

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0587

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 26, 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 unemployment insurance benefits effective November 10, 2019 (decision # 55453). Claimant filed a timely request for hearing. On August 10, 2020, ALJ Monroe conducted a hearing, and on August 13, 2020, issued Order No. 20-UI-153113, concluding the employer discharged claimant, but not for misconduct and claimant was not disqualified from receiving benefits. On August 20, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer and claimant each submitted a written argument with regard to the employer's application for review. The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Although the employer asserted in its argument that it was not prepared at hearing to rebut claimant's testimony, which it was not aware of beforehand, both claimant's appeal of the administrative decision and the notice of hearing provided the employer with adequate notice that the nature of the work separation would be discussed at hearing. Employer's Written Argument. Claimant did not declare 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Linfield College employed claimant, last as an adjunct professor, from 2001 to November 12, 2019. From approximately 2009 through 2019, claimant taught a "Global Health" course that he created and the employer customarily offered in the spring term. Transcript at 11.

(2) On November 12, 2019, claimant reported to the employer's campus to attend a departmental faculty meeting. Prior to the meeting, claimant visited the office of the department chair to obtain information about his assigned course for the 2020 spring term. The department chair's secretary told claimant that the department chair was not available to meet and when claimant asked if he was being scheduled to teach the global health class in the spring, the secretary told him, "No...they wanted to try somebody else to do that." Transcript at 10, 16. Claimant then attended the departmental faculty meeting, where the department chair and secretary were both present, and when he asked, "[A]m I scheduled to be teaching again," they said "no." Transcript at 5. Claimant responded by telling them that he was willing to continue teaching the class if they wanted him to. Transcript at 9.

(3) Claimant then went to the employer's human resources department (HR) and requested documentation that his employment had ended to provide to his retirement accounts administrators. It was necessary for claimant to provide such documentation to avoid incurring withdrawal penalties due to his age. Based on claimant's request, the HR coordinator believed that claimant had decided to retire and requested written documentation verifying that his employment was ending before issuing the requested documentation. Claimant then handwrote a statement declaring, in part, "Today is my last official day at Linfield... [after]...attending my last HHPA faculty meeting." Exhibit 2.

(4) On November 12, 2019, the employer discharged claimant from his employment because it concluded that it "wanted to try somebody else" at teaching its global health class, which only claimant had taught since 2009. Transcript at 10.

(5) The employer hired a replacement professor to teach the global health class in the spring 2020 term.

(6) The employer had no professional concerns about claimant's teaching performance and had not issued any warnings to or imposed any discipline on claimant.

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

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).

Claimant asserted that the employer discharged him on November 12, 2019. He testified that prior to the faculty meeting that day, the department secretary told him that he would not be teaching the spring 2020 global health class because the department "wanted to try somebody else to do that" and that at the faculty meeting the department chair and secretary responded "no" when he asked them if he was "scheduled to be teaching again." The employer's HR representative did not dispute claimant's testimony, but asserted that she understood that claimant was retiring that day. She asserted that after the faculty meeting, claimant appeared at the HR office and at her request submitted a written statement verifying that his employment was ending before she would prepare documentation for his retirement administrators that he was no longer employed. Transcript at 22-23. Claimant then handwrote a statement stating, "Today is my last official day at Linfield... [after] attending my last HHPA faculty meeting." However, only claimant testified regarding his conversation with the department secretary

prior to the November 12, 2019 faculty meeting and his conversation with the department chair and secretary at the subsequent faculty meeting regarding his teaching future with the employer. Absent a basis for concluding that claimant was not a credible witness, EAB gave his firsthand testimony under oath more weight than the HR representative's understanding that claimant was simply retiring, and have therefore found facts in accordance with his testimony. Because claimant told the department chair and secretary that he was willing to continue to work for the employer for an additional period of time on and after November 12, 2019, but was told he would not be allowed to do so, the work separation was a discharge which occurred on that day.

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) (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). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer failed to meet its burden that it discharged claimant for misconduct. The record shows that the employer discharged claimant on November 12, 2019 because it concluded that it "wanted to try somebody else" at teaching the global health class. However, the employer's witness asserted that claimant's personnel file did not show that the employer had any professional concerns about claimant's teaching performance or that it had issued any warnings to or imposed any discipline on claimant. Transcript at 31. Accordingly, the record fails to show that the employer made its decision to replace claimant as an adjunct professor and discharge claimant because he willfully or with wanton negligence violated a standard of behavior that the employer had the right to expect of him or had disregarded the employer's interest.

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-153113 is affirmed.

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

DATE of Service: September 18, 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

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 الإستئناف 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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