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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0669

Order No. 19-UI-133530 Affirmed – Request to Reopen Denied
Order No. 19-UI-132116 Reversed – No Disqualification

PROCEDURAL HISTORY: On May 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 83903). The employer filed a timely request for hearing. On June 6, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 21, 2019 at 9:30 a.m. On June 21, 2019, ALJ Scott conducted a hearing, at which claimant failed to appear, and issued Order No. 19-UI-132116, concluding that claimant's discharge was for misconduct. On July 1, 2019, claimant filed a timely request to reopen the June 21st hearing. ALJ Kangas reviewed claimant's request, and on July 17, 2019 issued Order No. 19-UI-133530, denying claimant's request to reopen. On July 21, 2019, claimant filed a timely application for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-132116 and 19-UI-133530. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0669 and 2019-EAB-0731).

FINDINGS OF FACT: (1) Laborworks Industrial Staffing Specialists, Inc., a temporary staffing agency, employed claimant at various assignments between January 2018 and April 12, 2019.

(2) On April 12, 2019, the employer assigned claimant to work as a dishwasher at its client's restaurant. The assignment paid $12.50 per hour. The assignment was for a single day of work. It was the employer's practice to repeatedly assign the same person to the dishwashing assignment when the client needed a dishwasher on successive days. Claimant accepted and completed the April 12, 2019 assignment.

(3) On April 13, 2019, the employer offered claimant another single-day dishwashing assignment at its client's restaurant. Claimant refused the employer's offer. Claimant told the employer that he had

another job going out with his union on an asbestos removal job that paid $15.00 per hour and would last "for a while." Audio recording at ~ 13:20-13:25.

(4) The notice of hearing OAH mailed to claimant on June 6 included a certificate of mailing stating that the notice was mailed to "Employment UI Claims." The caption on the first page of the notice stated, "Before the Office of Administrative Hearings State of Oregon for the Employment Department." The first paragraph of the notice stated, "the issue(s) to be considered are: **Shall claimant be disqualified from the receipt of benefits because of a separation . . .**" (Emphasis in original.) The next page stated, "This concerns your hearing. If you do not understand the enclosed important document please IMMEDIATELY contact the Office of Administrative Hearings at 1-800-311-3394."

(5) Claimant received the notice of hearing, but did not understand that the notice was related to his unemployment insurance claim. He thought the hearing was about a complaint he had filed against the employer regarding a previous work assignment.

CONCLUSIONS AND REASONS: Claimant's request to reopen is denied. Claimant is not disqualified from unemployment insurance benefits based upon a work separation from Laborworks.

Reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012).

Claimant failed to appear at the June 21st hearing because even though he received notice of the hearing he did not understand that it was related to his unemployment insurance claim. OAR 471-040-0040(2)(b)(B) specifically states, however, the "Good cause does not include: Not understanding the implications of a decision or notice when it is received." Claimant's request to reopen must therefore be denied.

Work separation. The Department concluded that the employer discharged claimant, but not for misconduct. Decision # 83903. Order No. 19-UI-132116 concluded, however, that claimant quit his job. Order No. 19-UI-132116 at 2. The first issue is therefore the nature of the work separation.

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).

Order No. 19-UI-132116 concluded that claimant quit work because he "could have continued to work at the same assignment under the same employer for an additional period of time." Although the record does show that the employer had additional assignments for claimant, and offered to reassign him to a client on successive days, the employer's witness also testified that each assignment was a one-day assignment.

For purposes of unemployment insurance benefits cases, when individuals work for temporary agencies the employment relationship "shall be deemed severed at the time that a work assignment ends." OAR 471-030-0038(1)(a). That means that each time one of claimant's day-to-day assignments ended, the employment relationship itself ended, even though the employer had other assignments to offer to claimant and claimant continued his affiliation with the employer after each assignment ended.

In this case, claimant completed his April 12th day-to-day assignment working for the employer's client as a dishwasher. At that point, the assignment ended. For purposes of unemployment insurance, the employment relationship between claimant and the employer also ended at that time. At the time the April 12th assignment ended, no additional continuing work was available to claimant in the April 12th day-to-day assignment. He therefore did not quit work, the work separation was a discharge.

The fact that the employer had additional assignments to offer claimant, or that claimant refused additional offers of work between April 13th and May 19th, does not change the outcome of this case because this case is based solely upon the Department's adjudication of the work separation between claimant and the employer. The Department may, at its discretion, choose to adjudicate claimant's alleged refusals of additional work assignment offers the employer made to him between April 13th and May 19th under the job refusal statute. This decision, however, is limited to the work separation issue.

Discharge. 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."

Claimant's discharge in this case occurred because his April 12th job assignment ended. The end of a temporary job assignment is not attributable to him as willful or wantonly negligent misconduct. He therefore may not be disqualified from receiving benefits based upon the April 12th work separation.

DECISION: Order No. 19-UI-133530 is affirmed. Order No. 19-UI-132116 is set aside, as outlined above.

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

DATE of Service: <u>August 9, 2019</u>

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.

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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