

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1153

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 150031). Claimant filed a timely request for hearing. On December 3, 2018, ALJ Shoemake conducted a hearing, and on December 7, 2018, issued Order No. 18-UI-120937, affirming the Department's decision. On December 14, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) RSG Forest Products, Inc. employed claimant from April 10, 2014 until July 18, 2018 as a sawmill laborer.

(2) The employer expected claimant to refrain from using his personal cell phone while on duty, permitting him to use his cell phone only during lunch and rest breaks.

(3) On March 2, 2018, claimant's plant manager saw claimant using his cell phone while working and warned claimant to put his cell phone away.

(4) On May 23, 2018, claimant's plant manager saw claimant using his cell phone while working and warned claimant to put his cell away and told him that he was not permitted to use his cell phone at work.

(5) Sometime before July 18, 2018, an employer representative told claimant that he was not permitted to use his cell phone as a clock while working.

(6) On July 18, 2018, claimant was waiting for wood to accumulate for the planer because the wood was jammed and needed to accumulate before claimant was able to push it through the planer. Claimant was not on a rest or lunch break, but began viewing material on his cell phone while he waited for the wood to accumulate. The plant manager saw the apparatus distributing wood for the planer was not working properly. The manager saw that claimant was using his cell phone while working at the planer and told claimant to go home.

(7) On July 18, 2018, the employer discharged claimant for violating its expectation that he refrain from using his cell phone while working.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude the employer discharged claimant for misconduct.

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) (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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for using his personal cell phone while working. The employer had a reasonable right to prohibit employees from using their personal cell phones while working. Claimant used his cell phone while he was working on July 18, 2018. Claimant did not assert, and the record does not otherwise show, that claimant was on a break at that time. Claimant testified that although it was not productive to use a cell phone while working, there was no specific rule against it. Audio Record at 18:37 to 18:55. However, claimant knew or should have known the employer's expectation about cell phone use because claimant's plant manager told claimant on March 2, 2018 and May 23, 2018 to put his cell phone away while working and that he was not permitted to use his cell phone at work. Claimant asserted that he sometimes used his cell phone to check the time, and that the employer did not provide him a clock in his work area. Audio Record at 17:33 to 18:05. However, claimant did not assert, and the record does not otherwise show, that claimant used his cell phone on July 18 merely to check the time, or that the employer approved any exceptions to its policy prohibiting cell phone use while working. In using his personal cell phone while on duty on July 18, 2018, claimant consciously engaged in conduct he knew or should have known violated the employer's expectations. Claimant therefore willfully violated those expectations.

Claimant's conduct on July 18, 2018 was not an isolated instance of poor judgment. For an act to be isolated, the exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Claimant used his cell phone on May 23 after his plant manager warned him on March 2 that doing so was prohibited. His conduct on July 18 therefore was a repeated act, and a single or infrequent occurrence. Thus, claimant's conduct was not an isolated instance of poor judgment.

Claimant's conduct was not a good faith error. Claimant testified that he did not know that his cell phone use could result in discharge. Audio Record at 19:28 to 20:05. However, the record does not show

that claimant had an objective basis to believe that the employer would excuse or condone his cell phone use. Audio Record at 19:28 to 20:08.

We therefore agree with the Department and the ALJ that the employer discharged claimant for misconduct, and that claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 18-UI-120937 is affirmed.

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

DATE of Service: January 11, 2019

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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