

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1368

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 172235). Claimant filed a timely request for hearing. On October 28, 2015, ALJ R. Frank conducted a hearing, and on October 30, 2015 issued Hearing Decision 15-UI-46867, affirming the Department's decision. On November 17, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision to the extent it was relevant and based on the hearing record.

FINDINGS OF FACT: (1) Express Employment Professionals, a temporary staffing agency, employed claimant from approximately August 1, 2015 to August 18, 2015. Claimant was assigned to work for one of the employer's clients.

(2) Claimant sought permanent employment elsewhere while working for the employer. On August 18, 2015, claimant received a contingent offer of work from a permanent employer. Claimant told the employer's client and the employer that she needed to leave work early on August 18, 2015 to complete a criminal background check and the hiring process at her new employer's. She left work at the employer's client's business at approximately 2:00 p.m. on August 18, 2015.

(3) When claimant told the employer she had received an offer of work from another employer, the employer found someone to take claimant's place at her current assignment, effective August 19, 2015. Claimant was not allowed to return to her assignment after August 18, 2015.

(4) At the time of the work separation, claimant had not yet passed the criminal background check or completed the hiring process with her new employer, and she had not been given a start date for her new job.

CONCLUSIONS AND REASONS: We disagree with the Department and the ALJ, and conclude that the employer discharged claimant for misconduct.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship is deemed severed at the time that a work assignment ends. OAR 471-030-0038(1)(a).

On August 18th, claimant told the employer and its client that she had received and accepted an offer of work from a permanent employer. The record does not show that claimant told either the employer or the client that she was unwilling to continue working in her temporary assignment while waiting to complete the background check and hiring process for her new job, and waiting for her new employer to provide her with a start date. On this record, claimant's employment did not continue past August 18th because the employer replaced her in her current temporary assignment with a different employee, and not because claimant obtained a new job. The employer therefore demonstrated that it would not allow claimant to continue working past August 18th. Because the first unequivocal indication in this record that claimant's employment had ended occurred when the employer replaced her, we conclude that the work separation was a discharge.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.

The employer discharged claimant because she accepted an offer of work with a different employer, and did not allege or show that it discharged her because she engaged in willful or wantonly negligent behavior that constituted misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 15-UI-46867 is set aside, as outlined above.¹

Susan Rossiter and J. S. Cromwell

DATE of Service: December 18, 2015

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the

¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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