

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0928

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 27, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 81717). Claimant filed a timely request for hearing. On September 24, 2019, ALJ Janzen conducted a hearing and issued Order No. 19-UI-137011, affirming the Department's decision. On September 28, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB on his application for review. 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).

FINDINGS OF FACT: (1) Les Schwab Tire Centers employed claimant from May 1, 2019 until August 1, 2019 as a sales and service employee.

(2) The employer expected employees to report to work on time for their scheduled shifts and mandatory meetings. Each employee was given a weekly schedule in advance of their scheduled shifts. Claimant understood the employer's expectations.

(3) Prior to August 1, 2019, claimant "clocked in" between one and seven minutes late on at least 20 occasions. Transcript at 7. At the end of July 2019, claimant's manager and assistant manager met with claimant and warned him that the employer expected him to clock in for work by the time he was scheduled to work. Claimant asserted to his managers that he had experienced delays using the time clock. Other employees did not experience delays due to the time clock and told the managers that claimant often reported to work late. The managers told claimant that the employer would discharge him if he reported to work late again.

(4) Claimant began reporting to work 10 to 15 minutes before his scheduled shifts so that he could clock in for his shift on time.

(5) The employer scheduled a mandatory, paid staff meeting at 7:00 a.m. on August 1, 2019. The employer notified claimant of the meeting and wrote it on its calendar several weeks before August 1, 2019. Claimant knew about the meeting, and knew the employer expected him to attend the meeting. The employer did not give claimant permission to miss the meeting.

(6) On August 1, 2019, claimant did not attend the mandatory staff meeting. Claimant chose to miss the meeting because he preferred to use the time to schedule (not attend) doctor appointments, pay bills, and complete other “errands” that morning. Transcript at 15. When claimant’s manager asked claimant why he did not attend the meeting, claimant replied that he had “other things going on.” Transcript at 6.

(7) On August 1, 2019, the employer discharged claimant for violating its attendance expectations by failing to report to work for a mandatory staff meeting that day.

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). 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). Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for failing to report for work to a mandatory staff meeting on August 1, 2019. Absent illness or other exigent circumstances not at issue here, the employer had the right to expect claimant to report for work as scheduled. On August 1, 2019, claimant knew the employer expected him to report to work for a mandatory meeting, and knew that he did not have the employer’s permission to miss the meeting.

Claimant missed the meeting because he had medical appointments and bill payments that he needed to schedule online, and other “errands” to complete. Claimant did not provide logical or persuasive reasons for why he chose to complete those tasks during the August 1 meeting rather than during his time off work. For example, when asked why claimant did not complete those tasks after he left work on July 31, claimant responded, “I guess I could have, but * * * I had other things I had to do. * * * I had to go shower.” Transcript at 16. The record does not show that the tasks were so urgent that claimant had to miss work to complete them. By knowingly failing to attend a mandatory work meeting so he could complete personal tasks, claimant demonstrated conscious indifference to the consequences of his conduct for the employer. His conduct was at least a wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-0300038(3)(b). For conduct to be considered an isolated instance of poor judgment, it must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent conduct. OAR 471-030-0038(1)(d)(A). Claimant's conduct was not isolated because he had begun his shifts late on at least 20 prior occasions. Claimant acknowledged that he clocked in late multiple times, but testified that he reported to work on time, but had difficulty using the computer to clock in. Transcript at 13, 20-23. Claimant's testimony is not persuasive because he did not show that he took steps to clock in on time until after the employer warned him for having failed to do so at least 20 times. Moreover, other employees were able to clock in on time and told the employer that claimant had been tardy for work. Because claimant's conduct on August 1 was not isolated, it cannot be excused as an isolated instance of poor judgment.

Nor can claimant's conduct be excused as the result of a good faith error in his understanding of the employer's attendance expectations. Claimant knew the employer expected him to report for the August 1 mandatory meeting, and the record does not show that claimant believed or had a factual basis for believing that the employer would condone his decision to attend to personal errands rather than attend a mandatory meeting.

The employer discharged claimant for misconduct under ORS 657.176(2)(a). Claimant is disqualified from receiving unemployment insurance benefits based on his work separation until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-137011 is affirmed.

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

DATE of Service: November 1, 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 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 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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