

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0705

Reversed & Remanded

PROCEDURAL HISTORY: On June 18, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 73625). The employer filed a timely request for hearing. On June 27, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 11, 2019. On July 11, 2019, ALJ Murdock conducted a hearing, and on July 12, 2019 issued Order No. 19-UI-133260, concluding that the employer discharged claimant, but not for a disqualifying act. On July 29, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Decision # 73625 stated that claimant was “fired for allegations of being under the influence at work,” which was not misconduct because claimant’s intoxication was not proven. Decision # 73625 stated that the laws and rules used to make the decision included ORS 657.176 and OAR 471-030-0038, which are the laws and rules that generally define the term “misconduct.”

(2) The notice of hearing OAH mailed to the parties on June 20th identified the issues for the hearing as, “Shall claimant be disqualified from the receipt of benefits because of a . . . discharge? (ORS 657.176, ORS 657.190 and OAR 471-030-0038)” The notice of hearing included a partial copy of ORS 657.176 and OAR 471-030-0038. In the copy of ORS 657.176 provided to the parties, subsections (9) and (10), which pertain to discharges and voluntary leavings for drug and alcohol issues, were omitted from the text. The notice of hearing did not include a copy of OAR 471-030-0125, the administrative rule that sets forth the Department’s drug and alcohol policy.

(3) During the hearing, it became apparent that the drug and alcohol laws and rules were pertinent to the issues the ALJ needed to decide in the case because the employer discharged claimant based upon a suspicion that he was intoxicated at work. The employer, which was the only party present at the hearing, did not waive their right to notice of the drug and alcohol issue and the laws and rules pertaining to the case.

(4) Order No. 19-UI-133260, which allowed claimant benefits and was adverse to the employer's interests, was based exclusively upon application of the drug and alcohol laws and rules, which were not included in the notice of hearing, to the facts of the case.

CONCLUSIONS AND REASONS: This matter is set aside and remanded for further proceedings.

ORS 657.280(1) provides that hearings on unemployment insurance cases "shall be in accordance with" the applicable administrative rules. OAR 471-040-0015 requires that all parties be notified of the "issue(s) in general." As a matter of general principle, due process of law and Oregon's Administrative Procedures Act generally require that notice of a hearing include "reference to the particular sections of the statute and rules involved," unless the parties have knowingly waived their right to notice. *See e.g.* ORS 183.413; OAR 137-003-0505(1)(b).

The employer was not provided with adequate notice of the laws and rules applicable to this case because the notice of hearing omitted reference to the drug and alcohol laws and rules, and, on this record, the employer did not consent to waive notice. This matter therefore must be remanded so the employer can receive notice of the statute and rules involved in this case.

The employer submitted written argument to EAB that contained additional evidence not included in the hearing record. Because this matter is being remanded, if the employer wants that evidence to be made part of the hearing record on remand, the employer should submit the evidence in accordance with the OAH procedures that will be set forth in the notice of hearing. The employer should contact OAH if they have any questions about those procedures.

DECISION: Order No. 19-UI-133260 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 28, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-133260 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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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