

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

Docket No. 14-AT-04547-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **FEBRUARY 17, 2014**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, .., affirming the Commission's determination by finding the claimant was discharged from his 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 by the Appeal Tribunal, the Appeal Tribunal decision, and the records of the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was assigned to a temporary-to-permanent position at Whirlpool through Key Group on September 11, 2013. Whirlpool used Key Group to provide prospective employees who would "audition" for the job on a 90-day probationary period. If Whirlpool was satisfied with the employee's work, the employee would be hired permanently. But on December 10 or 11, the claimant was released by Whirlpool due to horseplay in the assembly line area, and attendance problems.

At hearing, much discussion occurred about if the claimant had asked for another assignment after his release from Whirlpool, if he had worked on another assignment, and if he was eligible for rehire. Evidence indicates he did ask for another assignment on or about December 12, and was told there was something available on December 16. The testimony is not clear about whether he actually worked that day, however. He showed up and was "up there" about 30 minutes. Again, it is not clear if he was at Key Group for 30 minutes or at the assignment for 30 minutes. The employer said that notes in the claimant's file indicate the customer cancelled that job order. The claimant said one of the Key Group employees told him he was not needed on the assignment after all, and that nothing else would be available until after the first of the year. It appears the claimant did not work that day. That is backed up by both the claimant and the employer stating at the beginning of the hearing that the claimant's last day of work was either December 10 or 11, at which time he was discharged by the client.

The Board of Review finds that since the claimant was hired for the purpose of auditioning for a permanent job, he was not a temporary employee as defined in Section 2-404.1. The client discharged him for horseplay and attendance problems. The claimant denied engaging in horseplay or having attendance issues. The employer's witness at hearing had no firsthand knowledge of the client's assertions. Accordingly, the Board finds the employer did not meet the burden to show the claimant was discharged for misconduct.

After considering all the evidence, the Board of Review concludes that although it does not agree with all of the findings of fact and conclusion(s) previously adopted by the Appeal Tribunal, it does agree that the claimant was discharged but not for misconduct connected to the work.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.

COPIES TO: CLAIMANT
EMPLOYER