

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0617

Reversed
No Penalty Weeks Assessed

PROCEDURAL HISTORY: On July 1, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits and assessing a penalty disqualification from future benefits of four weeks (decision # 204527). Claimant filed a timely request for hearing. On August 20, 2020, ALJ Frank conducted a hearing, and on August 28, 2020 issued Order No. 20-UI-153449, affirming the Department's decision. On September 17, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument with their application for review. 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 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) ICM Resources, dba Bend/Sisters Garden RV Resort, employed claimant as a maintenance assistant from May 15, 2018 to August 12, 2019.

(2) On August 8, 2019, claimant tendered a notice of resignation to the employer, specifying that September 1, 2019 would serve as his final day of work. The employer accepted claimant's notice, but considered disallowing claimant from working until the intended resignation date due to his history of missing work time. The employer agreed to allow claimant to work until September 1, but advised him that "if he missed any [time]" prior to that date, the employer would consider it his "last day." Transcript at 11.

(3) On August 12, 2019, although the employer had scheduled claimant to work, claimant failed to report for work as scheduled or notify the employer that he would be absent. The employer discharged claimant that day for that reason, but did not communicate its decision to do so until the next day.

Claimant did not call in or report for work on August 12 because he had been suffering from a kidney stone and was hospitalized for that reason.

(4) On August 13, 2019, claimant and his girlfriend went to the employer's premises, where claimant explained to the manager why he had not called or been at work the previous day and showed her medical records that confirmed his hospitalization. He also told her that he wanted to keep his job. However, the manager responded, "not at this time." Transcript at 14. At that point, the conversation became emotional. Claimant, his girlfriend and the employer's manager "were all crying." Transcript at 34. The manager told claimant that the employer was going to "let you go for now...we'll see what happens with you down the road. You get yourself better." Transcript at 19. The manager did not specifically tell claimant that he was "fired," or being let go "due to a lack of work." Transcript at 14-15.

(5) On August 20, 2019, claimant filed an initial claim for unemployment insurance benefits. When filing his claim, claimant reported that he was "laid off due to a lack of work." Transcript at 5. Claimant reported that he was "laid off" because he "was going on what [he] was told on August 13, 2019, that the employer was going to "let you go for now...[and]...we'll see what happens with you down the road...[after]...You get yourself better." Transcript at 22, 24.

(6) In 2020, the Department conducted an investigation regarding whether claimant's work separation with the employer was disqualifying. In a questionnaire response to the Department, claimant explained, in part, that he was "laid off/let go" on August 12, 2019 by the employer because he missed a day of work "for a medical reason." Exhibit 1 at 19-20.

(7) On June 30, 2020, the Department issued a decision concluding that claimant's work separation with the employer was not disqualifying, reasoning, "You were fired because you were absent from work due to passing a kidney stone. This was an absence due to illness." Exhibit 1 at 11.

(8) On July 1, 2020, the Department issued decision # 204527, concluding that claimant willfully misrepresented his work separation as a layoff rather than a discharge to obtain benefits. For that reason, decision # 204527 imposed a four-week penalty disqualification from future benefits under ORS 657.215.

CONCLUSIONS AND REASONS: Claimant did not willfully misrepresent the nature of his work separation to obtain benefits.

An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215.

Order No. 20-UI-153449 concluded that claimant "willfully misrepresented material facts to obtain unemployment benefits," and that a disqualification "was appropriate." Order No. 20-UI-153449 at 3. After reasoning that the record showed that claimant misrepresented his work separation as a layoff rather than a discharge, order further reasoned:

It is also more likely than not that claimant did so willfully. [Claimant] was well aware that he was fired, though this exact terminology may not have been used. Likewise,

the employer made no mention of a layoff, or lack of work, as there was no layoff and it was the park's busy season. According to claimant's own witness, the work separation was sudden and emotional for all involved. While claimant has seemingly attempted to conflate the term "let go" with a layoff due to a lack of work, this argument is confusing and, given claimant's extensive experience with unemployment insurance claims, simply unpersuasive.

Order No. 20-UI-153449 at 3. However, the preponderance of the evidence in the record fails to show that claimant willfully misrepresented the nature of his work separation "to obtain benefits."

Although the order found that claimant was "highly experienced with unemployment claims," and in the past "had the payment of benefits suspended pending adjudication of eligibility issues," such as the nature of a work separation, the record does not support that finding. When asked by the ALJ whether claimant ever had the payment of benefits suspended pending a work separation adjudication, the Department's witness responded, "I don't know...maybe." Order No. 20-UI-153449 at 2; Transcript at 8. Moreover, as claimant was experienced with unemployment claims, having had twelve prior claims, that fact equally suggests that he may have known that a discharge for an absence due to illness was neither misconduct, nor disqualifying, as the Department eventually concluded here. Claimant's assertion that he initially reported that he was "laid off" because he "was going on what [he] was told on August 13, 2019, that the employer was going to "let you go for now...[and]...we'll see what happens with you down the road...[after]...You get yourself better" also was plausible. It was only after the passage of almost a year, in June 2020, that he may have realized and accordingly responded that he had been "let go" with no chance of a return to work.

Here, the Department's evidence offered to establish that claimant's misrepresentations were willfully made "to obtain benefits" was not persuasive. Accordingly, the preponderance of the evidence in the record fails to show that claimant willfully misrepresented the nature of his work separation with the employer in August 2019 as a layoff "to obtain benefits."

DECISION: Order No. 20-UI-153449 is set aside, as outlined above.

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

DATE of Service: October 21, 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 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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