

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0110

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause, was disqualified from benefits effective October 27, 2019, and was overpaid \$722 (decision # 153657). Claimant filed a timely request for hearing. On January 29, 2020, ALJ Frank conducted a hearing, and on January 31, 2020 issued Order No. 20-UI-143679, affirming decision # 153657. On February 5, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. Because this decision is being decided in claimant's favor, we need not reach a conclusion as to claimant's complaint that the hearing was not fair.

FINDINGS OF FACT: (1) On October 28, 2019, the Oregon & Southern Idaho Laborers-Employers Training Trust Fund sent claimant an "apprentice dispatch information" sheet instructing him to report to work for Condon-Johnson at a specified job site on October 29, 2019 at 7:00 a.m. Exhibit 1. Claimant understood based upon the dispatch sheet that he was being dispatched for only one day of work.

(2) On October 29, 2019, claimant reported to the job site and Condon-Johnson & Associates, Inc. employed claimant that day as an apprentice. The employer's work day was typically eight hours. Claimant expected to work eight hours on October 29th.

(3) On October 29, 2019, police arrived at the job site to speak with claimant. Claimant did not want to speak with police and felt upset they were on the job site. Between 3:30 p.m. and 4:00 p.m., claimant went into an outhouse to avoid the police. Claimant heard other workers leaving the job site at the end of the workday around 4:00 p.m. but he remained in the outhouse until approximately 5:00 p.m. He did not intend to quit before the day's work was over. When he left, he had been at the job site for over eight hours and believed his one-day dispatch assignment was over and that he had worked sufficient hours for the whole shift. He did not return to the work site the following day.

(4) The employer was not aware claimant went to the outhouse and concluded that claimant had quit his job by leaving prior to the end of the workday and not returning to work on October 30th. The employer ultimately paid claimant for working a full eight-hour day on October 29th, either because claimant worked the full eight hours, or because union rules required the employer to pay for a full eight-hour shift if the employee worked at least four hours. The employer usually had employees work the full duration of each job, but sometimes employed people for only one shift.

(5) On November 8, 2019, claimant filed an initial claim for unemployment insurance benefits. He claimed benefits from November 10, 2019 through November 23, 2019 (weeks 46-19 to 47-19), and the Department paid him \$722 in benefits for those two weeks.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct, and the Department did not overpay claimant.

Nature of work 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).

The order under review concluded that claimant voluntarily left his job, reasoning that regardless whether the job was a one-day or indefinite dispatch, claimant likely did not finish the day because he either left the job site or was waiting in an outhouse to avoid police. Order No. 20-UI-143679 at 3. The order reasoned that since continuing work was available at least through the end of the workday on October 29th, and claimant did not complete that work, he voluntarily quit his job. Order No. 20-UI-143679 at 3. The record does not support the order's conclusion, however. Claimant's position that his assignment with the employer was only a one-day dispatch is supported by Exhibit 1, and not contradicted by the employer, whose witness indicated that the employer did sometimes hire people for one-day assignments. Claimant therefore did not voluntarily leave work by leaving on October 29th and not returning to the job site on October 30th.

The record also does not show that claimant acted to sever the employment relationship when he decided to wait in the outhouse to avoid speaking with police. The preponderance of reliable evidence in the record suggests that claimant's October 29th shift was expected to last eight hours, he worked at least eight hours on October 29th, other workers at the job site left for the day within a half-hour of claimant going to the outhouse, and the employer paid claimant for a full day of work. "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). Given that claimant appears to have fulfilled his obligation to work a full eight-hour shift on October 29th, and the continuing relationship between himself and the employer ended at the end of his shift, the continuing relationship was over when the shift ended, and not because claimant was in the outhouse.

It is therefore more likely than not that the employment relationship in this case ended because claimant's one-day dispatch ended, and not because claimant voluntarily severed the employment relationship by leaving or not returning to the job site while continuing work was available to him. The work separation was therefore a discharge, not a quit.

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). “[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).

The employer discharged claimant because his one-day work assignment ended. The natural conclusion of a one-day assignment is not attributable to claimant as willful or wantonly negligent misconduct. To any extent claimant’s decision to avoid police by waiting in an outhouse affected the employer’s discharge decision, that, too, was not willful or wantonly negligent misconduct. On this record, there is no evidence suggesting that claimant’s decision to wait in the outhouse to avoid speaking with police about matters that were not developed on this record was either a willful or conscious violation of the employer’s expectations of him.

It is more likely than not, on this record, that claimant’s discharge was not for misconduct. Claimant therefore is not subject to disqualification from unemployment insurance benefits because of this work separation.

Overpayment. Having concluded that claimant’s work separation was a discharge, and that the discharge was not for misconduct, claimant’s work separation was not disqualifying, and claimant was not overpaid \$722 in benefits.

DECISION: Order No. 20-UI-143679 is set aside, as outlined above.

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

DATE of Service: March 11, 2020

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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