

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0352

Affirmed
Request to Reopen Allowed
No Disqualification

PROCEDURAL HISTORY: On February 19, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, and claimant was disqualified from receiving benefits effective January 26, 2020 (decision # 93310). Claimant filed a timely request for hearing. On March 17, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for March 26, 2020, at which claimant failed to appear. On March 26, 2020, ALJ M. Davis issued Order No. 20-UI-146934, dismissing claimant's request for hearing for failure to appear. On April 14, 2020, claimant filed a timely request to reopen the March 26th hearing. On April 23, 2020, OAH mailed notice of a hearing scheduled for May 6, 2020. On May 6, 2020, ALJ M. Davis conducted a hearing, and on May 7, 2020 issued Order No. 20-UI-149383, allowing claimant's request to reopen, and concluding that claimant's discharge was not for misconduct. On May 9, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen is **adopted**. The remainder of this decision will focus exclusively on claimant's discharge from work.

FINDINGS OF FACT: (1) St. Charles Health System, Inc. employed claimant as a patient financial services customer service representative from February 11, 2019 to January 27, 2020.

(2) The employer expected claimant to be professional while at work, and be respectful to other coworkers. On December 18, 2019, the employer concluded claimant violated those expectations during a meeting about how she had handled a patient call. Claimant had been absent when the employer had instructed staff how to handle those types of patient calls, and was not aware she had handled it incorrectly. Because she had not been trained about those types of calls, she felt "reactive," "upset," and "argumentative" when she was called into a meeting about it. Transcript at 24. She felt "blindsided" that human resources participated in the meeting about the patient call. Transcript at 23. The employer was

dissatisfied with how claimant behaved during the meeting. On approximately December 20, 2019, the employer issued claimant a written warning and had a “pretty in-depth discussion” about the expectation that she be professional and respectful.

(3) Claimant and her supervisor had a difficult relationship during the approximately six months since the supervisor began managing claimant. On January 22, 2020, claimant and her supervisor had a conversation about a coordinator that had been inappropriate with claimant, and an email claimant had sent. Claimant considered the conversation “very productive,” thought that she and her supervisor had “made a breakthrough in our relationship,” and thought there was no “animosity” between them after the meeting. Transcript at 22.

(4) On January 24, 2020, the supervisor held a team meeting. She intended to use a portion of the meeting to do some team building and morale building by going around the room and asking people to share good things with the group. Claimant said “something to the effect of the best thing that happened to me was when [the supervisor] was out of the office.” Transcript at 11.

(5) Claimant intended the comment as a joke, based on “a common witticism that we use when the boss is away, joking about the boss being gone.” Transcript at 20-21. She thought that everyone had been joking around, and that since she and her supervisor had resolved the issues they had that it would be acceptable to make the joke. The supervisor felt offended. The supervisor and human resources thought that claimant had taken the team- and morale-building tool the supervisor had intended to “lift up people’s emotions and spirits” and reduced it “all the way down, you know, to – to nothing,” and “undermined [the supervisor’s] ability to build morale in the team on that day.” Transcript at 30.

(6) After the meeting, the supervisor and human resources met with claimant about her comment. The employer had claimant turn her badge in and clock out, then sent her home pending a decision about her employment. The supervisor and human resources person decided to recommend claimant’s discharge based upon the January 24th comment.

(7) Later on January 24th, claimant called the human resources supervisor and left a voicemail message about what had happened and that she had a complaint against the employer. Claimant thought that she had disconnected from the call, then remarked to her husband that her supervisor “is such a fucking bitch.” Transcript at 13. She did not intend to say that to anyone except her husband, and thought she had disconnected her call with the human resource supervisor’s voicemail before saying it.

(8) The employer had decided to discharge claimant based on her comment during the January 24th meeting. The employer had been trying to address the “negative tone” in that department, and thought claimant was not cooperative since she appeared not to like her supervisor, and the supervisor and human resources thought that things were not going to improve between them. Transcript at 31. Claimant’s voicemail just “solidified the decision to terminate” claimant’s employment. Transcript at 13.

CONCLUSIONS AND REASONS: The employer discharged claimant, but 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).

The employer discharged claimant for making a comment on January 24th that offended her supervisor, was considered to have undermined the supervisor’s attempt to do some team- and morale-building, and violated the employer’s expectation that she be professional and respectful. Claimant’s comment violated the employer’s expectations. However, for that violation to be considered “misconduct” for purposes of unemployment insurance benefits, the violation must have been done willfully or with wanton negligence. Claimant did not willfully violate the employer’s expectation because she did not act with the intent to be unprofessional or disrespectful. Claimant also did not violate the employer’s expectation with wanton negligence, because she was not conscious that making a comment she intended as a joke, in the context of others joking around, would violate the employer’s expectations. She also was not indifferent to the employer’s expectations, because she made the comment in the context of a joke and thought that her relationship with the supervisor had improved to the extent that the joke would not offend the supervisor. Because claimant did not willfully or with wanton negligence violate the employer’s expectations by making a comment on January 24th, her discharge was not for misconduct.

To any extent claimant’s January 24th voicemail message to the human resources supervisor, during which claimant said her supervisor “is a fucking bitch,” might also have been a factor the employer considered when deciding to discharge claimant, that conduct also was not misconduct. Claimant understood it was not appropriate to make such a comment in the context of her job. However, she did not intend to make the comment in that context, and did not know that she had. Claimant thought she had disconnected her call to the human resources supervisor’s voicemail at the time she made the comment, and made the comment intending it to be heard only by her husband. Because claimant was not aware she was making the comment, and did not intend to make the comment, at work or to anyone at work, the comment was not willful or wantonly negligent.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 20-UI-149383 is affirmed.

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

DATE of Service: June 1, 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.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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.