

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0025

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 31, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 121501). Claimant filed a timely request for hearing. On December 14, 2018, ALJ Janzen conducted a hearing, and on December 17, 2018, issued Order No. 18-UI-121365, affirming the Department's decision. On January 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) Douglas County Forest Products employed claimant as a millwright from December 16, 1995 to September 13, 2018.

(2) The employer had a safety policy that provided, in relevant part, as follows:

Willful disregard for your safety or the safety of other employees is grounds for immediate termination. Carelessness is usually the cause of most accidents and can be avoided simply by thinking safety at all times. Do your part by reporting any unsafe conditions you become aware of to your supervisor promptly. Any injury, no matter how slight, must be reported immediately to your supervisor.

Transcript at 10. Claimant acknowledged receipt of the employer's safety policy and was aware of the employer's expectations regarding safety.

(3) On December 20, 2017, claimant placed a pressurized can of spray paint in front of a large mill heater in order to warm it up before using it. Claimant realized the paint can was flammable but put it close to the heater anyway. Within a few minutes, the can of spray paint exploded which showered the area with paint. Claimant did not report the incident to a supervisor. Claimant later acknowledged to the

employer that he knew that he should not have placed the can in front of the heater. On December 28, 2018, the employer gave claimant a written safety warning admonishing him for his conduct. Exhibit 1.

(4) August 8, 2018, claimant began cutting a piece of metal with a torch while within five feet of a Hyster forklift. Sparks from the torch flew outward and landed on the forklift, igniting fuel and sealant that had accumulated on the floorboard of the vehicle. A fire started and caused significant damage to the forklift. Claimant did not report the incident to a supervisor and tried to put out the fire himself before others became aware of it.

(5) On September 6, 2018, claimant needed to use a welder and with it turned on, inserted its electrical plug into a wall outlet causing a loud pop and small explosion in the outlet which caused the electrical breaker to turn off. Rather than alert a nearby company electrician to resolve the problem, or report the incident to a supervisor, claimant asked a coworker for assistance in figuring out why the welder did not work, without informing him of what had just occurred. The coworker noticed the welder was not plugged in, plugged it in and after also noticing that the breaker was in the off position, switched the breaker to the on position, causing another outlet explosion to occur. Only the coworker reported the incident to the employer.

(6) On September 13, 2018, after performing an investigation of the September incident, the employer discharged claimant for violating its safety policy with regard to that incident.

CONCLUSIONS AND REASONS: We agree with the ALJ. 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 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer had the right to expect claimant to follow its safety policy by considering the safety of himself or coworkers when performing work tasks and report any unsafe conditions or accidents to a relevant supervisor promptly. Claimant had acknowledged receiving the employer's safety policy and the employer had spoken to claimant multiple times about safety issues. Claimant violated that expectation on September 6, 2018 when he failed to report the initial loud pop, electrical explosion and unsafe condition he had caused to an electrician or relevant supervisor, and shortly thereafter, allowed a coworker to repeat his actions without informing him of what had just occurred which led to a second outlet explosion which could have caused him injury. Claimant's failure to report the unsafe condition to a supervisor, electrician or his coworker, at the very least, demonstrated conscious indifference to the consequences of his inaction for the coworker and employer and was wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment or a good faith error under OAR 471-030-0038(3)(b). For conduct to be considered an isolated instance of poor judgment, it must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent conduct. OAR 471-030-0038(1)(d)(A). Claimant also violated the employer's safety policy on December 20, 2017 when he knowingly placed a pressurized can of flammable spray paint in front of a large mill heater and on August 8, 2018 when he failed to report a fire he started on a Hyster forklift and instead attempted to put the fire out himself without the knowledge of others. On each of those occasions, claimant's conduct also demonstrated conscious indifference to the consequences of his actions for both the employer and his coworkers and was at least wantonly negligent. Nor can claimant's conduct be excused as a good faith error. Claimant did not assert or show that he reasonably believed, or had a factual basis for believing the employer would condone his actions in ignoring the requirements of the employer's safety policy on September 7, 2018, particularly when his failure to warn both his coworker and the employer placed the health of coworkers at risk.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits based on his work separation.

DECISION: Order No. 18-UI-121365 is affirmed.

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

DATE of Service: February 8, 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 desisyon.

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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ បើសិនជាលោកអ្នកមិនបានបំពេញតម្រូវការនេះទេ រដ្ឋអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

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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