

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1192

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 100924). The employer filed a timely request for hearing. On December 14, 2018, ALJ M. Davis conducted a hearing, and on December 18, 2018 issued Order No.18-UI-121443, affirming the Department's decision. On December 27, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Ochoco Lumber Company employed claimant as a night shift millwright from about May 17, 2014 until October 4, 2018.

(2) The employer expected claimant to avoid insubordination and unreasonably argumentative or disruptive behavior. Claimant understood the employer's expectations as a matter of common sense.

(3) On October 4, 2018, the general manager met with the claimant and approximately ten other night shift employees to discuss work-related matters. The general manager explained to the employees that there would be operational changes because the night shift had been having too much downtime. The general manager announced that the night shift would have a new shift supervisor and identified NW, an existing employee, as the new supervisor. Claimant did not get along with NW and they had a poor working relationship.

(4) Upon learning that NW would become night supervisor, claimant informed the general manager that he "would not be able to work" with NW and that he was going to begin looking for other work. Audio at ~15:46; *see also* at ~9:37. In response to claimant's comment, the general manager stated, "There's your two weeks' notice [of leaving]." Audio at ~15:55; *see also* at ~10:00. Claimant replied that he was not notifying the employer that he was leaving on a particular date, but only that he was going to start looking for new work. The general manager and claimant then became involved in a back-and-forth about what claimant's statement had meant. Claimant thought that the general manager was trying to goad him into quitting during the meeting. This exchange culminated in claimant generally asking the

other night shift employees who were present, “Has anyone heard me say I’m quitting in two weeks?” Audio at ~16:20. None of those employees responded, after which the general manager told claimant, “That’s it. You’re gone.” Audio at ~16:26. When claimant did not immediately leave the premises, the general manager told claimant that he would call the local sheriff to remove him if he did not go. Claimant left. In total the interaction between claimant and the general manager lasted somewhere between five and ten minutes.

(5) On October 4, 2018, the employer discharged claimant.

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. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. The employer has 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).

The general manager testified that he discharged claimant because claimant “refused” to work with NW and because he had been “disruptive” during the October 4 meeting. Audio at ~13:22. Fairly construed, however, it appears that claimant was expressing to the general manager only that he did not think he could work with NW, and not that he was unwilling to work under NW at any time thereafter or was rejecting NW as a supervisor. With respect to being disruptive at the meeting, while claimant may have expressed disagreement with the general manager’s decision to make NW the night shift supervisor, the general manager did not contend that claimant yelled, used foul or inappropriate language, had a tirade or a fit of temper or otherwise threw the meeting into disorder, confusion or the like. Aside from stating an opinion that differed from that of the general manager, the evidence does not show that claimant’s behavior or demeanor in doing so was manifestly unreasonable or defiant of the general manager’s authority, or that claimant knew or should have known merely by expressing his disagreement with the general manager at a meeting, he probably was violating the employer’s standards. As well, claimant’s perception during the October 4 meeting that the general manager was trying to provoke him into saying that he was quitting work was not obviously unreasonable given the substance and context of the general manager’s comments to him. Viewed against this backdrop, claimant’s comments to the general manager about what he had meant by his comments at the meeting and the general question he asked of his coworkers likely was not an attempt either to undercut the general manager’s authority or to cause a commotion, but was an effort to ensure that the general manager did not misconstrue what he had said. On this record, the employer did not meet its burden to show that claimant violated its standards willfully or with wanton negligence by his statements or his behavior during the October 4 meeting.

Although the employer discharged claimant, it did not show that it did so for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-121443 is affirmed.

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

DATE of Service: January 28, 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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