

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

Docket No. **15-AT-06640-BR**

In Re: Claim of:

APELLANT

EMPLOYER

SSA #

Date of Appeal to Board: **APRIL 28, 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 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 submitted documentation to the Board of Review that was not presented at the Appeal Tribunal hearing. In the Rules for the Administration of the Oklahoma Employment Security Act, Rule 240:15-3-3(c) states, "If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand." Therefore the new documentation could not be considered by the Board when examining this case.

The claimant was discharged for making a false statement on her application. She answered "no" to the question asking if she had previously worked for any state agency. She asserted the application was falsified by an unknown person and that the signature on it was not hers. She admitted she did not list her employment with the Department of Corrections on the application because there was not room for it; there was only enough space to include her last seven employers. However, she did submit a copy of her resume listing employment at the Department of Corrections, and the Director of Muskogee County Child Welfare Services testified he was aware of her previous employment with that agency prior to her being hired with Muskogee County Department of Human Services. Since the employer knew about her employment with the Department of Corrections, the discrepancy in her application, however it occurred, cannot correctly be called fraud, dishonesty or intentional misconduct. There does not appear to be any intent to deceive. While the employer may have had good business reasons to discharge her, the burden of establishing the discharge was due to misconduct has not been met.

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.

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 10-22-15 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.