

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

Docket No. **15-AT-10954-BR**

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

Date of Appeal to Board: **AUGUST 20, 2015**

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 was separated from employment due to compelling family circumstances, specifically domestic violence, 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 had established a history of attendance problems which exceeded the employer's leave policy. She had been warned several times. On the day of separation, the claimant failed to attend work because she overslept. She was terminated at that time for excessive absences.

The Board is mindful of the horrible effects of domestic violence. However, in this situation there simply was no evidence presented at the hearing that domestic violence was a factor in the claimant's separation. Section 2-210(d) addresses a claimant separating from employment due to domestic violence which causes her to reasonably believe that her continued employment would jeopardize her safety. The claimant did not quit her job because of domestic violence. She was discharged due to excessive absences and tardiness.

Misconduct is defined under Section 2-406, Title 40, as "1. Any intentional act or omission by an employee which constitutes a material or substantial breach of the employee's job duties or responsibilities or obligations pursuant to his or her employment or contract of employment; 2. Unapproved or excessive absenteeism or tardiness . . ." The claimant's attendance problems constituted a material breach of her job responsibilities and obligations, as well as excessive absenteeism and tardiness. She was discharged due to misconduct connected to the work.

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 disqualified from receiving benefits effective week ending July 4, 2015, and indefinitely until she becomes re-employed and earns wages equal to or in excess of ten times her weekly benefit amount.

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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 10-15-15 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.