

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

Docket No. 15-AT-09158-BR

In Re. Claim of:

Date of Appeal to Board: **JULY 10, 2015**

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, affirming but modifying the Commission's determination by finding that claimant was overpaid benefits in the amount of \$3526.00 for weeks ending August 23, 2014 through October 18, 2014 due to administrative error, which may be deducted from future benefits payable to the claimant. The determination was in accordance with Section 2-613, 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 (OESC), the Appeal Tribunal, and the Board of Review pertaining to this appeal.

The claimant was off work for some time due to an injury. He was released to return to work in July 2015. For some reason, the employer would not put him back to work or even communicate with him. In August, the claimant decided to file for unemployment benefits. He received benefits from the end of August until mid-October. At that time, a new employee at the employer's place of business realized that the claimant should have been allowed to return to work in July. The claimant was called to work and the employer decided to give him back pay to make amends for its failure to allow him to return to work earlier. The OESC found the claimant to be overpaid unemployment benefits during the weeks for which he received back pay.

Section 2-105.1 of Title 40 states that back pay received by a claimant shall be subtracted from the benefit amount drawn by him in each week in which he is placed on furlough or work stoppage by his employer, when such furlough or work stoppage is due to a lapse in appropriations, funding or budget shortfall affecting the employer. Those are not the reasons the claimant was off work. Accordingly, the Board of Review finds the back pay should not be subtracted from his benefits, nor should he be overpaid for that amount.

**IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW** that the decision of the Appeal Tribunal is hereby **REVERSED**. The Commission is instructed to rescind the claimant's overpayment.