

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1075

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 113206). Claimant filed a timely request for hearing. On October 30, 2018, ALJ Wyatt conducted a hearing, and on November 7, 2018 issued Order No. 18-UI-119348, reversing the Department's decision. On November 13, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Clive Holdings, Inc. employed claimant as a customer service representative from July 19, 2018 until July 29, 2018.

(2) The employer expected claimant would provide reasonable notice if he was going to be away from work on vacation. Claimant understood the employer's expectations as a matter of common sense.

(3) As of sometime before July 18, 2018, claimant was regularly working Mondays through Thursdays and was regularly off on Fridays through Sundays. Sometime before July 18, claimant notified the employer that he was going to be away from work on vacation and would miss work on his regularly scheduled days of July 23 through July 26, as well as that he was going to be gone on his usual day off of Friday, July 27. The employer approved the requested vacation. Claimant notified the members of his team that he was going to work remotely on Thursday, July 19 to prepare for an airline flight that he had scheduled for that evening.

(4) On Wednesday, July 18, 2018, claimant reported for work and worked a complete day. On Thursday, July 19, claimant telecommuted for work. That day, claimant finished up some work in preparation for being away on vacation. Among other things, claimant spoke with the employer's shipping department and left some messages on the employer's slack channel about customer matters that might come up during his absence. Claimant also sent some text messages to members of his team reminding them that he was leaving on vacation. On the evening of Thursday, July 19, claimant took the airplane flight to begin his vacation. Claimant did not report for work on Friday, July 20 since he was on vacation and it was not a regularly scheduled work day. Claimant did not work from July 23 through July 27.

(5) On Saturday, July 28, 2018, in the evening, claimant returned from his vacation. Claimant intended to report for work for his regularly scheduled shift on Monday, July 30, 2018. Around Sunday, July 29, 2018, an employer representative called claimant and told him that he was discharged. Claimant asked the representative if he would tell him the reason that his employment had been terminated and the representative stated, "Nope." Audio at ~34:50. The employer discharged claimant on July 29, 2018.

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

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) (January 11, 2018) 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 carries the burden to show claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

Although the employer's witness contended that claimant had failed to notify the employer in advance that he was going to be away from the workplace from July 18 through July 27, and that he was incommunicado and the employer did not know his whereabouts from July 18 through July 20, claimant disputed the accuracy of the witness's account. Audio at ~23:40, ~24:27. Claimant stated that the employer had approved in advance a vacation for him from July 23 through July 27, that he had reported for work on July 18, that he had telecommuted to work on July 19 and through communications that day to coworkers and team members the employer reasonably should have known where he was, and that since Friday was not a regularly scheduled work day for him, he had not needed to seek permission to take July 20 off. Audio at ~29:30, ~30:30, ~32:00. Claimant's testimony was based on first-hand information about events that he participated in and directly observed. The testimony of the employer's witness was based on hearsay from others who were not identified. Absent a reason to doubt claimant's credibility and to prefer the testimony of the employer's witness over that of claimant, claimant's first-hand evidence is entitled to greater weight than the employer's hearsay. Accordingly, claimant's testimony is accepted as accurate in the findings of fact.

On the facts as found, claimant did not fail to give advance notice of any scheduled workdays that he missed work for the period of July 18 through July 27. While the employer might not have realized that claimant would be telecommuting on July 19, the record is insufficient to show that telecommuting was an unusual occurrence in the workplace, that claimant knew or should have known that the employer had prohibited him from telecommuting, or any basis from it might be inferred that claimant's behavior relating to the period of July 18 through July 27 was a willful or wantonly negligent violation of the employer's standards. On this record, the employer did not meet its burden to show that the behavior that led to claimant's discharge was a willful or wantonly negligent violation of the employer's standards. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-119348 is affirmed.

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

DATE of Service: December 17, 2018

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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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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