

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

Docket No. 14-AT-05132-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: MARCH 7, 2014

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, ^{reversing and modifying} 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 at the Oklahoma Employment Security Commission, the Appeal Tribunal, and the Board of Review.

The Hearing Officer found that in this instance, the claimant should not be considered as a temporary employee of a temporary help firm because the job assignment lasted over a year. However, Section 2-404.1 does not specify a length of time after which an assignment is no longer considered to be "temporary." Black's Law Dictionary (6th Edition) does, however, provide some guidance. Black's defines "temporary" as "That which is in last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration." In this case, the claimant was working for a client of Terry Neese Personnel Services which had a contract with the federal government. This could certainly be considered as "special assignments and projects" under Section 2-404.1(A)(1). The claimant's assignment could last only as long as the contract was in effect. It was not a "temp-to-perm" situation. The contract was extended at least once, which meant the claimant was allowed to work perhaps longer than was originally thought. But when the contract ended, so did her job.

As an employee of Terry Neese Personnel Services, the claimant was required to contact that company within 24 hours of the end of her assignment, to indicate whether she was available for future assignments. Her assignment ended on Friday, January 3. Although the employer said she did not contact the company, the claimant testified that she did so and provided proof that she did call on Monday, January 6. (Claimant Exhibit 1.) The Board finds that excluding the weekends from the 24-hour requirement was reasonable; the claimant did contact the employer on the next working day following her lay off.

The employer said that the claimant did not say she was available for another assignment on January 6. The claimant stated that she may not have used the word "available" when she called that day, but she gave them her new address and verified they had her correct telephone number so they could contact her. She believed she had done what was required of her. The evidence shows that she did contact Terry Neese Personnel Services on the next working day following the end of her assignment and made sure they had her correct contact information. No logical reason for her doing that was presented, other than her desire to make herself available for another assignment.

After considering all the evidence, the Board of Review concludes that the claimant was a temporary employee of a temporary help firm. She did contact the employer after the end of her assignment as required by her agreement with the employer. The Board of Review finds the claimant is eligible for benefits in accordance with Section 2-404.1.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is AFFIRMED but MODIFIED to show Section 2-404.1 as the applicable Section of Title 40. Benefits are allowed effective December 29, 2013.

COPIES TO: CLAIMANT
EMPLOYER

APPEAL RIGHTS

Within 30 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 5-19-14 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.