

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0871

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91528). Claimant filed a timely request for hearing. On August 29, 2018, ALJ Wyatt conducted a hearing at which the employer failed to appear, and on September 6, 2018, issued Order No. 18-UI-116120, affirming the Department's decision. On September 10, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Express Employment Professionals was a temporary staffing agency.

(2) Express Employment Professionals had employed claimant for a series of different work assignments. A work assignment with the employer ended when claimant completed 560 hours of work for the employer's client.

(3) On February 12, 2018, claimant began a work assignment with the employer's client, Smith Bates Printing. In June 2018, claimant satisfactorily completed 560 hours of work for Smith Bates Printing. On June 27, 2018, claimant left work with the employer because he had completed the work assignment with Smith Bates Printing. Claimant was not hired as a permanent employee by Smith Bates Printing and did not accept a new assignment with Express Employment Professionals.

(4) Claimant sought firefighting work with a different employer after he completed the Smith Bates Printing assignment.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct.

In Order No. 18-UI-116120, the ALJ concluded that claimant quit work without good cause because he planned to work for a different employer, but did not have a definite offer of work when his employment ended with Express Employment Professionals. Order No. 18-UI-116120 at 2-3. We disagree that claimant voluntarily left work, and that claimant should be disqualified from unemployment insurance benefits based on this work separation.

Where, as here, an individual works for a temporary agency, the employment relationship is deemed severed at the time that a work assignment ends. OAR 471-0300038(1)(a) (January 11, 2018). It is undisputed in the record that the employer's work assignment was completed when claimant completed 560 hours of work for the assigned client, and that claimant completed those hours for the last assignment he had from the employer with Smith Bates Printing. Although we infer that the employer may have had other assignments for claimant if claimant had not sought firefighting work with a different employer, claimant's employment relationship was severed when claimant completed the work assignment with Smith Bates Printing, and not because claimant voluntarily left work. In other words, notwithstanding whether claimant contacted the employer for another work assignment after he completed the work assignment with Smith Bates Printing, a work separation occurred when his 560-hour work assignment ended on June 27, 2018. Because claimant completed the work assignment with Smith Bates Printing, the work separation with Express Employment Professionals 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.

Claimant's discharge from the work assignment occurred because the assignment ended, and not because of conduct attributable to him as a willful or wantonly negligent violation of the employer's expectations. Claimant's discharge was not for misconduct, and he is not subject to disqualification from receiving unemployment insurance benefits on the basis of that discharge.

DECISION: Order No. 18-UI-116120 is set aside, as outlined above.

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

DATE of Service: October 10, 2018

NOTE: This decision reverses an order 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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