

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0703

Affirmed
Not Eligible for TRA

PROCEDURAL HISTORY: On December 12, 2018, the Oregon Employment Department (the Department) served notice of a potential benefit report concluding that claimant was not entitled to receive Trade Readjustment Allowance (TRA) or Trade Adjustment Assistance (TAA). On December 21, 2018, the Department served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 150709). Claimant filed a timely request for hearing on decision # 150709. On February 6, 2019, ALJ Meerdink conducted a hearing, and on February 8, 2019 issued Order No. 19-UI-124291, reversing decision # 150709 and concluding that the employer discharged claimant, but not for misconduct. On February 28, 2019, Order No. 19-UI-124291 became final without an application for review having been filed with the Employment Appeals Board (EAB). On May 8, 2019, claimant filed a request for hearing on the December 12, 2018 potential benefit report. On July 10, 2019, ALJ M. Davis conducted a hearing and issued Order No. 19-UI-133235, concluding that claimant was not eligible to receive TRA. On July 30, 2019, claimant filed an application for review with EAB.

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On August 22, 2018, employees of Royal Caribbean Cruises Ltd., Royal Caribbean International Division, Customer Contact Center in Springfield filed a petition with the United States Department of Labor (DOL) to have Royal Caribbean certified as an adversely affected employer under the Trade Act of 1974, as amended. On September 28, 2018, DOL granted the requested certification. For two years thereafter, workers that totally or partially separated from employment with the Customer Contact Center in Springfield were eligible to apply for TRA. Exhibit 1 at 2-4.

(2) On November 8, 2019, Royal Caribbean Cruises, Ltd. discharged claimant for using profanity in the workplace.

(3) On November 19, 2018, claimant filed a claim for unemployment insurance benefits. On November 21, 2018, claimant applied for TRA benefits.

(4) In December 2018, Royal Caribbean hired an employee to fill the position from which claimant was discharged.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive TRA.

TRA and TAA are federally funded programs that provide assistance to workers who have lost their jobs as a result of foreign trade competition. 19 USC §§2271 *et seq.* Both programs are administered by state agencies through their workforce or unemployment insurance systems.

DOL has promulgated regulations that set out requirements for workers to receive TRA. 20 CFR §617.11(2) provides, in part

To qualify for TRA for any week of unemployment an individual must meet each of the following requirements of paragraphs (a)(2)(i) through (vii) of this section:

- (i) Certification. The individual must be an adversely affected worker covered under a certification.
- (ii) Separation. The individual's first qualifying separation *** before the application for TRA must occur:

(B) Before the expiration of the two-year period beginning on the date of such certification ****

20 CFR §617.3(c) provides in part:

Adversely affected worker means an individual who, because of lack of work in adversely affected employment:

- (1) Has been totally or partially separated from such employment; or

(emphasis in original).

Claimant was potentially eligible to receive TRA because workers for the Royal Caribbean Cruises Customer Contact Center in Springfield were covered by a certification of work in adversely affected employment, and claimant separated from employment in the Customer Contact Center within two years after the certification. However, Order No. 19-UI-124291 concluded that Royal Caribbean Cruises discharged claimant, not for misconduct, on November 8, 2018, because he used foul language in the workplace. Order No. 19-UI-124291 establishes that Royal Caribbean Cruises did not let claimant go due to lack of work. For that reason, claimant does not qualify for TRA because he was not an "adversely affected worker" under 20 CFR§617.11(a)(2)(i) and §617.3(c)(1). Order No. 19-UI-124291 became final on February 28, 2019 without an application for review having been filed. Principles of finality of decision preclude claimant from challenging the correctness Order No. 19-UI-124291 in this separate proceeding. Unless and until Order No. 19-UI-124291 is set aside as to the reason for claimant's discharge on November 8, 2019, claimant is not eligible for TRA based on that work separation.

DECISION: Order No. 19-UI-133235 is affirmed.

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

DATE of Service: September 4, 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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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 desisyong ito.

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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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 محكمة 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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