

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0073

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, and disqualifying claimant from benefits effective October 20, 2019 (decision # 73443). Claimant filed a timely request for hearing. On January 7, 2020, ALJ Roberts conducted a hearing, and on January 8, 2020 issued Order No. 20-UI-142247, concluding that claimant's discharge was not for misconduct, and that claimant was not disqualified from benefits because of her work separation. On January 28, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument when reaching this decision. The employer argued that "while there may have been extenuating circumstances that final day during the final conversation this does not explain nor excuse all the previous issues." However, in a discharge case, the initial focus of the misconduct analysis is on the final incident that caused the employer to discharge claimant when they did. *See e.g. Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision 09-AB-1767*, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did). Only if the final incident is found to be willful or wantonly negligent under Employment Department law would the inquiry then focus on "all the previous issues." For the reasons that follow, because claimant's behavior in the final incident was not willful or wantonly negligent, claimant's behavior in the previous incidents is not at issue in this case.

FINDINGS OF FACT: (1) Jackson's Food Stores employed claimant, last as an assistant manager, from June 7, 2017 to October 25, 2019.

(2) At all relevant times, claimant experienced post-traumatic stress disorder (PTSD). She has had three psychiatric evaluations and received mental health therapy to treat her condition.

(3) The employer had some ongoing concerns about claimant's professionalism and behavior with coworkers, customers, and with respect to performing her duties. Between August and October 2019, the employer issued claimant approximately five warnings or reprimands, each of which instructed claimant to improve her behavior or face additional discipline including discharge.

(4) In late October, claimant took time off work that included an extra day of leave she needed to cope with a situation that caused her mental distress. On October 25, 2019, claimant learned that her niece had been missing since the night before and was missing for approximately 24 hours by the time claimant reported to work. She reported to work already feeling that her PTSD had been triggered, and intending to ask her managers if she could leave work for the day.

(5) Before claimant asked for time off, managers met with her to deliver a reprimand for her behavior the previous day. Claimant felt even more triggered at that point, and knew she could not emotionally handle the situation because "that's when all the panic and stress and anxiety – everything had hit." Transcript at 73. She felt that she and the managers were "shut up in that tiny little room where we could all be triggered and small and stuffed in." Transcript at 49. She had trouble breathing, could not catch her breath, and her voice was heightened and stern as a result. She did not know how to calm herself down and wanted to clock out and leave work for the day.

(6) During that meeting, the managers observed that claimant's behavior in the meeting escalated to include standing, being "very animated," raising her voice, and being demanding. Transcript at 5. One manager left the room and called her supervisor to inform her about claimant's behavior during the meeting. During that time, claimant asked another employee's opinion of her behavior the previous day, which the managers considered inappropriate. Because of claimant's PTSD she was "in defense mode." Transcript at 49.

(7) The manager returned to the meeting with claimant to talk again. Claimant asked to leave, and explained that she was having an anxiety attack, was upset, and wanted to go home. The manager would not allow claimant to leave, and told claimant to take some time to calm and gather herself before they talked more. Claimant said again that she wanted to leave. The manager told claimant that if she left the premises it would be considered job abandonment, but she was "more than welcome" to take time to calm down. Transcript at 7. Claimant said she was "very [] upset" and "shaking," and was "adamant" that she wanted to leave. Transcript at 7, 33.

(8) The manager left the meeting to speak with human resources about how she was handling the situation. Claimant thought that the manager was calling HR to figure out how claimant could leave to calm down enough to work, and felt frustrated when that was not the case. Claimant was trying to keep herself "in check as much as I could knowing I have a whirlwind going on inside of me." Transcript at 56. She told a manager that she should not have to stay at work while she as having an anxiety attack, that she wanted a leave of absence, and would the manager talk to HR about a leave of absence.

(9) The manager, human resources, and the manager's supervisor all decided to discharge claimant for unprofessional behavior in responding to the warning on October 25, 2019. Claimant was told on October 25th that she was discharged, and was not allowed to return to work thereafter. Claimant felt that she had not had any time to "actually really calm down" since being told about the reprimand and that "everything was rush, rush, rush, all the way 'til I got fired." Transcript at 52.

CONCLUSIONS AND REASONS: Claimant’s discharge was not 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).

Claimant’s October 25th behavior violated the employer’s expectations with respect to how employees should behave, and the employer considered claimant’s behavior “wildly inappropriate.” Transcript at 91. Nevertheless, for claimant’s behavior to be considered “misconduct” and result in a disqualification from unemployment insurance benefits, claimant’s behavior must have occurred under circumstances where she was either willfully violating the employer’s expectations, or was acting consciously and with wantonly negligent disregard of the consequences of her conduct. In this case, claimant’s behavior on October 25th was more likely than not the result of her mental health condition, PTSD. Claimant felt her PTSD was triggered enough by her personal issues before she arrived at work on October 25th that she intended to ask for the day off work. Once she arrived to work and was faced with the reprimand, she felt that “all the panic and stress and anxiety – everything had hit,” she felt unable to breathe, she was “very [] upset” and “shaking,” her voice was heightened in volume and had a stern tone, and she felt like she needed to leave work immediately. Under those circumstances, it is more likely than not that claimant was not capable of controlling her voice, demeanor, or behavior during her PTSD-triggered state of anxiety and panic. Claimant’s conduct therefore was not willful, and her repeated requests to leave the workplace suggest that she was not behaving as she did out of disregard for the employer’s expectations.

It is more likely than not in this case that claimant violated the employer’s expectations while experiencing ill mental health on October 25th. Claimant’s violation was not willful or wantonly negligent, and her discharge therefore was not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 20-UI-142247 is affirmed.

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

DATE of Service: March 4, 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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