

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

Docket No. 15-AT-03602-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **FEBRUARY 10, 2015**

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 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 worked as a customer service representative. The employer provided her with a personal phone as a part of her benefits package. She was required to pay for any additional fees she might incur, and was also required to keep her account in good standing with the company or face termination. She had previously had problems with her phone being suspended, and was facing another suspension at the time of the incident which led to her discharge. Knowing that her job was in jeopardy, she called customer service on her own personal time while away from the job site in order to get the situation resolved. During the call, she was spoken to rudely by the representative, called "sir" repeatedly even though the claimant informed the representative that she was not a "sir," and was kept on the phone over 45 minutes. She asked to speak to a supervisor but was met with even more rude behavior from the representative. The claimant became upset and used a profanity. When the incident was reported, the claimant was discharged.

While the claimant had received warnings about certain aspects of her work performance, she had not been warned about the use of profane language. Further, the incident occurred while she was away from the workplace and was not on duty. Section 2-406(B) states that misconduct connected to the work shall be limited to eight specific acts. Under the circumstances described, the claimant's behavior did not meet the definition of misconduct in the statute.

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 December 7, 2014.

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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 4-14-15 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.