

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0796

Affirmed
Request to Reopen Denied
Disqualified

PROCEDURAL HISTORY: On May 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 91203). The employer filed a timely request for hearing. On June 12, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 24, 2019. On June 24, 2019, ALJ Snyder conducted a hearing at which claimant failed to appear, and on July 2, 2019 issued Order No. 19-UI-132672, concluding that claimant was discharged for misconduct and disqualified from benefits effective March 31, 2019. On July 11, 2019, claimant filed with the Employment Appeals Board (EAB) both a timely request to reopen the June 24th hearing and an application for review of Order No. 19-UI-132672. ALJ Kangas considered claimant's request to reopen, and on July 23, 2019 issued Order No. 19-UI-133784, denying the request. On August 12, 2019, claimant filed an application for review of Order No. 19-UI-133784 with EAB. This matter is before EAB based upon claimant's timely applications for review of Orders No. 19-UI-132672 and 19-UI-133784.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-132672 and 19-UI-133784. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0757 and 2019-EAB-0796).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), Order No. 19-UI-133784, which denied claimant's request to reopen, is **adopted**.

FINDINGS OF FACT: (1) Transition Projects Inc. employed claimant from October 6, 2017 to April 4, 2019.

(2) In November 2018, claimant reported that a payroll check was not correct. Claimant screamed at a human resources employee and accused her of being a “liar.” Audio Record at 15:00-15:45. Claimant also accused the employer of cheating her.

(3) On approximately March 23, 2019, the employer offered to transfer claimant to a permanent position. Claimant agreed and completed some paperwork, but did not sign and return the position description.

(4) On April 3, 2019, claimant’s manager contacted claimant and asked her to return the paperwork. Claimant subsequently called a human resources employee and began to scream at her about the paperwork, said “you’re a liar,” and said “you need to do your job and stop bothering me.” Audio Record at 12:00-12:40.

(5) The employee ended the call and reported claimant’s behavior to the directors. She told the directors she could not work with claimant anymore because of claimant’s repeated behavior toward the employee that included screaming at her and calling her a liar.

(6) Sometime between April 3, 2019 and April 4, 2019, claimant’s manager spoke with claimant. During the call, claimant made offensive comments about the human resources employee and used foul language, both of which violated the employer’s policies.

(7) On April 4, 2019, the employer discharged claimant because her behavior to the human resources manager and on the phone with her manager were unprofessional.

CONCLUSIONS AND REASONS: The employer discharged claimant 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).

The employer had the right to expect claimant to refrain from engaging in abusive behavior toward other employees, and to refrain from using foul language at work. Claimant knew or should have understood both of the expectations either as a matter of common sense or because the employer’s policies prohibited such conduct. Claimant knew or should have known that screaming at the human resources employee, accusing her of being a liar, and screaming at her to do her job and stop bothering claimant would be considered abusive conduct. Likewise, she should have known that using foul language when speaking with her manager would also violate the employer’s expectations. Claimant’s decisions to engage in abusive conduct toward the human resources employee and use foul language when speaking

her manager demonstrate that she was indifferent to the consequences of conduct that she knew or should have known would probably violated the employer's expectations. Her conduct was, therefore, wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). To be considered isolated, claimant's exercise of poor judgment during the April 3, 2019 call with the human resources employee and subsequent call with the manager would have had to be single or infrequent incidents rather than repeated acts or representative of a pattern of other willful or wantonly negligent conduct. OAR 471-030-0038(1)(d)(A). Claimant's conduct was not isolated because she had on at least one prior occasion screamed at the human resources employee and accused her of being a liar, and accused the employer of cheating her. Claimant knew or should have known as a matter of common sense that such behavior was abusive, and her decision engage in abusive behavior on the prior occasion was therefore also wantonly negligent. Because claimant had engaged in repeated acts of wantonly negligent abusive behavior, the conduct was not isolated.

Even if claimant's April 3rd behavior had been isolated, her behavior still would not be excusable as an isolated instance of poor judgment because it exceeded mere poor judgment. Conduct exceeds mere poor judgment when it causes a breach of trust in the employment relationship or otherwise makes a continued employment relationship impossible. OAR 471-030-0038(1)(d)(D). Claimant's conduct made a continued employment relationship impossible because her conduct was so repeatedly abusive that a human resources employee was unwilling to continue interacting with claimant, and claimant's managers decided to discharge her instead of transferring her into the permanent position they had offered to her. Objectively considered, no reasonable employer would continue to employ someone who reacted to paycheck and paperwork issues by screaming at the human resources employee tasked with addressing the issues on claimant's behalf, and accusing others of lying to and cheating her. Claimant's conduct exceeded mere poor judgment.

Finally, claimant's April 3rd behavior cannot be excused as a good faith error. On this record, there is no evidence suggesting that claimant sincerely believed she was not screaming or accusing the human resources employee of being a liar when she behaved in those manners, or that she did not use foul and offensive language about the employee when speaking to her manager the next day. Although claimant had previously screamed at and accused the human resources employee of being a liar without being disciplined for doing so, common sense suggests that repeating that sort of behavior would not be acceptable in any workplace. The record does not suggest that that previous incident was a basis upon which claimant could reasonably have believed the employer would excuse or condone her engaging in abusive behavior toward other employees.

The employer discharged claimant for misconduct. Claimant therefore is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Orders No. 19-UI-132672 and 19-UI-133784 are affirmed.

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

DATE of Service: August 28, 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 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 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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