

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0059

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct connected with work. (decision # 111429). Claimant filed a timely request for hearing. On January 7, 2020, ALJ Snyder conducted a hearing, and on January 9, 2020 issued Order No. 20-UI-142383, affirming the Department's decision. On January 22, 2020, Claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Jackson County employed claimant as a Data Analyst for multiple years leading up to her discharge on November 5, 2019. Claimant had a lengthy disciplinary history leading up to the final incident that led to her discharge from employment.

(2) On September 20, 2019, the Jackson County Assessor instructed claimant to access the Helion computer system and enter a tax roll correction for a Jackson County taxpayer for tax years 2012 through 2016. The tax roll correction was necessary in light of an Oregon Tax Court Magistrate's order that directed the Assessor to remove the taxpayer's real market value (RMV) for tax years 2012 through 2016 and reset it to zero for each year. The intent was that the tax roll correction would allow the taxpayer to receive a full refund of property taxes for tax years 2012-2016. The Assessor gave claimant the task because claimant was one of the few employees who retained access to the Helion computer system during the then-occurring tax roll certification process. Claimant was concerned that the Assessor's directive to her did not also include a directive that she make corresponding changes to the taxpayer's maximum assessed value (MAV) for each of the tax years covered by the magistrate's order.

(3) Claimant questioned the legality of allowing the taxpayer's MAV to grow when its tax base was zero. The Assessor informed claimant that although he had the discretion to change the MAV, because the Magistrate's order did not discuss MAV it was not an issue in the appeal and that the existing MAVs should be left alone. The Assessor explained to claimant that the Jackson County Counsel and the Department of Revenue (DOR) supported his decision. The Assessor invited claimant to address any

remaining concerns with the County Counsel, however, the Assessor instructed claimant that the tax roll correction was to be completed by her that day due to the time sensitive nature of the issue.

(4) Claimant emailed the County Counsel to share her concerns about the lack of changes to the MAVs. County Counsel responded to claimant's email by attaching written guidance from the DOR indicating that the Assessor's decision to leave the MAVs alone "is lawful." Exhibit 1 at 6. The DOR's guidance included the statement that the tax roll corrections take place "immediately." Exhibit 1 at 7. County Counsel noted that he agreed with the DOR's guidance. Exhibit 1 at 6. Claimant responded to County Counsel that she "appreciated [his] explanation and response." Exhibit 1 at 8. Claimant viewed the County Counsel's response as raising even more questions in her mind. However, claimant never again addressed her concerns with any of her supervisors or superiors. She never made the tax roll corrections, and never informed the Assessor or anyone else that she had not made the corrections.

(5) On October 9, 2019, weeks after claimant was instructed to complete the tax roll correction "immediately" and on September 20th, the Assessor learned for the first time that claimant had not made the tax roll corrections in the Helion computer system. The Assessor removed the assignment from claimant and tasked it to someone else. The resulting delay created a financial liability for the county in the form of additional interest charges owed to the taxpayer on its \$75,485.05 refund.

(6) On November 5, 2019, the employer discharged claimant for insubordination based on her failure to enter the tax roll correction on September 20, 2019.

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).

Isolated instances of poor judgment and good faith errors do not constitute misconduct. OAR 471-030-0038(3)(b). However, isolated "[a]cts 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 will not exculpate a claimant from a finding of misconduct. OAR 471-030-0038(1)(d)(D).

The employer directed claimant to make the tax roll corrections to the taxpayer's RMV for tax years 2012 through 2016 because claimant was one of the few county workers who had access to the Helion system during the tax roll certification process. Claimant testified that she was never told of the time sensitive nature of the employer's directive. Transcript at 24. However, the preponderance of the evidence demonstrates that on September 20, 2019, she was notified of the time sensitive nature of the

tax roll corrections by both the Assessor and the DOR (through email traffic with the County Counsel). The employer had a reasonable expectation that claimant would carry out the tax roll correction task based on claimant's unique position as one of the few individuals with system access to make the required changes, and because claimant was provided, and acted upon, the opportunity to speak with County Counsel about her concerns, and County Counsel validated the Assessor's directive. Claimant's failure to make the directed tax roll corrections on September 20, 2019, and her failure, thereafter, to notify anyone that she did not make the required changes constituted a willful violation of the reasonable standards of behavior that the employer had a right to expect. Furthermore, claimant's inaction willfully disregarded the interests of the employer inasmuch as it delayed the taxpayer's receipt of its tax refund and led to an assessment against the employer of additional interest charges.

Claimant's inaction was not the result of a good faith error. The preponderance of the evidence demonstrates that claimant was placed on notice of the time sensitive nature of the tax roll corrections, yet after seeking clarification to alleviate her concerns, she failed to make the necessary data changes in the Helion system and then failed to notify any of her supervisors or superiors that no data changes had been made. No reasonable view of the totality of claimant's inaction would lead to the conclusion that claimant was acting in good faith.

Claimant's willful failure to make the tax roll corrections was also not an isolated instance of poor judgment. While claimant's actions were arguably isolated, and while there is no evidence suggesting that claimant's actions violated any law or were tantamount to unlawful conduct, the preponderance of the evidence demonstrates that by failing to immediately make the tax roll corrections directed by the employer claimant created an irreparable breach of trust in the employment relationship and made a continued employment relationship impossible. Under the circumstances presented, no similarly situated reasonable employer would have continued an employment relationship with claimant given the magnitude of the breach of trust that had occurred.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 20-UI-142383 is affirmed.

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

DATE of Service: February 26, 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.

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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

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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