

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0504

Affirmed ~ Confirmada
Disqualification ~ Descalificación

PROCEDURAL HISTORY: On April 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 143436). Claimant filed a timely request for hearing. On May 22, 2019, ALJ Janzen conducted a hearing, and on May 28, 2019, issued Order No. 19-UI-130599, affirming the Department's decision. On May 31, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

El reclamante no declaró que envió una copia de su argumento por escrito a todas las partes en este caso, de acuerdo con OAR 471-041-0080(2)(a) (13 de mayo de 2019). El argumento también contiene información que no es parte del expediente de este caso, y el reclamante no demostró que razones o circunstancias afuera de su control le impidió ofrecer esa información durante la audiencia, de acuerdo con OAR 471-041-0090 (13 de mayo de 2019). EAB solamente consideró información recibida en evidencia durante la audiencia. Vea ORS 657.275(2).

FINDINGS OF FACT: (1) Oregon Precision Manufacturing Inc. employed claimant from November 2014 until March 26, 2019 as a general laborer.

(2) The employer expected its employees to refrain from engaging in insubordinate conduct toward supervisors and confrontational or hostile conduct toward coworkers. Claimant understood the employer's expectations.

(3) Claimant's wife also worked for the employer. On May 17, 2018, the employer gave claimant a verbal warning to refrain from hostile conduct toward his wife at work after claimant's wife complained to the employer's business manager that claimant had "accus[ed] her of messing around and . . . called her fat" that day. Transcript at 10.

(4) On October 10, 2018, the employer's president warned claimant to refrain from hostile conduct toward his wife at work after an employee reported to the president that claimant and his wife were "fighting" on the production floor, and asked the president to stop them. Transcript at 19.

(5) On January 17, 2019, claimant became upset in the break room because the table where he normally sat had been moved. Claimant "shoved" the table and a chair and used foul language toward coworkers who were present. Transcript at 18. One of the coworkers reported the incident to the employer's president, and the employer gave claimant a written warning for being confrontational toward other employees in the break room.

(6) On the morning of March 26, 2019, the employer's president stated to claimant and two other employees while they were in the employer's break room that it was important that they follow his instructions while working on a new part. It was not a disciplinary meeting. Claimant stood up, pushed his chair away, and raised his voice and one of his arms, stating, "Okay, we'll be doing whatever you want us to do" in a "sarcastic" tone of voice. Transcript at 15. Claimant told the president that he had already understood and was going to do it the way the employer wanted. Audio Record at 1:27:30 to 1:27:38.¹ Claimant told the president, "If you wanna talk to me, bring me to your office." Transcript at 15. The president left the break area and went to his office. The president felt claimant had behaved in a manner that was "aggressive and hostile . . . as if he want[ed] to fight [him]." Transcript at 15.

(7) On March 26, 2019, the employer discharged claimant for being insubordinate toward the employer's president in the break room earlier that day.

CONCLUSION AND REASONS: 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. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a) (December 23, 2018). "[W]antonly negligent" means 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." OAR 471-030-0038(1)(c). Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for insubordination based upon his conduct when the employer's president addressed claimant and two coworkers on March 26, 2019 about following instructions while

¹ The interpreter omitted and did not interpret claimant's statement at the hearing and it is not therefore in the transcript.

producing a part. Claimant asserted at the hearing that he “never contradicted” the president and did not state that the president should bring him to his office if he wanted to talk to claimant. Transcript at 24, 25.

Claimant’s assertion is not plausible for two reasons. First, although claimant denied that he told the president to bring him to the office if he wanted to speak with claimant, claimant followed his denial at hearing with an explanation about why he disagreed with the president’s management style when he “criticized” employees “on the floor” rather than in private. Claimant stated, “[H]e should talk with [the employee] in the office . . . and not criticize them out on the floor in front of everybody else. And that he can be really insulting . . . and it would be better to be called to the office instead of being criticized before the entire public, out on the floor.” Transcript at 24-25. Second, claimant’s statement that he “already understood” the president’s instructions and was already following his instructions shows claimant’s impatience at being given the instructions again in front of his coworkers. Claimant asserted that the president often yelled and had called claimant “stupid” in the past. Transcript 24-25. However, claimant did not assert, and the record does not otherwise show, that the president was hostile or abusive toward claimant and the other employees on March 26. Claimant’s impatience and insubordinate conduct during the incident was at least wantonly negligent under the circumstances.

Claimant’s conduct cannot be excused under OAR 471-030-0038(3)(b) as a good faith error. Although claimant denied having been confrontational toward his wife and other coworkers, claimant knew or should have known from multiple prior warnings that the employer expected him to refrain from confrontational conduct, even in the break room. Claimant therefore did not make confrontational statements to the president, in front of other employees, based upon a sincere belief that the president would condone such conduct.

Claimant’s conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). For conduct to be considered isolated, it must be a single or infrequent exercise of poor judgment rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d). Claimant’s conduct on March 26 was not isolated. On January 17, 2019, claimant engaged in similar conduct that constituted at least a wantonly negligent violation of the employer’s expectations when he “shoved” a table and a chair and used foul language toward coworkers in the break room because he was upset that the table had been moved. Claimant asserted that he told coworkers someone had moved the table and moved the table and chairs back, but did not know why the coworkers reported to the employer that he was angry. Transcript at 26-27. It is implausible that the coworkers would have reported the incident had claimant not behaved in a confrontational manner that day. Claimant knew or reasonably should have known at the time he moved the table that doing so in an angry manner and using foul language toward coworkers was at least a wantonly negligent disregard of the employer’s expectation of how he should treat coworkers. Given claimant’s conduct on January 17, 2019, the record shows that his insubordinate behavior on March 26 was not a single or infrequent occurrence, and cannot be excused as an isolated instance of poor judgment.

The employer discharged claimant for misconduct. Claimant is therefore disqualified from receiving unemployment insurance benefits because of this work separation, until he requalifies for benefits by earning four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-130599 is affirmed. *La Orden de la Audiencia 19-UI-130599 queda confirmada.*

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

DATE of Service: July 5, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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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