

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

Docket No. **15-AT-06582-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **MAY 1, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, _____, finding the employer failed to show good cause for non-appearance at the hearing scheduled on APRIL 2, 2015, in accordance with Rule 240:10-13-40 of the Rules for Administration of the Oklahoma Employment Security Act, and reinstating the decision of the Appeal Tribunal issued on APRIL 2, 2015, which found the employer's objection to the claim was not timely filed within the period provided by Section 2-503, Title 40, Okla. Stat., as amended. This matter is submitted on the recording of the hearing, 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 employer missed the original hearing because a train blocked the entrance to the rail yard where his office is located. His paperwork with the hearing information on it was in his office. He testified that he did not call anyone to ask if they could look at the paperwork and give him the number to call for the hearing because he did not think of doing so. He also testified that trains came through and blocked the yard on a daily basis. The Hearing Officer found that his failure to call in for the hearing was not beyond his control because he should have anticipated the possibility of being blocked by the train and could have taken the paperwork with him when leaving his office the previous day; or, in the alternative, he could have called someone to retrieve the information from his office.

In his appeal to the Board of Review, the employer said that even if he had called the office manager and asked her to retrieve the information from his desk, she would not have been able to do so because his office was locked and she does not have a key. However, he did not offer that information at the hearing while under oath, so the Board could not take that into consideration. The employer also told the Board of Review that he has no control over the time that the trains will come through the yard, seeming to indicate that he could not have anticipated a train coming through at that time of day. However, at the hearing he testified that it happens everyday. The Board also notes that trains usually run on a schedule that would have given the employer a good idea of what time one might be in the yard. Upon review of the testimony, the Board of Review agrees with the Hearing Officer that it was within the employer's control to have participated in the April 2nd hearing.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that the same should be adopted by the Board of Review as asserted.

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

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 6-22-15 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.