

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0230

Reversed & Remanded

PROCEDURAL HISTORY: On December 31, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 31, 2020 (decision # 111418). Claimant filed a timely request for hearing. On March 22, 2021, ALJ Micheletti conducted a hearing interpreted in Nepali, and on March 29, 2021 issued Order No. 21-UI-163642, reversing decision # 111418 and concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation. On March 31, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: At hearing, the ALJ admitted as evidence “a written statement with [claimant’s] request for hearing,” identified as “Exhibit 1.” Audio Record at 12:02 to 12:10. The order under review likewise stated that “Exhibit 1 was admitted into evidence without objection.” Order No. 21-UI-163642 at 1. However, the hearing record does not contain a marked copy of that document, and it is not possible from the hearing record to identify which page or pages of the document were admitted. On remand, the ALJ should mark Exhibit 1.

Further, both parties were “limited English proficient persons” within the meaning of OAR 471-040-0007(2)(a) (August 1, 2004) and both offered interpreted testimony at hearing. Because Exhibit 1 was an English language document that had not been previously interpreted, on remand, the ALJ must “read the document and allow for contemporaneous interpretation.” OAR 471-040-0007(8)(b). On remand, the ALJ should read the document into the record¹ in accordance with that rule.

Finally, because the document was offered under the ALJ’s own motion rather than by one of the parties, it was admitted as a matter of judicial notice under OAR 471-040-0025(7) (August 1, 2004). However, the ALJ did not afford the parties an opportunity to contest the noticed exhibit as required by

¹ To the extent that the document is lengthy, the ALJ may exclude from reading into the record “clearly irrelevant portions of the document, provided however that the administrative law judge shall summarize the remaining content of the document on the record.” OAR 471-040-0007(8)(b).

OAR 471-040-0025(7). On remand, the ALJ should afford the parties such an opportunity prior to ruling on its admissibility.

FINDINGS OF FACT: (1) Cascade Oil LLC employed claimant as a cashier and gas attendant from November 2018 until May 31, 2020.

(2) Claimant's husband also worked for the employer as a manager at the same gas station.

(3) On May 31, 2020, the owner met with claimant's husband and informed him that they had hired a new manager for the gas station. Claimant and her husband understood this to mean that the employer had discharged them both, and claimant stopped working for the employer.

CONCLUSIONS AND REASONS: Order No. 21-UI-163642 is set aside and this matter remanded for another hearing and order.

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).

At hearing, the parties disagreed as to the nature of the separation. The employer testified that claimant voluntarily quit after the meeting on May 31, 2020 because claimant was dissatisfied with the prospect of only working 40 hours per week for the employer, and that she and her husband were instead looking to start their own business. Transcript at 6. Conversely, claimant testified that the employer had discharged her on that date when they informed her and her husband that they had replaced him and the rest of the staff, and told the couple to hand over their keys. Transcript at 12. Claimant also answered "yes" to the question, "So did they tell you that you no longer worked there explicitly?" Transcript at 12.

Largely on the basis of the above testimony, the order under review concluded that "claimant testified credibly that she wanted to [continue] working for the employer" because she "provided detailed evidence regarding the lead up to the employment separation," whereas "the employer's explanation of the reasons for the separation lacked detail and context," and for that reason found that the employer discharged claimant. Order No. 21-UI-163642 at 2. The record does not support such a credibility determination. Rather, the evidence in the record is equally balanced as to whether claimant quit or was discharged.

In concluding that claimant provided "detailed evidence regarding the lead up to the employment separation," the order under review apparently refers to claimant's testimony regarding prior business and legal dealings that claimant and her husband had in relation to the gas station. Transcript at 14-15. This testimony lends no weight to claimant's assertion that she was discharged. Further, while claimant's testimony repeatedly characterized the separation as a "discharge," the record does not contain a clear indication of what the employer actually said to claimant. Transcript at 10, 11, 13, 17, 20. On remand, to the extent that a dispute of material fact persists, the record should be developed to show what the parties explicitly stated to each other at the time of separation in order to better support a credibility determination or otherwise determine whether the work separation was a quit or a discharge. Additionally, further inquiry should be directed as to whether the employer was willing to allow

claimant to continue working for an additional period of time; whether claimant was willing to work for an additional period of time; and in either case, what requirements (i.e., a minimum number of hours, pay rate, etc.), if any, the parties placed on any such willingness to continue the employment relationship. Finally, once the nature of the separation has been determined, the record should be developed to show whether or not claimant was discharged for misconduct; or, alternatively, whether or not claimant voluntarily quit with good cause.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant voluntarily quit or was discharged, and in either case, whether the separation occurred for a disqualifying reason, Order No. 21-UI-163642 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-163642 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. Hettle;
Angela Steger-Bentz, not participating.

DATE of Service: May 6, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-163642 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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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