

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

Docket No. 15-AT-06358-BR

In Re: Claim of:

APPELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **APRIL 22, 2015**

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 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 was discharged because the employer believed the claimant did not take his prescribed medicine in the recommended dosage. The claimant was prescribed some cough syrup but spilled most of it the first night he had it. He brought the almost empty bottle with him to work the next day and finished it. He threw the bottle in the trash and his supervisor retrieved it. When he saw the prescription had been filled only the day before, the supervisor reported it to the plant manager. The claimant was then discharged because the plant manager believed the claimant had abused the prescription by not taking the appropriate dosages, which was against the company drug policy.

Section 2-406 indicates that the burden of proof rests with the employer to establish misconduct as it is defined in Title 40. Misconduct must be shown by evidence submitted at the hearing and by the testimony of witnesses. Here, the Hearing Officer's decision had to be based only on witness testimony, as no relevant evidence was introduced. The only person with firsthand knowledge of the events, particularly the spillage of the cough syrup, was the claimant. He testified he took the medication at the appropriate intervals and at what he believed was the appropriate dosage. No testimony was presented to refute that of the claimant. As such, the testimony of the claimant must be taken as true. The acts of the claimant do not meet the definition of misconduct.

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 March 1, 2015.

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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 6-30-15 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.