as this. Furthermore, the Board of Review finds requiring the claimant to do so would controvert the intent of Section 2-210, which allows claimant's benefits in unfortunate situations where the claimant is forced to voluntarily separate from his or her work due to the illness or disability of either the claimant or their immediate family member.

The Claimant was Separated from Work Due to Compelling Family Circumstances when He Resigned to Care for His Ill Mother; and Therefore the Decision of the Appeal Tribunal Should be Reversed

The claimant was separated from his work due to the illness of his mother, who qualifies as an immediate family member under Section 2-210(1). His mother suffers from illnesses which will require care for the rest of her life, a period likely to last years, which is longer than any reasonable employer can be expected to offer leave, paid or unpaid; an "illness" under Section 2-210(2). Because the claimant was separated from his employer due to his mother's illness, this qualifies as a "compelling family circumstance" under Section 2-210(4)(b). Therefore, the claimant was separated from his work due to a "compelling family circumstance," and because the claimant is "monetarily and otherwise eligible" the claimant is eligible to receive unemployment benefits in accordance with Section 2-210, Title 40, Okla. Stat., as amended.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-210, Title 40, Okla. Stat., as amended as the applicable section; and the claimant is allowed benefits effective DECEMBER 26, 2011.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within ten (10) days after the mailing date of this decision, as shown opposite, further written appeal for judicial review may be filed in the District Court of claimant's county of residence or in the District Court of Oklahoma County if claimant is not a resident of Oklahoma, in accordance with Section 2-610, Title 40, Ok. Stat.

CERTIFICATE OF MAILING

I certify on 4-8-11 I personally placed copies of this decision in the United States mail in envelopes addressed to the claimant and employer at their respective addresses shown on the decision. Said envelopes were sealed and bore indicia of proper postage paid.