

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

Docket No. 15-AT-07662-BR

In Re: Claim of:

CLAIMANT

APPELLANT

SSA #

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

OPINION

The BOARD OF REVIEW considered the findings and decision of the Appeal Tribunal Hearing Officer, reversing the Commission's determination by finding the claimant was discharged from his last employment but not for misconduct connected with the work and allowing 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 employer 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 a positive drug test. It was the second time the claimant had tested positive. He was truck driver with a Commercial Driver's License and knew the Department of Transportation regulations regarding driving while using drugs. He was given the test because he totaled a \$200,000 vehicle by driving off the road. He disputed the validity of the test, but declined to have a confirmation test done because it would have cost \$150 and he thought the results would be the same. Section 2-406.1(3) says, "When the claimant fails to request a confirmation test pursuant to Section 556 of this title, the claimant shall not be eligible for benefits." Although there may be a question about the chain of custody, the claimant had the opportunity to request another test and did not do so. Therefore, he is not eligible for benefits according to the statute. The claimant 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. The claimant is disallowed benefits effective week ending April 11, 2015, until he becomes re-employed and earns wages equal to or in excess of ten times his 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 8-7-16 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.