

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1119

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding Riverside Payments, Inc., as claimant's putative employer, discharged claimant but not for misconduct and for that reason, claimant was not disqualified from benefits (decision # 113854). The putative employer filed a timely request for hearing. On September 13, 2017, ALJ Janzen conducted a hearing, and on September 14, 2017 issued Hearing Decision 17-UI-95253, concluding claimant was not disqualified from benefits based on a work separation from the putative employer. On September 18, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

Riverside Payments, Inc. submitted a written argument to EAB, but failed to certify that it provided a copy of its argument to claimant as required by OAR 471-041-0080 (October 29, 2006). For that reason, EAB did not consider the written argument of Riverside Payments, Inc. when reaching this decision.

FINDINGS OF FACT: (1) Riverside Payments, Inc. was a separate business entity from Cascade Tech Systems, LLC. While the same individuals held ownership interests in both companies, the companies were separately organized and had different employer identification numbers. Riverside Payments did not do business as Cascade Tech and Cascade Tech did not do business as Riverside Payments. Cascade Tech supplied support and marketing services to Riverside Payments through employees hired by and working for Cascade Tech.

(2) On April 27, 2017, Cascade Tech hired claimant to work as a call center representative. Upon hire, claimant entered into and signed an employment agreement with Cascade Tech as the employer. Around this time, Cascade Tech also issued its employee handbook to claimant, which set out Cascade Tech's performance expectations of him in his role as a call center representative. Cascade Tech assigned claimant to handling incoming phone calls to Riverside Payments. In those calls, claimant sometimes represented that he was acting on behalf of Riverside Payments. Claimant had no other relationship with Riverside Payments than that he was assigned to a call center and answered phone calls made to Riverside Payments.

(3) On July 17, 2017, Cascade Tech discharged claimant.

CONCLUSIONS AND REASONS: There was no employment relationship between Riverside Payments and claimant. Claimant cannot be disqualified from benefits based on a work separation from Riverside Payments.

ORS 657.176(1) states that an individual may be disqualified from benefits based on, among other things, a work separation. ORS 657.176(2)(a) states that an individual who is discharged for *misconduct* connected with *work* is disqualified from receiving benefits. Emphasis added; *see also* OAR 471-030-0038(3)(a) (setting out the standard for determining if a claimant has engaged in disqualifying misconduct.). OAR 471-030-0038(1) (August 3, 2011) defines the term “work” for purposes of ORS 657.176(2)(a) and OAR 471-030-0038(1)-(5) to mean “the continuing relationship between an employer and an employee” and further states that its provisions do not apply “where no employment relationship exists.” ORS 657.015 defines “employee” to mean, among other things, any person who is employed for remuneration or under any “contract of hire, written or oral, express or implied” by an employer subject to this chapter in an employment subject to this chapter.

Although administrative decision # 113854 concluded by necessary implication that Riverside Payments employed claimant and discharged him for non-disqualifying reasons, the preponderance of the evidence shows that Riverside never employed claimant and that claimant never worked for it. While claimant was assigned to work in a call center representing Riverside Payments, the evidence developed at hearing did not suggest or tend to suggest that Riverside Payments at any time held itself out as claimant’s employer or did anything that reasonably should have induced claimant to believe that Riverside Payments was employing him. Indeed, the fact that claimant signed an employment contract with Cascade Tech and not Riverside Payments and received an employee handbook from Cascade Tech as his employer and not from Riverside Payments makes any such belief unreasonable as well as unlikely. On this record, there was no express or implied employment or work relationship between claimant and Riverside Payments and Riverside Payments did not and could not have initiated a work separation with claimant by discharging him or otherwise.

The only issue before EAB at this time is whether or not claimant should be disqualified from benefits based upon a work separation from Riverside Payments. Because Riverside Payments did not employ claimant, claimant is not disqualified from benefits based on a work separation from that particular business. In so concluding, we reach no opinion as to whether or not claimant should or should not be disqualified from benefits based on a work separation from Cascade Tech.

DECISION: Hearing Decision 17-UI-92523 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: October 19, 2017

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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