

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

Docket No. 15-AT-05353-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **MARCH 25, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming but modifying the Commission's determination by finding the claimant was separated from employment due to compelling family circumstances, and allowing benefits in accordance with Section 2-210, 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 was discharged for missing too much work. During his last week of work, he missed four days. The last three days he missed were due to pain from a bad tooth, which he had extracted that week. The claimant presented documentary evidence that he had the dental work done that week, and the employer stated he had no reason to doubt the claimant on this matter. The employer also said the claimant gave notice of his absences by texting, which was not an acceptable form of contact. However, the claimant testified that he was not aware of such a policy. The employer provided a document showing the claimant had been advised of company policies, but that document did not specify what the company policy was regarding notification by texting.

The Commission originally found the claimant was discharged from employment but not due to misconduct, and allowed benefits in accordance with Section 2-406. The Appeal Tribunal changed the applicable statute to Section 2-210, and said the claimant should be allowed benefits because he was separated from work due to compelling family circumstances. The Board does not find that the claimant's job separation falls within the scope of Section 2-210. It was not medically necessary for the claimant to stop working or change occupations; he simply needed to take three days off for a dental problem. The Board finds that his job separation is more correctly adjudicated under Section 2-406. The claimant was discharged, but not due to misconduct as it is defined in that statute.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED but MODIFIED to show Section 2-406 as the appropriate Section of Title 40.

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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 5-5-15 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.