

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0766

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 84246). Claimant filed a timely request for hearing. On July 29, 2019, ALJ Seideman conducted a hearing, and on July 31, 2019 issued Order No. 19-UI-134251, affirming the Department's decision. On August 13, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Central Willamette Community Credit Union employed claimant as a teller from June 11, 2018 until May 22, 2019.

(2) The employer expected claimant to perform her work satisfactorily and not make unreasonably large numbers of errors. Claimant understood the employer's expectations as a matter of common sense.

(3) During her employment, claimant frequently made errors. Those errors included depositing funds into the wrong account of the customer, depositing funds into the wrong customer's account, posting incorrect deposit amounts, calculating incorrect balances, and miscellaneous other errors.

(4) Beginning in August 2018, employer representatives spoke to claimant about her errors. On December 19, 2018 and April 2, 2019, the employer issued warnings to claimant for continuing to make errors. When the employer spoke to claimant about the errors she was making, claimant would respond that she was trying and would try harder.

(5) Throughout her employment, claimant's manager and coworkers tried to help claimant better perform her work and avoid making errors. Sometimes the manager and the coworkers were not able to assist claimant when claimant asked because they had other work to perform. Although claimant asked the employer for additional training, she did not receive all the training she requested.

(6) As claimant's employment continued, claimant's work performance did not reach the level that the employer desired and claimant continued to make frequent errors. In an effort to improve her

performance, claimant asked the employer for a transfer to a different position or to a different branch. The employer did not allow claimant's transfer request. Because the teller position that claimant was having difficulty performing was entry level, the employer did not think that claimant's performance was likely to improve if she was working in a different position or at a different branch. Claimant continued to try to avoid errors.

(7) Over time, claimant still made what the employer considered an excessive number of errors when performing her work. On May 22, 2019, the employer discharged claimant for continuing to make an excessive number of errors.

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

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). Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

Order No. 19-UI-134251 concluded that claimant was disqualified from benefits because the employer discharged her for misconduct. Without explaining the grounds, the order stated, "Claimant's failure to attend to detail was a wantonly negligent disregard of what her employer had the right to expect and constituted misconduct." Order No. 19-UI-134251 at 3. The order is not supported by the record.

The employer did not contend that claimant was deliberately making mistakes when she performed her work. The employer also did not contend that claimant was consciously aware of the mistakes that she was making when she made them. The record does not show that claimant likely was acting deliberately or was consciously aware when she made the mistakes for which the employer discharged her. Without such evidence, violations of an employer's standards that result from an error or mistake generally are not accompanied by the consciously aware mental state required to before a claimant's errors can be considered willful or wantonly negligent. *See* OAR 471-030-0038(3)(a). Additionally, errors of the type that claimant made likely were inefficiencies arising from a lack of job skills, which is not considered misconduct. The employer did not meet its burden to show that claimant's errors were misconduct.

The employer discharged claimant, but did not show that it was for misconduct. Claimant is not disqualified from receiving benefits.

DECISION: Order No. 19-UI-134251 is set aside, as outlined above.

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

DATE of Service: September 18, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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