

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0113-R

Affirmed on Reconsideration
No Disqualification

PROCEDURAL HISTORY: On November 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 81904). The employer filed a timely request for hearing. On January 16, 2019, ALJ Janzen conducted a hearing and issued Order No. 19-UI-122840, affirming the Department's decision. On February 4, 2019, the employer filed an application for review with the Employment Appeals Board (EAB) that included a written argument.

On February 26, 2019, EAB issued EAB Decision 2019-EAB-0113, adopting Order No. 19-UI-122840. EAB did not consider the employer's argument in reaching that decision because the employer did not state in the argument that it had sent a copy to claimant as required by OAR 471-041-0080. Later on February 26, 2019, the employer filed a timely written argument that did include a statement that it was sent to claimant as required. EAB construed the employer's timely filed written argument as a request to reconsider EAB Decision 2019-EAB-0113 in light of the employer's written argument. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

Under ORS 657.290(3) EAB has authority to reconsider its own decisions to correct errors of fact or law. EAB erred in reaching 2019-EAB-0113 without considering the employer's written argument because the employer's February 26th argument complied with all the procedural requirements set forth in OAR 471-041-0080 governing submission of written argument.

In its argument, the employer suggested that claimant should be denied benefits because she failed to comply with company policy during her new team member training period by failing to perform essential job duties, receiving customer complaints, and failing to follow directions despite coaching. The employer argued that claimant's conduct demonstrated a willful and wanton disregard of the employer's interests, and that she was at fault for termination of her employment.

The employer's written argument summarized the employer's allegations at the hearing. The employer's testimony at the hearing, however, were insufficient to prove misconduct for two primary reasons. First, the employer's witness at the hearing did not identify any specific incidents or provide details about

claimant's conduct in any particular incident sufficient to establish that she intentionally or knowingly engaged in the conduct alleged. Second, the employer had the burden of proof in this case, and therefore had to present evidence showing it was more likely than not that claimant acted as alleged and had the required willful or wantonly negligent mental state. In this case, claimant denied the employer's allegations and affirmatively testified that she thought she was providing good customer service and had not violated the employer's expectations at all, much less with a willful or wantonly negligent mental state. Absent a basis for concluding that claimant was not a credible witness, the parties' evidence was no better than equally balanced. Where the evidence is equally balanced, the employer – which has the burden of proof – has failed to satisfy its evidentiary burden. The employer's allegations about claimant's conduct therefore did not establish that she engaged in misconduct connected with work, or that she should be disqualified from receiving unemployment insurance benefits because of her work separation.

For those reasons, on reconsideration we adhere to EAB Decision 2019-EAB-0113 as modified, and re-affirm Order No. 19-UI-122840.

DECISION: On reconsideration, Order No. 19-UI-122840 is re-affirmed.

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

DATE of Service: March 13, 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

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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