

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0622

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 125835). Claimant filed a timely request for hearing. On June 10, 2019, ALJ Monroe conducted a hearing, and on June 17, 2019, issued Order No. 19-UI-131765, concluding the employer discharged claimant, but not for misconduct. On July 5, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Skykart Indoor Racing Center LLC employed claimant from March 7, 2017 until March 17, 2019 as a track attendant at the employer's indoor racing center.

(2) The employer expected track attendants to complete a daily cart safety inspection. At hire, the employer's facility manager instructed claimant to complete the cart safety inspection, and provided him a checklist to follow. To complete the checklist properly, the employer expected claimant to, among other things, do a visual inspection of the carts, check the carts' tire pressures with a pressure gauge, and use a wrench to make sure the carts' bolts were tight. If the racing center was too busy to complete the checklist before opening, the employer expected the track attendants to complete the checklist throughout their shift.

(3) Claimant understood that the employer expected him to complete the cart safety checklist each shift, but the employer did not tell claimant to use a wrench to check the carts' bolts, and claimant did not see other track attendants using a wrench while completing the checklist. Claimant did not use a wrench to complete that task, and would visually inspect the carts instead. Claimant checked the cart tires visually when he completed the daily inspection, and with a tire gauge every few days. He regularly checked tires he knew were prone to leak air. He observed other track attendants checking the carts' tire pressures by watching how the carts performed going around corners, and by stepping on the tires.

(4) During 2017, the employer's mechanic, who had been a manager previously, told claimant that completing the checklist was "a waste of time" and that the employer did not use the completed checklists. Transcript at 16.

(5) The employer had not warned claimant before March 15, 2019, for failing to complete the cart safety inspections properly or told claimant that he was not performing the safety inspections correctly.

(6) On March 15, 2019, claimant had approximately ten minutes to complete the safety checklist before the race center opened. Claimant completed a “basic” check of the carts, and planned to complete the remainder of the safety checklist throughout his shift. Transcript at 21. Claimant did not use a wrench to check or tighten the screws on the carts. He did not check all the tires with a tire gauge, but saw that the carts appeared to be running properly on the track.

(7) On March 15, 2019, claimant’s coworker contacted the facility manager and told him that claimant had not completed the cart safety checklist. The manager reviewed the racing center’s security camera and saw that claimant had not properly completed the items on the checklist because he did a visual inspection, but did not use a pressure gauge to check the carts’ tire pressures, and did not use a wrench to check the carts’ bolts.

(8) Although the employer was dissatisfied with other aspects of claimant’s work performance, if claimant had not failed to complete the cart safety checklist properly on March 15, 2019, the employer would have continued to employ claimant for another “couple of weeks.” Transcript at 8.

(9) On March 17, 2019, the employer’s manager discharged claimant for failing to complete the cart safety inspection properly on March 15, 2019.

CONCLUSION 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 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). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer decided to discharge claimant after claimant’s failure to inspect the carts properly on March 15. The March 15 incident was therefore the proximate cause of claimant’s discharge. Accordingly, that incident must be examined to determine whether claimant’s discharge was for misconduct. Only if claimant’s failure to complete the cart safety inspection on March 15 was willful or wantonly negligent would it then be appropriate to analyze the prior incidents of alleged willful or wantonly negligent behavior that the employer described at hearing. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

It is undisputed that claimant did not use a wrench to test the bolts on the carts, or a tire pressure gauge to test the tires on the carts, or that claimant did not complete more than a visual inspection of the carts before the racing center opened on March 15. The record shows that claimant knew of the employer's expectation that he complete the checklist each shift. However, although claimant violated the employer's expectations by failing to use a wrench and tire gauge to check the carts, and to do a thorough safety check of the carts, claimant's conduct was a good faith error, and therefore not misconduct. A "good faith error" usually involves a mistaken but honest belief that one is complying with the employer's expectation, and some factual basis for believing that to be the case. *See Goin v. Employment Department*, 203 Or App 758, 126 P3d 734 (2006).

As a basis for his good faith belief, the employer had not trained claimant regarding the inspection procedures or instructed claimant to use a wrench to inspect the bolts or a tire gauge to check the tires every shift. Claimant testified that he completed the checklist tasks "to the best of his ability." Transcript at 20. The record shows that claimant observed other track attendants complete the safety checklist with the same thoroughness, or lack thereof, as claimant. The employer had not warned claimant before March 17 that he was performing the safety inspection incorrectly, despite the record showing that claimant had more likely than not failed to complete the inspection to the employer's standards repeatedly in the past. Moreover, the employer permitted track attendants to complete the inspection throughout their shifts, rather than before opening, if the racing center was busy. The record shows that claimant had limited time to complete the inspection before opening on March 15 and that he planned to complete the inspection later during his shift on March 15. The record does not show that the facility manager checked the security tape to see if claimant completed the inspection later during his shift.

Although claimant's failure to perform a more thorough safety inspection, including manually checking tire gauge pressure and the carts' bolts, violated the employer's expectation, claimant did so with the sincere belief that he was complying with the employer's expectation. Under OAR 471-030-0038(3)(b), claimant's conduct was a good faith error, and not misconduct. Claimant therefore is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-131765 is affirmed.

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

DATE of Service: August 9, 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 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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

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.

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.