

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0760

Reversed & Remanded

PROCEDURAL HISTORY: On July 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause (decision # 74041). Claimant filed a timely request for hearing. On July 23, 2019, ALJ Murdock conducted a hearing, and on July 29, 2019 issued Order No. 19-UI-134123, affirming the Department's decision. On August 2, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Seus Family Farms employed claimant as a laborer beginning on December 20, 2018.

(2) On Wednesday, May 29, 2019, claimant was backing up the owner's pickup truck and accidentally struck a pallet of concrete tiles. One of the employer's owners (WM) had observed it happen and raised his voice at claimant as he told him to pay more attention to what he was doing. Transcript at 18. Claimant became upset and approximately five minutes later told his immediate supervisor that he was not going to work for someone who treated him like that, that he had clocked out, and that he was going to walk home to Klamath Falls, Oregon, about 30 miles away. Claimant had carpooled with a coworker to work and had no other transportation home. The supervisor told claimant that he did not want him to walk home and that he should just clock back in, finish the day, and then get a ride home, which claimant did. Transcript at 18-19.

(3) Claimant did not return to work on May 30, 2019. He went to his health clinic about a leg infection he had and was told that if the infection did not dissipate he would need to be hospitalized. Transcript at 56-57.

(4) On Saturday, June 1, claimant went to one of the owner's homes (WM) to help with molding some wood for another owner's home (SS). Transcript at 55-56. On Sunday, June 2, 2019, claimant was hospitalized for his leg infection until approximately Wednesday, June 5, 2019. When released, he was advised by his physician to stay off of his leg for approximately a week.

(5) After being released from the hospital, claimant reportedly spoke to WM by phone and told him that he needed to be off for approximately another week, and WM reportedly responded, "Okay. That's fine." Transcript at 10-11. After a few days, claimant again attempted to contact WM by phone, without success, to let him know he could return to work on the following Monday. When he could not reach WM, he reportedly attempted to contact SS by phone, also without success.

(6) On Sunday, June 8, 2019, claimant contacted a coworker who told him that he had heard from a supervisor the previous week that claimant had been "let go for medical reasons." Transcript at 30-31.

CONCLUSION AND REASONS: Order No. 19-UI-134123 is reversed and this matter is remanded for further development of the record.

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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (December 23, 2018).

Order No. 19-UI-134123 concluded that the work separation was a voluntary leaving. The order reasoned as follows:

The Employment Department concluded that claimant quit work and the employer agreed, but claimant asserted that he was discharged. However, claimant's testimony was vague, illogical and inconsistent and was not reliable. Therefore where the testimony differed, I found facts consistent with the employer's testimony. The credible evidence establishes that claimant quit work on May 29, 2019. He had decided to quit work and had expressed to a supervisor and then a coworker that he did not want to continue working for the employer and that he wanted to leave immediately. Both individuals persuaded claimant not to leave before the end of the shift, which he agreed to, but he did not return to work or communicate with the supervisor that he wanted to rescind his resignation. The employer was willing to permit claimant to continue to work up until the time that he expressed his decision to leave work. Given that claimant expressed his unwillingness to continue working for the employer, the work separation was a voluntary leaving...[However] claimant maintained that he had changed his mind about quitting and that he was later discharged....

Order No. 19-UI-134123 at 3. However, the record was not sufficiently developed to determine whether claimant's work separation was a discharge or a voluntary leaving and if it was a discharge, whether it was or was not for misconduct, and if it was a voluntary leaving, whether it was with or without good cause.

On remand, the record needs to be further developed, particularly with regard to the events that took place after claimant last performed services for the employer. For example, after claimant finished working on May 29, 2019, what did the supervisor who had talked claimant out of leaving earlier that day, do with that information and when? Would claimant have been allowed to work on May 30, 2019, if he had returned to the job site at the start of his shift? When did the employer decide that claimant was

no longer an employee? Was that decision made because it had determined that claimant had quit or because he had not called in to his supervisor or reported for work after May 29, 2019? Was the separation decision made because claimant had significant health problems that had limited his attendance at work? Did the employer know that claimant had health problems and had been hospitalized shortly after May 29, 2019? Was a final check sent to claimant, and if so, on what day and for what days of work? Was any paperwork or correspondence sent to claimant with a final check or at all about the work separation? Without this additional information, the record is unclear with regard to the nature of claimant's work separation and whatever, it was, whether it is disqualifying.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of the nature of the work separation, and whether it is disqualifying, Order No. 134123 is reversed, and this matter is remanded.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 134123 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

DECISION: Order No. 19-UI-134123 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 6, 2019

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 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 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 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.