

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0954

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 21, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from benefits effective December 30, 2018 (decision # 153655). Claimant filed a timely request for hearing. On September 13, 2019, ALJ Scott conducted a hearing, and on September 16, 2019 issued Order No. 19-UI-136575, concluding that claimant voluntarily left work with good cause and was not disqualified from benefits. On October 4, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Springwater Environmental Sciences School employed claimant as principal. Claimant worked for the employer from January 1, 2012 until she resigned on June 26, 2018. At the time claimant resigned, the employer had received allegations that claimant had behaved inappropriately at a work-related auction.

(2) After claimant's June 26, 2018 resignation, the employer re-hired claimant under a separate fixed-term contract. Claimant worked for the employer under that contract until it expired on December 31, 2018, after which continuing work was not available to claimant.

CONCLUSIONS AND REASONS: Claimant's work separation is not disqualifying.

When analyzing the nature of claimant's work separation and whether or not it should be considered disqualifying, the order under review focused almost exclusively upon claimant's decision to resign from her job on June 26, 2018. *See* Order No. 19-UI-136575. The Oregon Court of Appeals has repeatedly held that the correct point in time at which to analyze a work separation is at the time of the actual work separation. *See accord Kay v. Employment Department*, 292 Or. App. 700, 425 P.3d 502 (2018) (Kay II); *Gaines v. Employment Department*, 287 Or. App. 604, 403 P.3d 423 (2017); *Kay v. Employment Department*, 284 Or. App. 167, 391 P.3d 989 (2017) (Kay I); *Roadhouse v. Employment Department*, 283 Or. App. 859, 391 P.3d 887 (2017). In this case, the actual work separation occurred

on December 31st, not June 26th. Therefore, while the order under review correctly concluded that claimant was not disqualified from receiving benefits it did so for the wrong reasons. Because the work separation at issue in decision # 153655 was actually claimant's December 2018 separation, the remainder of this decision will focus on the December 2018 separation.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant's employment contract expired on December 31, 2018. By operation of the contract, continuing work was no longer available to claimant after that date. Because continuing work was not available to claimant at the time the contract expired and the employment relationship ended, the work separation is most appropriately characterized as a discharge.

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).

The reason for the discharge – the basis upon which the discharge occurred when it did – was that claimant's contract expired. The expiration of claimant's contract was not attributable to her as willful or wantonly negligent conduct.

To any extent claimant's alleged inappropriate conduct in May 2018 at the work-related auction contributed to the circumstances under which claimant was offered and worked under a fixed-term contract that expired December 31, 2018, the employer did not investigate the allegation or substantiate that claimant's conduct with respect to the allegation was willful or wantonly negligent. The employer has the burden to prove that misconduct occurred by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). In the absence of evidence substantiating the allegations, and that claimant's conduct was the result of willful or wantonly negligent conduct, the employer has not met its burden.

To the extent claimant's decision to resign in June 2018 might have affected the circumstances under which claimant was offered and worked under a fixed-term contract that expired December 31, 2018, and led to her discharge on that date, deciding to resign was not the result of willful or wantonly negligent misconduct.

The employer therefore discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of her December 31, 2018 work separation from this employer.

DECISION: Order No. 19-UI-136575 is affirmed.

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

DATE of Service: November 8, 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

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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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