

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

Docket No. 16-AT-06097-BR

In Re: Claim of:

APPELLANT

Date of Appeal to Board: JUNE 27, 2016

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's wages from Skyline Directional Drilling are not exempt from unemployment taxes and should be added to her claim for benefits in accordance with Section 1-208, Section 1-209, Section 1-210, Section 1-228, and Section 2-207, 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.

Section 1-210(14) suggests that a rebuttable presumption supporting employment relationship existed in this case. Section 1-210(15) does not exclude the employment of the claimant from being considered an employment relationship. All of the following assertions were rebuttable:

1. The claimant had an employment agreement - she was an "at will" employee.
2. The claimant made no capital contributions to the company.
3. The company directed the claimant's work.
4. The claimant could not bind the company to any agreement.
5. The claimant received no guaranteed payment from the company.
6. The claimant had taxes withheld from her checks.
7. The claimant's income was not based on company profits.

The Commission asks for the matter to be remanded for further hearing so that Skyline Directional Drilling ("Skyline") can be present and participate in the proceedings. If the Commission wanted to produce evidence to rebut presumption of employment, someone from Skyline could have been brought to testify or rebut or deny the claimant's testimony. 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." Since Skyline could have been called to testify at the hearing, the Board does not find it appropriate to reopen the matter to obtain such testimony now.

The Board of Review concludes that the findings of fact and the conclusion(s) previously adopted by the Appeal Tribunal are applicable and that same should be adopted by the Board of Review as asserted.

IT IS THEREFORE ORDERED BY THE BOARD OF REVIEW that the decision of the Appeal Tribunal is hereby AFFIRMED.