

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0421

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 13, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 90052). Claimant filed a timely request for hearing. On April 2, 2019, ALJ Seideman conducted a hearing, and on April 9, 2019, issued Order No. 19-UI-127875, affirming the Department's decision. On April 29, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Winco Foods Inc. employed claimant from February 17, 2003 until February 6, 2019 as a cashier and a grocery clerk. Claimant's duties included handling cash.

(2) The employer expected claimant to comply with its cash handling policy, which included verifying the payment amount from the customer by counting the payment twice before issuing a money order for the correct amount. Claimant understood the employer's expectation.

(3) On February 11, 2018, claimant received a verbal warning for violating the employer's cash handling procedure because claimant issued a money order to a customer for \$100, but only received \$50 in payment from the customer.

(4) On January 1, 2019, claimant received a warning and suspension for violating the employer's cash handling policy because she printed a money order without receiving payment from the customer first, and because she gave the money order to the wrong customer.

(5) On February 1, 2019, claimant collected \$800 from a customer who requested a money order for \$900. Claimant counted the cash that the customer gave her and thought she counted \$900. While claimant was counting the cash, another employee was bothering her by "putting their hands in [claimant's] face." Audio Record at 29:04 to 29:10. Claimant issued a money order to the customer for \$900. The customer later returned to claimant and told her that he may have given her \$800 instead of \$900. The customer gave claimant an additional \$100, and claimant reported the incident to the

employer. The employer determined that claimant had received only \$800 when she initially received payment from the customer.

(6) On February 6, 2019, the employer discharged claimant for violating its cash handling policy.

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. OAR 471-030-0038(3)(a) (December 23, 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 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 discharged claimant because she violated its cash handling procedures by incorrectly verifying the payment amount she received from a customer. Order No. 19-UI-127875 concluded that claimant's "acts" during her final year of employment were wantonly negligent, reasoning that claimant "did not use the care she should have" after having received warnings, and that her conduct was not an isolated instance of poor judgment. Order No. 19-UI-127875 at 3. However, the employer did not meet its burden of proof to show that claimant's conduct was willful or wantonly negligent during the final incident.

The employer reasonably expected claimant to follow its cash handling procedures, including counting payments received from customers twice to verify the amount received. Claimant understood the employer's expectations. The evidence as to whether claimant counted the customer's payment twice on February 1 is equally balanced. The employer's witness testified that video of the transaction between claimant and the customer on February 1, 2019 showed that claimant was "distracted" by a coworker who went behind the counter by claimant, and that claimant did not count the customer's payment twice. Audio Record 35:05 to 35:36. However, the video is not in evidence, and claimant testified that she always counted the money twice for large payments, and was "positive" she had received \$900 when she received the payment from the customer on February 1, 2019. Audio Record at 28:56 to 29:15.

However, even assuming that claimant failed to count the payment twice, it is undisputed that she was "distracted" by a coworker while she was verifying the payment amount, and the record fails that claimant consciously neglected to count the payment twice. Absent such a showing, the record fails to establish that claimant was aware that she miscounted the payment, or that she consciously engaged in conduct that she knew or should have known would probably result in her doing so. The employer therefore failed to show that claimant's conduct was willful, or that she acted with wanton negligence as defined under OAR 471-0300038(1)(c).

The employer failed to establish claimant's discharge was for misconduct. Claimant is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 19-UI-127875 is set aside, as outlined above.

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

DATE of Service: June 3, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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