

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0622

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 31, 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 December 8, 2019 (decision # 92020). Claimant filed a timely request for hearing. On September 10, 2020, ALJ Murdock conducted a hearing, continued on September 11, 2020, and on September 17, 2020, issued Order No. 20-UI-154059, concluding the employer discharged claimant, but not for misconduct and claimant was not disqualified from receiving benefits. On September 21, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Portland Community College employed claimant as a “casual employee,” also known as a “599” employee, from January 2018 to December 13, 2019. Transcript at 5. Claimant last worked for the employer as co-director of an employer arts gallery from June 17, 2019 to December 13, 2019. Transcript at 5.

(2) As a 599 employee, claimant did not receive employee benefits from the employer. Claimant worked under casual worker contracts that were fulfilled when the 599-hour threshold was reached. Prior to his last contract with the employer, which began on June 17, 2019, claimant had never failed to work the allotted and budgeted 599 hours under a casual employee contract.

(3) The employer employed many 599 employees. The employer’s human resources (HR) department processed employee time sheets and had a system for keeping track of the number of hours a 599 employee had worked and ran weekly reports regarding the same. An HR employee was expected to periodically notify either the 599 employee or the 599 employee’s manager of the number of the allowed 599 hours the employee had worked. When the manager was notified of the hours worked, the manager was expected to notify the employee of the status of his hours.

(4) In September of 2019, an HR representative sent claimant a “heads-up” email, which notified him that he had worked 330 of the allowed 599 hours up to the date of the email, leaving him with 269 remaining hours. Transcript at 7.

(5) Claimant had a medical condition that required surgery, followed by a 12-week recovery period. In October 2019, claimant met with his manager and discussed his intent to resign on December 13, 2019, on which date he had projected that his allotted 599 allotted hours would be exhausted. Claimant also notified the manager of his intent to have his required surgery, which he had scheduled for the second week in January 2020.

(6) On December 13, 2019, an HR department employee notified claimant’s manager that 49.5 hours of claimant’s budgeted 599 hours remained available and unused. The manager responded, “Oh today is his last day of employment.” Audio Record (September 11, 2020 hearing) at 15:45 to 17:00. The manager chose not inform claimant of those remaining unused hours. Had the manager done so, claimant “absolutely” would have continued to work for the employer until the 49.5 hours had been used up. Transcript at 26.

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

Work Separation. The employer asserted that claimant “resigned” on December 13, 2019. Transcript at 10. However, the nature of a work separation is determined by administrative rule. 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) (September 22, 2020). 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).

The record shows that throughout claimant’s employment, claimant had worked as a “casual employee” under contracts that allowed claimant to work a maximum of 599 hours before it expired and that he had never failed to work the allotted 599 hours under a contract. The employer had a system for keeping track of the number of hours a 599 employee had worked under their contract, ran weekly reports regarding the cumulative hours worked and expected an HR employee to periodically notify the 599 employee or the 599 employee’s manager of the number of the allotted 599 hours the employee had worked. When a manager was notified of the number of hours a contract employee had worked, the manager was expected to notify the employee of that number. Here, on claimant’s last scheduled day of work, claimant’s manager was notified that 49.5 hours of claimant’s allotted and budgeted 599 hours remained available and unused by him, but chose not to notify claimant of that fact. Had claimant been so notified, claimant “absolutely” would have continued to work for the employer until the remaining 49.5 hours had been worked. Because claimant was willing to continue to work for the employer until all of his allotted 599 hours were worked, but was not allowed to do so because claimant’s manager chose not to notify him that 49.5 hours remained available, the separation was a discharge.

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) (September 22, 2020).

At the September 10, 2020 hearing, the employer’s witness asserted that claimant resigned, but also admitted that claimant’s work separation was not the result of disciplinary issues or unsatisfactory work performance. Transcript at 9. The record confirms this, and fails to otherwise show that claimant was discharged for a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of an employee. Accordingly, the employer discharged claimant, but not for misconduct, and claimant is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Order No. 20-UI-154059 is affirmed.

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

DATE of Service: October 21, 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 desisyong ito.

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 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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