

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0299

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving unemployment insurance benefits from August 30, 2020 through November 28, 2020 (weeks 36-20 through 48-20) because claimant was unemployed due to a labor dispute that was in active progress (decision # 110910). Claimant filed a timely request for hearing. On March 11, 2021, ALJ Davis conducted a hearing, and on March 17, 2021 issued Order No. 21-UI-162836, reversing decision # 110910, and concluding that claimant was not unemployed due to a labor dispute that was in active progress and was therefore not disqualified from receiving benefits for the period of August 30, 2020 through March 6, 2021 (weeks 36-20 through 9-21). On April 6, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Hood River Distillers Inc. employed claimant. Claimant was represented by the union, Teamsters Local 670 ("the union").

(2) On May 6, 2020, claimant and other employees of the employer who were represented by the union went on strike.

(3) On August 27, 2020, the union informed the employer in writing that claimant and the other employees were "unconditionally offer[ing] to return to work." Exhibit 1c. The union advised that claimant and the other employees would report to work on September 1, 2020.

(4) On August 30, 2020, the employer discharged claimant. Most of the other employees were placed on a list to be re-hired by the employer.

(5) On September 1, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for each week during the period of August 30, 2020 through March 6, 2021 (weeks 36-20 through 9-21), the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not unemployed during weeks 36-20 through 9-21 due to a labor dispute and therefore was not disqualified from receiving benefits for those weeks under ORS 567.200(1).

ORS 567.200(1) provides that “[a]n individual is disqualified for benefits for any weeks with respect to which the [Department] finds that the unemployment of the individual is due to a labor dispute that is in active progress at the factory, establishment or other premises at which the individual is or was last employed or at which the individual claims employment rights by union agreement or otherwise.” “The term ‘labor dispute’ as used in the Employment Department law means any concerted or deliberate action by two or more individuals or by an employing unit resulting in either a strike or lockout in which wages, hours, working conditions or terms or employment of the individuals are involved.” OAR 471-030-0097 (January 11, 2018). Under OAR 471-030-0038(1)(a) (September 22, 2020), “the employer-employee relationship is severed” on “the date an individual is separated from work.” “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

Claimant was not unemployed due to a labor dispute during weeks 36-20 through 9-21. The employer discharged claimant on August 30, 2020, thereby separating claimant from work and severing the employer-employee relationship on that date. Accordingly, when claimant filed his initial claim for benefits on September 1, 2020 and made a weekly claim for benefits for weeks 36-20 through 9-21, he was unemployed because of the discharge, and not because of a labor dispute. Thus, ORS 567.200(1) does not apply to claimant because beginning August 30, 2020, claimant was unemployed due to the employer discharging him, not due to a labor dispute.

For these reasons, claimant was not unemployed due to a labor dispute and therefore was not disqualified during weeks 36-20 through 9-21 from receiving benefits under ORS 567.200(1).

DECISION: Order No. 21-UI-162836 is affirmed.

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

DATE of Service: May 13, 2021

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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