

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0506

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 2, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct and disqualifying claimant from receiving unemployment insurance benefits effective February 23, 2020 (decision # 145620). Claimant filed a timely request for hearing. On June 24, 2020, ALJ Monroe conducted a hearing, and on June 30, 2020 issued Order No. 20-UI-151654, concluding the employer discharged claimant, but not for misconduct. On July 3, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: On July 3, 2020, the employer submitted written argument to EAB on its application for review. EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). On July 10, 2020, the employer submitted written argument and included a statement declaring they provided a copy of their argument to the opposing parties. EAB considered the employer's July 10, 2020 written argument in reaching this decision.

In its written argument, the employer asked if claimant's request for hearing should have been dismissed because claimant did not participate in the hearing. OAR 471-040-0025(4) (August 1, 2004) provides that parties may appear on their own behalf or by authorized agent or counsel. Claimant appeared at the hearing through counsel. Therefore, it would have been error to dismiss claimant's request for hearing for failure to appear. Claimant's counsel did not testify at hearing, therefore the employer's assertion that claimant's counsel may have been biased is immaterial.

The employer requested that it be allowed to provide additional information in the form of testimony from witnesses. The employer did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

Order No. 20-UI-151654 correctly focused its misconduct analysis on the claimant's conduct during her final meeting with the regional manager and shop manager on February 29, 2020. The employer conducted an investigation into the February 24, 2020 incident between claimant and a coworker and determined that the appropriate discipline would be a demotion and probationary period. Because the employer did not discharge claimant in response to that incident, it presumably did not consider the incident sufficient to warrant discharge.

The record does not show claimant engaged in misconduct during claimant's meeting with the managers on February 29. The regional manager asserted that claimant disagreed with and did not understand the demotion, and that claimant "put blame on" the shop manager and did not "own up to" her actions on February 24. Exhibit 2, Regional Manager's Statement. The shop manager asserted that during the meeting, claimant stated she did not deserve to be demoted, and that claimant "did not show remorse or ownership" regarding the February 24 incident, and did not apologize for her actions. Exhibit 2, Shop Manager's Statement. The employer's owner testified that the managers told her that they felt claimant's conduct during the February 29 meeting showed that the managers would not be able to coach claimant regarding her conduct because she did not appear to comprehend that her conduct on February 24 was unacceptable at work. Transcript at 19-23. For the alleged conduct to be considered misconduct and disqualify claimant from receiving unemployment insurance benefits, it must have been done with an intent to violate the employer's expectation or with conscious indifference to it. The employer did not establish that claimant's conduct violated a known, reasonable workplace expectation. The record shows that claimant requested the meeting because she sought an additional opportunity to clarify her conduct on February 24 and offer her perspective about how the shop manager could have improved the employees' working relationship. The record does not show that claimant used foul language, raised her voice, or was insubordinate during the meeting. The employer's information showed that claimant did not apologize during the February 29 meeting, but does not show that claimant knew or should have known that the employer expected claimant to apologize again for her conduct. The record shows that claimant apologized for her conduct and recognized that it was not appropriate in the workplace when she met with a human resources representative. See Transcript at 6, 8. For those reasons, and the reasons set forth in Order No. 20-UI-151654, the employer discharged claimant, not for misconduct. Claimant is not subject to disqualification from receiving benefits because of this work separation.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 20-UI-151654 is affirmed.

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

DATE of Service: August 10, 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

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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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