

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0029

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 26, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90400). Claimant filed a timely request for hearing. On December 28, 2018, ALJ Snyder conducted a hearing, and on December 31, 2018 issued Order No. 18-UI-121940, reversing the Department's decision. On January 3, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Evans Machine & Fabrication LLC employed claimant as a machinist from sometime in approximately 2012 until September 25, 2018.

(2) On September 24, 2018, claimant and a coworker had an argument. The argument escalated and a supervisor thought the argument might become physical. The coworker with whom claimant had argued quit work that day. The employer's owner sent claimant home early that day without asking claimant for his side of the argument. The employer was not going to discharge claimant for his involvement in the argument.

(3) On September 25, 2018, claimant reported for work. After working that day for an hour, claimant went outside the shop to get some material. The supervisor was working outside near the materials that claimant wanted to retrieve. The supervisor noticed claimant and told him to get back to work inside the shop. Claimant asked the supervisor why he seemed angry. Claimant and the supervisor then discussed claimant's involvement in the argument the day before and used some foul language directed at each other. Both claimant and the supervisor were upset. The supervisor told claimant that he was not happy about claimant's behavior the day before because the coworker with whom claimant had been arguing had quit due to claimant "trying to get physical" with the coworker during the argument. Audio at ~10:20. Claimant responded, "Well, you're about to [lose another employee]." Audio at ~16:35. Claimant wanted to communicate that he was upset at the comment the supervisor had made because he did not think that he had been physical with the coworker the day before and he thought the supervisor and the owner were blaming him without having heard his side of the story. By his comment, claimant

was not intending to state that he was quitting, only that he might quit if the supervisor did not stop accusing him of starting the argument or becoming physical during it.

(4) After his interaction with the supervisor outside the shop on September 25, 2018, claimant went inside to return to work as the supervisor had instructed. However, before resuming work, claimant retrieved his lunch box and set it on a desk near the shop door. Claimant did so because he thought the supervisor was probably going to send him home early that day because of their interaction. While claimant was in the front of the shop, the owner entered. The owner told claimant to leave the shop. Claimant told the owner he had not told the supervisor that he was quitting and that “you [the owner] are not going to make me quit.” Audio at ~16:58; *see also* at ~11:18. In response, the owner told claimant to “get out of here” and that claimant was “done here.” Audio at ~16:58. Claimant left the workplace.

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

The employer’s witness, the owner, contended that claimant voluntarily left work by the statements he made to his supervisor on September 25, 2018. Claimant contended that the employer discharged him by the owner’s later statements to him that same day. The first issue this case presents is the nature of the work separation. OAR 471-030-0038(2) (January 11, 2018) sets out the standard for characterizing the separation. If the employee could have continued to work for the same employer for an additional period of time, the separation is a voluntary leaving. OAR 471-030-0038(2)(a). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant and the supervisor had a heated conversation on September 25, 2018. However, by reporting for work earlier in the day on September 25 and commencing work, claimant evidenced an intention to continue working for the employer. The statement claimant made to the supervisor, that “you’re about to [lose another employee],” in the heat of the moment, was at best ambiguous about claimant’s intentions, and reasonably susceptible of interpretation not as a statement of present intention, but one of future intention if the supervisor did not stop blaming him for the argument he had with his coworker the previous day. The preponderance of the evidence shows that after the interaction with his supervisor and as of his encounter with the owner on September 25, claimant remained willing to continue working for the employer. The statement from the owner ordering claimant to leave the workplace while claimant was trying to explain that he had not quit and had not intended to quit work during the earlier interaction with his supervisor was the first objective and unambiguous intention of either party to sever the work relationship, and it was instigated by the employer. Claimant’s work separation was a discharge on September 25.

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).

The employer’s witness testified that he did not allow claimant to continue working on September 25 because he thought claimant had quit work during his earlier interaction with the supervisor. The witness

did not contend that claimant violated any employer standard leading to his discharge or that he engaged in any misconduct. On this record, there is insufficient evidence to show that the employer discharged claimant for a willful or wantonly negligent violation of its standards.

The employer did not show that it discharged claimant for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-121940 is affirmed.

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

DATE of Service: February 6, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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

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 محكمة 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.