OES-453 (Rev. 9-85)

BOARD OF REVIEW

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

Docket No. **14-AT-08374-BR**

In Re: Claim of:

APPELLANT **EMPLOYER**

SSA #

Date of Appeal to Board: **MAY 19, 2014**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing and modifying the Commission's determination by finding the claimant voluntarily left his last employment without good cause connected to the work and disallowing benefits in accordance with Section 2-404, Title 40, Okla. Stat., as amended.

This matter comes for review in its regular order on the assignment docket. It 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 Appeal Tribunal found that the claimant voluntarily resigned his employment without good cause and denied his unemployment benefits. However, based on the evidence presented, there was nothing voluntary about his resignation. "Voluntary" as been defined as "Resulting from free choice, without compulsion or solicitation" or "gratuitous." (See Black's Law Dictionary, Sixth Edition.)

It was required of the claimant here that he resign in order to obtain workers compensation benefits, benefits the claimant was entitled to under Oklahoma law. The claimant had no *choice*, if he was to accept the workers compensation benefits to which he was undeniably entitled. The actions of the employer amounted to a discharge, to which no evidence of misconduct has been offered. As such, benefits are allowed.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby REVERSED and MODIFIED to show Section 2-406 as the applicable Section of Title 40. The claimant is allowed benefits effective March 23, 2014.

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 7-18-14 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.