

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0872

Order No. 19-UI-132286 Affirmed – No Disqualification
Order No. 19-UI-135423 Affirmed – Request to Reopen Denied

PROCEDURAL HISTORY: On February 21, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 121936). Claimant filed a timely request for hearing. On March 18, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 1, 2019. On April 1, 2019, ALJ Seideman convened a hearing and continued it to another date. On April 3, 2019, OAH mailed notice of the continued hearing scheduled for April 15, 2019. On April 15, 2019, ALJ Seideman conducted a hearing, and on April 23, 2019 issued Order No. 19-UI-128622, affirming the Department's decision. On May 3, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On June 6, 2019, EAB issued EAB Decision 2019-EAB-0435, reversing and remanding this matter to OAH.

On June 18, 2019, OAH mailed notice of a remand hearing scheduled for June 25, 2019. On June 25, 2019, ALJ M. Davis conducted a hearing at which the employer failed to appear, and on June 26, 2019 issued Order No. 19-UI-132286, reversing decision # 121936 and concluding that claimant's discharge was not for misconduct. On July 12, 2019, the employer filed a timely application for review of Order No. 19-UI-132286 and a timely request to reopen the June 25th hearing. On August 1, 2019, OAH mailed notice of a hearing scheduled for August 14, 2019.

On August 6, 2019, the OAH mailed notice of a rescheduled hearing for August 21, 2019. On August 21, 2019, ALJ M. Davis conducted a hearing on the employer's reopen request, and on August 22, 2019, issued Order No. 19-UI-135423, denying the employer's request. On September 11, 2019, the employer filed an application for review of Order No. 19-UI-135423 with EAB.

This matter is before EAB on the employer's timely applications for review of both Order No. 19-UI-132286 and Order No. 19-UI-135423.¹ Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of those orders. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0872 and 2019-EAB-0924).

EAB reviewed the entire hearing records and both of the employer's arguments. While the ALJ might have asked additional questions of the employer concerning their failure to appear at the June 25th hearing, as suggested in the employer's representative's argument, the record established that the employer knew a hearing was going to be scheduled and left town for over a week without notifying OAH that they would be unavailable for a hearing during that time, and without arranging for others to handle their time sensitive mail regarding the hearing. Additional evidence would not alter the existence of those circumstances, which support the conclusion reached in Order No. 19-UI-135423 that the employer did not have good cause to reopen the hearing.

The employer also alleged the ALJ erred by failing to allow the employer the opportunity to provide additional evidence about claimant's work separation at the August 21st reopen hearing. However, because the employer did not have good cause to reopen the hearing, the employer was not entitled to present additional evidence at that hearing. The ALJ did not err in that respect. Absent a showing of good cause to reopen the hearing, EAB may not consider the additional evidence the employer provided in its arguments concerning the work separation. *See* ORS 657.270; ORS 657.275(2); OAR 471-041-0090. To the extent the employer's arguments were based upon the record developed at the April 1st, April 15th, and June 25th hearings, EAB has reviewed the entirety of the hearing record and concluded there is insufficient evidence of misconduct. Particularly significant was a comparison of claimant's demeanor in the surveillance videos in evidence to the employer's description of her demeanor at the time of her work separation and arrest; the videos do not support the employer's allegations about claimant's behavior or demeanor. The videos, and totality of the evidence in this record, support the conclusion reached in Order No. 19-UI-132286 that claimant's discharge was not for misconduct.

On *de novo* review and pursuant to ORS 657.275(2), Order No. 19-UI-132286 and Order No. 19-UI-135423 are **adopted**.

DECISION: Order No. 19-UI-132286 and Order No. 19-UI-135423 are affirmed.

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

DATE of Service: October 3, 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

¹ No additional evidence was taken on the discharge issue at the August 21st hearing because the employer was not entitled to reopen the June 25th merits hearing. Our review of the discharge issue is based upon review of the record of the April 1st, April 15th, and June 25th hearings.

'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.

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 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.

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.