

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0770

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged from work due to absences resulting from the use of alcohol on a second or subsequent occasion within a 12 month period (decision # 95829). Claimant filed a timely request for hearing. On June 1, 2016, ALJ Murdock conducted a hearing at which the employer did not appear, and on June 8, 2016 issued Hearing Decision 16-UI-61327, affirming the Department's decision. On June 27, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Bridgeway Recovery Service, Inc. employed claimant as a records clerk from July 7, 2014 until April 8, 2016.

(2) Claimant was an alcoholic. After April 8, 2015, claimant was absent from work at least two times as a result of her use of alcohol.

(3) On April 8, 2016, claimant met with her supervisor and a representative from the employer's human resources department. They told claimant she was being discharged due to her irregular work attendance and her absences. At least two or more of those absences were caused by claimant's use of alcohol. Claimant told the supervisor and human resources representative that she had relapsed into alcoholism and wanted to enter a treatment program. The employer allowed claimant to resign in lieu of discharge. Claimant signed a resignation notice that day, April 8, 2016.

(4) On the same day the work separation occurred, April 8, 2016, claimant called Kaiser Permanente, her health provider, for alcohol rehabilitation treatment. Kaiser had a certificate of authority from the

Oregon Health Authority to provide addictions and mental health services. Claimant was told that she needed to attend a mandatory orientation to Kaiser's addiction treatment services and a mandatory assessment to determine an appropriate level of treatment for her as the first steps in the treatment process. On April 10, 2016, claimant attended the orientation. On April 13, 2016, claimant attended the assessment. The assessment counselor determined that residential treatment was appropriate and claimant received a referral to Brookside Center, a residential facility that Kaiser owned. Brookside Center was licensed by the Oregon Health Authority to provide residential treatment for addictions. On April 20, 2016, claimant was admitted to Brookside as an in-patient.

CONCLUSIONS AND REASONS: Claimant was not disqualified from benefits as a result of her discharge.

ORS 657.176(2)(g) states that an individual who is discharged for absences from work that occurred as a result of the use of alcohol on a second or subsequent occasion within a period of twelve months is disqualified from benefits unless he or she is participating in a recognized alcohol rehabilitation program within ten days after the date of the discharge and the individual provides to the department documentation of program participation. OAR 471-030-0126(3) (August 1, 2004) defines "participating" in a program to mean engaging in a course of treatment through a recognized drug or alcohol rehabilitation program. OAR 471-030-0126(5) defines a recognized alcohol rehabilitation program to mean a program authorized and licensed under the provisions of OAR Chapter 415 or similar provisions in a state other than Oregon...

In Hearing Decision 16-UI-61327, the ALJ concluded that claimant was disqualified from benefits despite following the steps the Kaiser Addictions program set out for her in the ten days after she was discharged. The ALJ reasoned that because claimant was not actually admitted to Brookside until April 20, 2016, she did not begin "participating in a course of alcohol *treatment*" until that day and since that date was twelve days after the employer discharged her she fell outside the ten day window where she would not have been disqualified from benefits. Hearing Decision 16-UI-61327 at 3 (emphasis in original). We disagree.

As claimant described her initial contacts with the Kaiser addictions program and the steps she took within the first ten days after her discharge, those steps were mandatory parts of the Kaiser program. The orientation and the assessment were needed to allow claimant, in collaboration with an addictions counselor, to determine the level of care at Kaiser most appropriate for her to maximize her chances for a successful recovery. Audio at ~14:11, ~15:10. As such, they appear to have initiated the course of treatment and to be integral parts of the Kaiser program. While the ALJ is correct that claimant was not actually admitted to Brookside within ten days after her discharge, by the actions she took in that first ten days, she was engaging in the course of treatment prescribed by the Kaiser addictions program, of which entry to Brookside, or in-patient treatment, was only the culminating step in the process that began with the orientation and the assessment. Because claimant was engaging in Kaiser's plan of treatment by the April 10, 2016 orientation, or two days after her discharge, she did not fall outside the ten day window within which she needed to begin her participation in order to avoid disqualification.

It appears that the Kaiser addictions program, directly or by inference, met all other requirements for claimant's work separation not to have been disqualifying. Claimant placed into evidence the certificate of approval issued to the Kaiser addictions program by the Oregon Health Authority and, while that

certificate did not refer to approval under OAR Chapter 415, but to other chapters, we infer that this omission was an oversight and the “recognized” requirement of OAR 471-030-0126(4) was met. Since the administrative decision concluded claimant was disqualified from benefits because she was not participating in a recognized alcohol rehabilitation program within ten days of discharge, we infer that claimant provided documentation of her participation to the Department in advance of the issuance of the decision. Record Document, administrative decision # 94824 (May 11, 2016); Exhibit 1 at 4. Since claimant’s participation in the Kaiser addictions program met all of the requirements of ORS 657.176(9)(b) and OAR 471-030-0125, claimant is not disqualified from benefits based on her discharge.

DECISION: Hearing Decision 16-UI-61327 is set aside, as outlined above.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, not participating.

DATE of Service: August 4, 2016

NOTE: 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.

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 ‘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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