

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0907

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 30, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer suspended claimant for misconduct, and claimant was disqualified from receiving benefits effective July 7, 2019 (decision # 102056). Claimant filed a timely request for hearing. On August 16, 2019 and August 30, 2019, ALJ S. Lee conducted a hearing, and on September 6, 2019 issued Order No. 19-UI-136249, affirming the Department's decision. On September 18, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Frontier Communications NW employed claimant as a sales and service technician 2 from October 5, 2014 until he was suspended from July 10, 2019 to July 25, 2019.¹

(2) Claimant's job required him to drive a company van. The employer required claimant to maintain a valid driver's license and the legal right to operate the vehicle. The employer provided claimant with a copy of its policies, which included that requirement.

(3) In April 2018, claimant received a citation for driving under the influence of intoxicants (DUII). In September 4, 2018, claimant pled guilty.

(4) On October 11, 2018, the State of Washington Department of Licensing mailed claimant a letter stating that his driving privileges were suspended for one day. The letter also stated that as a condition of his guilty plea, claimant was required to "Have an Ignition Interlock Device (IID) installed by an approved vendor in every vehicle you drive for the entire restriction period."²

(5) Claimant had an IID installed on his personal vehicle, but did not notify the employer of his plea conditions or notify the employer that he was required to have an IID installed on his work van.

¹ The employer later discharged claimant from work, effective July 25, 2019.

² Exhibit 3.

(6) Between the end of October 2018 and July 2019, claimant operated his work van without an IID, in violation of his plea conditions. On July 10, 2019, the employer suspended claimant from work for reasons including that he drove the work van “without a functioning IID as required by the Department of Licensing.”³

CONCLUSIONS AND REASONS: Claimant’s suspension was for misconduct.

ORS 657.176(2)(b) requires a disqualification from unemployment insurance benefits if the employer suspended claimant for misconduct connected with work. “As used in ORS 657.176(2)(a) and (b) 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 maintain his legal right to operate a vehicle while working for the employer in a position that required him to drive a work van. Claimant understood the employer’s expectation because the employer notified him of it in a policy and as a matter of common sense. Claimant violated the employer’s policy by repeatedly and unlawfully operating a work van without an IID between October 2018 and July 2019. Claimant testified at the hearing that he was not aware he was doing anything wrong because he “was under the impression that was in my personal car. I didn’t know it was for every single car I drove.”⁴ However, the requirement that claimant use an IID in *every vehicle* he drove was not ambiguous, and was clearly set forth in the October 11th letter, which he testified that he received and reviewed. Claimant consciously operated his work van without an IID on repeated occasions, under circumstances where he had been fully and clearly informed of the requirement that he use an IID in every vehicle he drove and therefore knew or should have known that failing to use an IID in his work van would probably violate the employer’s expectations. Claimant’s conduct every time he drove the work van without an IID was, therefore, wantonly negligent.

Claimant’s conduct cannot be excused as an isolated instance of poor judgment. An isolated instance of poor judgment is defined as a single or infrequent occurrence of wantonly negligent poor judgment that does not exceed mere poor judgment by, for example, being unlawful. OAR 471-030-0038(1)(d)(A)-(D). Claimant’s exercise of poor judgment in driving the work van without an IID was not isolated because it occurred every time he drove the work van for almost six months. Claimant’s conduct also cannot be excused because it exceeded mere poor judgment by being unlawful.

Claimant’s conduct also cannot be excused as a good faith error. Claimant knew at all relevant times that he had pled guilty to DUII and was required to use an IID; he had been informed that he was required to use an IID on *every vehicle*, not just his personal vehicle. Claimant therefore did not sincerely believe or have a basis for believing that he was complying with the terms of his plea conditions, or with the

³ Exhibit 2, July 10, 2019 Termination Letter.

⁴ August 16th hearing, Transcript at 18.

employer's expectations, when he operated the work van without an IID. Claimant also did not sincerely believe, or have a basis for believing, the employer would condone his repeated operation of the work van without an IID, in violation of the law.

For those reasons, the employer suspended claimant for misconduct. Claimant is therefore disqualified from receiving unemployment insurance benefits because of his suspension from work.

DECISION: Order No. 19-UI-136249 is affirmed.

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

DATE of Service: October 23, 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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