

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0645

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 29, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 111129). The employer filed a timely request for hearing. On June 25, 2019, ALJ Meerdink conducted a hearing at which claimant did not appear, and on June 26, 2019 issued Order No. 19-UI-132289, concluding that claimant quit working for the employer without good cause. On July 13, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Tidy Sister LLC employed claimant as housekeeper from 2017 until April 30, 2019.

(2) The employer expected claimant to drive to the houses she was assigned to clean using her personal vehicle. The employer expected that claimant would maintain a valid driver's license and liability insurance so that it was lawful to drive her vehicle to clients' houses. Claimant understood the employer's expectations.

(3) On April 24, 2019, claimant notified the employer that she would not be able to work during the workweek of April 29, 2019 through May 3, 2019 because of a death in her family. The employer allowed claimant to have those days off.

(4) On April 26, 2019, claimant was scheduled for work. That day, on her way to work, claimant called the employer's owner and told the owner she was going to be late to work because a law enforcement officer had stopped her and informed her that her driver's license was suspended and she had no automobile insurance. Claimant told the owner that the suspension was due to several unpaid traffic tickets. The owner reminded claimant that she needed to have a valid driver's license and automobile insurance to work for the employer.

(5) On April 27, 2019, claimant and the owner exchanged messages on Facebook. The owner told claimant that she needed to take a leave of absence until she was able to have her driver's license

reinstated and obtain insurance. Claimant told the owner she did not earn enough to pay off the tickets and get her license and automobile insurance reinstated “anytime soon.” Audio Record at 8:25 to 8:28. Claimant also told the owner that she could not be a housekeeper for the rest of her life. The owner replied, “I guess we have come to a crossroads, left or right but not straight. We can’t do this anymore.” Audio Record at 8:45 to 8:51. Claimant responded that she could not “do this right now.” Audio Record at 8:52 to 8:53. The owner replied, “We just did. You made it very clear where you stand. I love you, but this is a business and I can’t split this behavior anymore and you know why. So let’s just walk away like adults.” Audio Record at 8:54 to 9:04. Claimant responded in part, “If you want to fire me, just go ahead and fire me already. . .” Audio Record at 9:25 to 9:28. The owner told claimant that she was not firing her, but felt like claimant had quit. Claimant replied, “I have a thousand dollars in tickets I have to pay off and my car’s a piece of crap. I’m pissed off that you’re doing this to me right now.” Audio Record at 9:38 to 9:46. Later in the exchange, claimant asked the owner, “Are you laying me off until I get [a] license?” Audio Record at 10:56 to 10:59. The owner stated in reply, “Yeah, you can probably file for a hardship license.” Audio Record at 10:59 to 11:01.

(6) On April 30, 2019, the owner sent claimant a message on Facebook asking claimant if she had yet looked into whether she could obtain a hardship license. Claimant responded that she had not since she had been at family gatherings surrounding her family member’s death, but would do so when she returned home. The owner asked claimant how she wanted her clients handled during that week. The subsequent messages that the owner and claimant exchanged became irritated, culminating in the owner sending a message to claimant stating, “Your attitude has finished it. I’m done,” “I’ve gone out of my way to help you for this whole entire year,” and “I’ve put up with a lot, and your attitude right now establishes the fact that it’s over.” Audio Record at 12:17 to 12:35. The exchange ended.

(7) On May 1, 2019, claimant sent a Facebook message to the owner stating that she had contacted the Department of Motor Vehicles (DMV) and had been told that DMV would not give her information over the phone about a hardship license. The owner responded to claimant that she was “already done.” Audio Record at 12:47 to 12:48. By this statement, the owner was referring to the messages she sent to claimant on April 30.

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

Order No. 19-UI-132289 found that the work separation was a voluntary leaving, reasoning that claimant and the owner mutually agreed on April 27, 2019 that the employment would end due to the suspension of claimant’s driver’s license and her lack of automobile insurance. Order No. 19-UI-132289 at 2. The order concluded that claimant did not leave work for good cause and was disqualified from benefits she since she created the situation that resulted in the loss of her driver’s license by not paying for traffic tickets she incurred. Order No. 19-UI-132289 at 2. However, Order No. 19-UI-132289 was incorrect as to the nature of the work separation on which the disqualification was based.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). 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).

In the messages that claimant and the owner exchanged on April 27, both expressed frustration with the other. However, neither expressed unequivocally that they wanted to end the work relationship. The final message exchanged that day, about the hardship license, suggested that, as of the conclusion of that exchange, there would be no need to end the employment if claimant was able to obtain a hardship license. The conclusion that the work relationship did not end on April 27 is strengthened by the fact that the owner contacted claimant on April 30 about the status of claimant's efforts to obtain a hardship license, which likely would not have happened had the work relationship ended on April 27.

As the exchange of messages continued on April 30, however, the owner communicated a clear unwillingness to allow claimant to continue working for the employer when she stated that she was "done" and "it's over." There was no indication that claimant agreed to sever the employment relationship, which is corroborated by her message to the owner on May 1 about the hardship license, which she likely would not have sent had she thought her employment had ended the day before. By the owner's response to claimant's May 1 message, the owner expressed to claimant that in her messages of the day before she had intended to sever the employment relationship. Claimant's work separation therefore was a discharge on April 30, 2019.

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). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence.

The owner was not willing to allow claimant to continue working with a suspended driver's license and no automobile insurance. The issue is whether claimant lost her driver's license and had no insurance as a result of her willful or wantonly negligent behavior. While the owner testified that claimant's driver's license was suspended due "tickets," the owner did not know the basis for the tickets. Audio Record at 15:14 to 15:19. There was no evidence as to whether claimant was aware of the tickets before law enforcement told her about them during the stop on April 26. There was no evidence about why claimant had not paid the tickets. There also was no evidence as to why claimant was not carrying automobile insurance and if she was aware that she was not covered by insurance before the April 26 stop. Absent evidence on these matters, the record fails to show that claimant's lack of a valid driver's license and insurance was due to willful or wantonly negligent behavior. The record therefore fails to establish that the employer discharged claimant for misconduct.

The employer discharged claimant but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 19-UI-132289 is set aside, as outlined above.

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

DATE of Service: August 19, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week 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 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.

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