

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1089

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 24, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant committed a disqualifying act (decision # 83959). Claimant filed a timely request for hearing. On November 1, 2019, ALJ Shoemake conducted a hearing, and on November 15, 2019, issued Order No. 19-UI-139882, concluding that claimant did not commit a disqualifying act and was not disqualified from the receipt of benefits. On November 18, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Roth IGA Foodliner employed claimant from January 16, 2018 until July 23, 2019 as a banquet server.

(2) On October 25, 2018, claimant told the employer he had to miss work due to alcohol use and to enter an alcohol rehabilitation program. On October 26, 2018, claimant signed a return to work agreement with the employer. As part of the agreement, claimant agreed to complete the program and all aftercare treatment, and to comply with the employer's alcohol policy for two years, including testing negative for drugs and alcohol. Exhibit 1. The policy provided that the employers' workplace is free of the effects of alcohol.

(3) On December 6, 2018, claimant completed the rehabilitation program. In mid-December 2018, claimant returned to work for the employer. Claimant completed all aftercare mandated by the treatment program. Claimant never went to work while under the influence of alcohol. From December 2018 to July 2019, the employer tested claimant several times for alcohol. Claimant tested negative each time.

(4) On July 25, 2019, claimant was scheduled to work. Claimant called the employer's catering director and told her he was unable to work because he was under the influence of alcohol.

(5) On July 26, 2019, the employer discharged claimant for missing work due to alcohol use and failing to follow the terms of his October 26, 2018 return to work agreement with the employer. Exhibit 1.

(6) On July 30, 2019, claimant entered an alcohol rehabilitation program. The program was authorized and licensed by the state of Arizona. On August 30, 2019, claimant completed participation in the program. Exhibit 2. When claimant applied for benefits, he provided the Department a signed statement from an authorized representative of the treatment program stating he had completed the program. Exhibit 2.

CONCLUSIONS AND REASONS: The employer discharged claimant, but he is not disqualified from receiving benefits under ORS 657.176(2).

ORS 657.176(2)(g) provides that an individual is disqualified from benefits if the individual was discharged for being absent or tardy in reporting to work and the absence or tardiness occurred as the result of the use of alcohol on a second or any subsequent occasion within a period of 12 months unless the person was participating in a recognized alcohol rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the date of the discharge or suspension, and the person provides to the department documentation of program participation. "Documentation of program participation" means a signed statement by an authorized representative of the recognized program that the individual is or was participating in a treatment program. OAR 471-030-0126(2) (January 11, 2018). "Participation" means to be engaged in a course of treatment through a recognized alcohol rehabilitation program. OAR 471-030-0126(3). A "recognized alcohol rehabilitation program" is a program authorized and licensed by the State of Oregon, or authorized and licensed by another state. OAR 471-030-0126(4).

The employer discharged claimant because he was absent on July 25, 2019 as a direct result of alcohol use on a repeated occasion within a 12-month period. Consequently, claimant was subject to disqualification from benefits under ORS 657.176(2)(g) unless he was participating in a recognized alcohol rehabilitation program on July 25, or within 10 days of the date of the discharge. Claimant was not participating in a program on July 25. However, the record shows claimant entered a recognized treatment program, licensed in Arizona, the day after the employer discharged him, and that claimant provided documentation of his participation in the program to the Department. Claimant was therefore not subject to disqualification under ORS 657.176(2)(g) due to an absence as a result of alcohol use.

The employer discharged claimant, but not for an act that disqualifies him from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-139882 is affirmed.

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

DATE of Service: December 19, 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 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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