

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0535

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving benefits effective March 1, 2020 (decision # 92627). Claimant filed a timely request for hearing. On June 24, 2020, ALJ Shoemake conducted a hearing at which the employer failed to appear, and on June 26, 2020, issued Order No. 20-UI-151525, affirming the Department's decision. On July 15, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Summit RV and Auto LLC employed claimant as a salesperson from June 1, 2019 to March 3, 2020.

(2) Claimant was one of two commissioned salespersons. The owner paid claimant minimum wage if claimant did not earn sufficient sales commissions.

(3) When claimant began work on June 1, 2019, he worked full time. In the fall of 2019, his hours were reduced to 32 per week. On February 25, 2020, the employer's owner sent claimant home for a week because there were "no customers coming on the lot" and told claimant, "Come back next week and we'll see where we are at." Audio Record at 12:00 to 12:15; 21:20 to 21:45. The owner also reduced the other salesperson's hours from three days per week to one day per week, which was the day the owner took off work.

(4) Claimant returned to work on March 3, 2020. Shortly after his arrival, the owner called claimant into his office "to have a discussion about work." Audio Record at 21:45 to 22:00. A heated discussion ensued during which claimant said to the owner, "If you don't give me hours, I don't have a job," to which the owner did not respond. Audio Record at 13:15 to 14:30. During their discussion, claimant did not tell the owner that he quit and the owner did not tell claimant that his employment was terminated. Claimant left the employer's lot and returned home. The owner never called claimant back to work and claimant never returned. When claimant later talked to the other salesperson, he told claimant the owner

had told him, about claimant, "I don't know if I fired him or I laid him off." Audio Record at 10:30 to 11:00.

(5) Claimant did not apply for other work until March 30, 2020. Exhibit 1.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct.

Work Separation. Order No. 20-UI-151525 concluded that on March 3, 2020 claimant quit work without good cause, reasoning in relevant part:

The separation is a voluntary quit because the claimant returned to work on March 3, 2020 and then left work after a discussion with the owner did not go well. The employer did not feel that the claimant was happy and the claimant did not feel that he had a job because the employer was not giving him much work

Order No. 20-UI-151525 at 2. However, the record does not support the order's conclusion that claimant quit work.

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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

By February 25, 2020, the employer's business had substantially slowed down. On that day, the owner sent claimant home for a week because there were "no customers coming on the lot," probably "because of the COVID thing." Audio Record at 21:45 to 22:05. The other salesperson's hours had been reduced from three days per week to one, apparently only because the owner needed one day off per week. On March 3, 2020, shortly after claimant reported for work, the owner called claimant into his office "to have a discussion about work." During that discussion, the parties became angry with each other and claimant said to the owner, "If you don't give me hours, I don't have a job," to which the owner did not respond. Claimant then left the employer's lot and returned home. Claimant did not apply for other work until March 30, 2020. The owner never called claimant back to work, and when claimant later talked to the other salesperson, he told claimant that the owner had told him about claimant, "I don't know if I fired him or I laid him off."

By returning to work on March 3 and not applying for other work for almost a month thereafter, claimant demonstrated that he was willing to continue to work for the employer for an additional period of time after March 3. By not calling claimant back to work after March 3 and telling claimant's coworker about claimant, "I don't know if I fired him or I laid him off," the owner demonstrated that he had not intended to allow claimant to return to work after March 3, particularly given the recent reduction in both claimant's and the other salesperson's hours. Although during their discussion, claimant did not tell the owner that he quit and the owner did not tell claimant that his employment was terminated, the record shows the work relationship between claimant and the employer was severed that day. More likely than not, the work separation was a discharge that occurred on March 3, 2020.

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).

Viewing the record as a whole, it is more likely than not that the employer discharged claimant due to a lack of work because there were “no customers coming on the lot” due to “the COVID thing.” The record fails to show that the employer discharged claimant for willfully or with wanton negligence violating a standard of behavior the employer had the right to expect of him or for disregarding the employer’s interests. Accordingly, the record fails to show that the employer discharged claimant for misconduct.

The employer discharged claimant, but not for misconduct under ORS 657.176(2)(a). Claimant is not disqualified from receiving unemployment insurance benefits based on his work separation.

DECISION: Order No. 20-UI-151525 is set aside, as outlined above.

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

DATE of Service: August 13, 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 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.

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