

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0929

Reversed
Disqualification

PROCEDURAL HISTORY: On August 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 92601). Claimant filed a timely request for hearing. On September 12, 2019, ALJ Schmidt conducted a hearing, and on September 19, 2019, issued Order No. 19-UI-136749, concluding that claimant voluntarily left work with good cause. On September 30, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) North Clackamas School District employed claimant as a technology support specialist at one of its schools from September 15, 2010 until July 16, 2019.

(2) The employer had a written technology network policy that required employees to act in a manner that protected the security, integrity and reliability of its equipment, network and services. The policy specifically prohibited users from sharing passwords or using another person's password without supervisory permission. The employer considered password misuse a breach of network security and a dischargeable offense. The employer also had a written policy regarding its general workplace expectation that employees be truthful at all times, including during personnel investigations. Claimant was aware of and understood the employer's network policy and general workplace expectation regarding truthfulness.

(3) On June 19, 2019, the employer's director of technology and information services discovered that a \$60,000 network server had been purchased for the school where claimant worked without her or the technology department's knowledge or the participation of the employer's purchasing specialist. She went to claimant's school and when she asked claimant about the server, he denied knowing anything about it. However, claimant's coworker told the director that claimant had been involved in obtaining quotes for the server, and sent her one listing claimant as the primary contact person.

(4) On June 21, 2019, the director met with claimant and the coworker, and when she confronted claimant about his previous denial, he admitted that he had not told the truth on June 19, and that he had

been involved in obtaining quotes. When the director asked if the employer's quote process had been followed, claimant denied knowledge of that but agreed to investigate and get back to her. Immediately after the meeting, claimant used his access as a technology support specialist to obtain the school secretary's account password, logged into her account as the secretary, and changed the information on the quotes to reflect that a teacher at his school had been the primary contact for two of the server quotes rather than him. Claimant did not inform the secretary that he had looked up her password and used her account to falsify information regarding the quotes. Claimant did not have supervisory permission to use the secretary's password.

(5) The director reviewed the modified quote documents and noticed that claimant's name was no longer on one of the quotes. When she investigated she learned that the quotes she viewed had been replaced on June 21, 2019 after she met with claimant, but under the secretary's login and without her knowledge, with two of the quotes then reflecting that claimant had not been the primary contact for the quote.

(6) On July 9, 2018, in a meeting with the director, a human resources representative, and claimant's union representative, claimant admitted to secretly obtaining the secretary's password and falsifying quote information under her login in an attempt to avoid being terminated for not following district policy regarding equipment purchases. Claimant also admitted that he had lied to the employer during its investigation.

(7) On July 10, 2019, the employer presented claimant and his union representative with its "Summary of Investigation Findings and Decision" in which it described the "egregious nature" of claimant's misconduct in six respects, including obtaining and using another user's password without supervisory approval, falsification of documents, and lying during a personnel investigation. Exhibit 1.

(8) On or about July 11, 2019, claimant discussed the matter with his union representative, who recommended that claimant resign his employment in lieu of termination because the representative believed that termination was highly likely. The representative negotiated an extension of claimant's health benefits for a period of time and the removal of the investigation documents from claimant's personnel file in exchange for claimant's resignation.

(9) On July 16, 2019, claimant resigned from his employment to avoid a discharge. Claimant resigned because he believed that resigning rather than being discharged would make it easier for him to secure future employment.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4) (December 23, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time. An individual who quits work to avoid what would otherwise be a discharge

for misconduct or a potential discharge for misconduct has quit without good cause. OAR 471-030-0038(5)(b)(F).

Order No. 19-UI-136749 concluded that claimant quit work with good cause. The order reasoned that “[b]ecause claimant’s resignation would allow him to continue to receive needed care for a recent injury and prevent a serious impediment from future employment, he had no other reasonable alternative but to resign.” Order No. 19-UI-136749 at 4. However, the order did not address OAR 471-030-0038(5)(b)(F), described above.

Claimant admitted that he quit work to avoid what his union representative recommended would otherwise be a discharge for misconduct or a potential discharge for misconduct. Transcript at 31-32. “Misconduct” means, in relevant part, a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of claimant. ORS 657.176(2)(a); OAR 471-030-0038(3)(a). The record shows that claimant admitted to “breaching the system” on June 21 by intentionally accessing the secretary’s password without supervisory approval and falsifying the quote documents “to cover up his mistake.” Exhibit 1. Claimant’s failure to comply with the employer’s network policy and general expectation of truthfulness in those respects were willful violations of standards of behavior the employer had the right to expect of him.

OAR 471-030-0038(3)(b) defines exceptions to “misconduct,” including isolated instances of poor judgment and good faith errors. OAR 471-030-0038(1)(d)(D) provides that acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). Here, the record shows that the employer considered claimant’s conduct in using his access to “breach a system,” obtaining another person’s password without supervisory approval, and using that password to make changes to documents in the name of that other person to be a violation of the employer’s trust that was so serious that claimant’s continued employment was impossible. Transcript at 17-18.

Claimant’s behavior also was not excusable as the result of a good faith error in his understanding of the employer’s expectations. Claimant admitted to the employer on July 9, 2019 that he understood the employer’s expectations regarding its network policy, security and truthfulness. Exhibit 1.

Because claimant’s conduct consisted of willful violations of the employer’s network policy and expectation regarding truthfulness, and cannot be excused under the exculpatory provisions of OAR 471-030-0038(3)(b), any discharge or potential discharge based on claimant’s conduct would have been for misconduct. Accordingly, under OAR 471-030-038(5)(b)(F), because claimant quit work to avoid a discharge or potential discharge for misconduct, he quit work without good cause and is disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Order No. 19-UI-136749 is set aside, as outlined above.

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

DATE of Service: November 6, 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 desisyong ito.

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 الإستئناف 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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