

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1150

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged but not for misconduct connected to work (decision #100849). The employer filed a timely request for hearing. On November 19, 2019, ALJ Comstock conducted a hearing, and on November 19, 2019 issued Order No. 19-UI-139962, affirming decision #100849. On December 6, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) WinCo Foods, Inc. employed claimant, last as a grocery clerk lead worker, from November 18, 2018 to September 12, 2019.

(2) Claimant made her deli department supervisor aware that she had suffered a traumatic brain injury, which caused her to get overstimulated and experience panic attacks in stressful situations. Claimant was diagnosed with a panic attack condition that required her to take medicine twice a day. Claimant handled situations in which she suffered panic attacks by stepping away from them.

(3) On September 11, 2019, claimant instructed two coworkers to stock some shelves. One of the coworkers rolled her eyes at claimant, so claimant suggested that the coworker accompany her to the apprentice manager's office to discuss their differences. Upon reaching the apprentice manager's office, claimant began to vent her frustration about the lack of respect she got from coworkers. The coworker appeared at the office a few minutes later and engaged in a heated argument with claimant as the apprentice manager quietly observed. The coworker took two steps toward claimant, and the apprentice manager intervened.

(4) The apprentice manager attempted to discuss the situation with claimant at that time, but claimant felt upset and was on the verge of a panic attack. Claimant told the apprentice manager that she was not taking it anymore and the manager should write her up, then left the office. Although scheduled to work until 11:30 p.m., claimant tossed her keys to another lead worker and left work at 5:49 p.m.

(5) The employer had a policy that stated that an employee who left work without permission might be considered to have voluntarily quit their job. Claimant was aware of the policy. After leaving on September 11th, claimant received text messages from coworkers suggesting she would be discharged.

(6) On September 12, 2019, claimant returned to the store in the morning to meet with the store manager. Claimant brought her work badge and apron with her to return if the employer decided to end her employment. The manager told claimant that he had not made a decision and that he would discuss the matter with her further when she reported to work at her regular shift time. The store manager wanted to investigate the situation before deciding whether or not to end claimant's employment.

(7) After claimant left, the store manager discussed the previous day's incident with the apprentice manager and another lead clerk. When claimant clocked in for her shift later that day, the store manager notified claimant that she was discharged for leaving early on September 11th without permission.

CONCLUSIONS AND REASONS: The employer discharged claimant for an isolated instance of poor judgement, which is not 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). Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). In a discharge case, the employer bears the burden to establish misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant for leaving work early after a heated exchange with a coworker in her manager's office. Claimant knew at the time that leaving early without permission could violate the employer's policies, but did so anyway, suggesting her conduct was more likely than not a willful or wantonly negligent violation of the employer's expectations.

Some willful or wantonly negligent conduct may still be excused, however, if the conduct was an isolated instance of poor judgment. Behavior may be considered an isolated instance of poor judgment if it was a single or infrequent occurrence of willful or wantonly negligent poor judgment that did not, among other things, exceed mere poor judgment by causing an irreparable breach of trust in the employment relationship. OAR 471-0300039(1)(d)(A); OAR 471-030-0038(1)(d)(D). Claimant's conduct was isolated, since she decided to leave early without permission on only one occasion. Claimant exercised judgment when she decided to leave, and her judgment was poor because she knew that leaving early without permission could violate the employer's policy. Claimant's conduct did not exceed mere poor judgment, however. She left early after a heated exchange with a coworker, during which the coworker stepped toward her in a way that caused the manager to intervene, triggered claimant to experience heightened anxiety and panic attack symptoms as a result of her mental health

condition, which necessitated that she walk away from the stressful situation. Leaving early without permission while experiencing an urgent medical problem is not the sort of conduct that would make any reasonable employer conclude that she could no longer be trusted as an employee. Claimant's conduct therefore did not exceed mere poor judgment.

Because claimant's conduct was isolated, and did not exceed mere poor judgment, her conduct is excusable as an isolated instance of poor judgment. The employer therefore discharged claimant for an isolated instance of poor judgment, which is not misconduct, and claimant is not disqualified from receiving benefits.

DECISION: Order No. 19-UI-139962 is affirmed.

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

DATE of Service: January 10, 2020

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.