

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0149

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, and disqualifying her from benefits effective November 17, 2019 (decision # 74412). Claimant filed a timely request for hearing. On January 24, 2020, ALJ S. Lee conducted a hearing, and on January 30, 2020 issued Order No. 20-UI-143593, affirming decision # 74412. On February 19, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY RULING: Order No. 20-UI-143593 stated in its “Evidentiary Rulings” section that “[n]o exhibits were offered or admitted into evidence.” However, the ALJ admitted Exhibit 1 and Exhibit 2 into evidence during the hearing. *See* Audio recording 6:30-7:10. EAB therefore considered Exhibit 1 and Exhibit 2 when reaching this decision.

FINDINGS OF FACT: (1) Southern Oregon Elmers, LLC employed claimant as a bar attendant and manager from January 28, 2018 to November 22, 2019.

(2) The employer and Oregon law prohibited serving alcohol to minors. The employer required employees to check customers’ photo identification and verify their ages prior to serving alcohol to them. Claimant understood the employer’s expectations and state law with respect to serving alcohol to minors.

(3) On approximately November 18, 2019, claimant injured herself. Although she could not afford to seek medical attention, claimant experienced facial bruising, blurred vision, and had one enlarged pupil. Claimant concluded based upon her symptoms that she probably had a concussion.

(4) On November 19, 2019, claimant reported to work and notified the general manager that she had a possible concussion. She did not report her blurred vision or difficulty seeing to the general manager, and agreed she could work as scheduled.

(5) Later on November 19, 2019, the general manager seated three customers in the bar. Unbeknownst to claimant and the general manager, one of the customers was a minor who was working as a decoy as part of a Oregon Liquor Control Commission (OLCC) underage service sting operation.

(6) Before serving alcohol to any of the three customers, claimant asked each of them for photo ID. Claimant looked at all three IDs, including the decoy's, which indicated that she was born in 1999 and was still a minor. Claimant misread the decoy's birth year as being 1998, and concluded that all three customers, including the decoy, were old enough to be served alcohol.

(7) Claimant served alcohol to the three customers. Claimant and the employer were then notified that the customers were part of an OLCC sting operation and that the decoy was a minor. OLCC cited claimant and the employer for serving alcohol to a minor.

(8) Later on November 19, 2019, the employer suspended claimant. On November 22, 2019, the employer discharged claimant for serving alcohol to a minor in violation of the employer's policies and Oregon law.

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). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The order under review concluded that claimant's discharge was for misconduct. Although claimant had checked the minor's photo ID and "testified credibly" that she sincerely believed the minor was old enough to serve, the order concluded that claimant nonetheless committed misconduct because her "conduct in working when she knew that her vision was blurring and not asking for assistance led her to violate the law." Order No. 20-UI-143593 at 4. The record does not support the order's conclusion.

There is no dispute on this record that claimant, experiencing symptoms consistent with a concussion, thought she was capable of working and complying with the employer's expectations and Oregon law by not serving alcohol to minors. There is also no dispute that claimant checked the minor decoy's photo identification, misread the decoy's birth year, and mistakenly thought the decoy was old enough to be served alcohol. Claimant did not realize at the time that she had misread the decoy's birth year, however, and this record does not suggest that she knew or should have known at the time of the events at issue that her concussion was likely to result in misreading the decoy's birth year. She therefore did not willfully or consciously violate the employer's policies or Oregon law. Rather, at all relevant times, claimant sincerely believed she was acting in compliance with the employer's policies and Oregon law by checking the customers' identifications to verify that they were old enough to serve, and, having

satisfied herself that they were old enough, sincerely believed she was also in compliance when she served alcohol to them. Because claimant did not intentionally or consciously violate the employer's policies or Oregon law, and sincerely believed herself to be in compliance with both, claimant's conduct was, more likely than not, the result of her good faith error.

The employer discharged claimant because of a good faith error. Under OAR 471-030-0038(3)(b), good faith errors are not misconduct. Claimant's discharge therefore was not for misconduct, and claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 20-UI-143593 is set aside, as outlined above.

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

DATE of Service: March 24, 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 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

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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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