

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0350

Reversed
No Penalty Weeks Assessed

PROCEDURAL HISTORY: On March 23, 2021, 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 # 201413). Claimant filed a timely request for hearing. On April 20, 2021, ALJ Amesbury conducted a hearing, and on April 22, 2021 issued Order No. 21-UI-165365, affirming the Department's decision. On April 29, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Walmart Associates Inc. employed claimant as a cashier until January 9, 2020.

(2) The employer normally scheduled claimant to work from Monday through Thursday, and on Saturdays. On Thursday, January 9, 2020, claimant "got upset" with her floor manager and "walked out," before her shift ended, prompting the floor manager to tell claimant at that time that she was "fired." Transcript at 17, 19, 23. Claimant understood the employer's policy to be that only a store manager, and not a floor manager, had the authority to discharge an employee. After the January 9, 2020 incident, a store manager never contacted claimant to tell her that the employer had discharged her. Because no store manager contacted claimant, she did not believe that the employer had discharged her. Claimant called in sick for the next two shifts she normally would have been scheduled to work after January 9, 2020, and did not report to work again after that. After January 9, 2020, claimant called her store manager "a couple times," but the store manager did not talk with claimant or return claimant's calls. Transcript at 17. Claimant never told the employer that she quit work. Claimant thought the employer no longer needed her to work when they did not call claimant back.

(3) On April 5, 2020, claimant filed an initial claim for unemployment insurance benefits online. It was the first time claimant had applied for unemployment insurance benefits.

(4) When claimant filed her initial claim for benefits online, she was offered three options to choose from regarding the reason her employment ended with the employer: that she quit, that she was discharged, or that she was laid off due to lack of work. Claimant reported that she was “laid off due to lack of work.” Transcript at 5. Claimant claimed and was paid benefits for the week of April 5, 2020 through April 11, 2020 (week 15-20). On May 26, 2020, the Department received a notice of claim determination response from the employer contradicting claimant’s report that she was laid off work and stating that they had discharged claimant.

(5) In November 2020, a Department representative spoke with claimant about her work separation from the employer. The representative told claimant that the employer had discharged her.

(6) On December 8, 2020, the Department issued an administrative decision concluding that the employer discharged claimant for misconduct. Claimant requested a hearing regarding that decision and the Office of Administrative Hearings (OAH) conducted a hearing and issued an order concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

(7) Prior to March 20, 2021, claimant completed a questionnaire for a Department fraud investigator regarding her work separation from the employer. On the questionnaire, claimant stated that when she filed her initial claim for benefits, she did not report that the employer discharged her because “she did not know” the employer discharged her. Transcript at 10.

(8) On March 20, 2021, a Department representative spoke with claimant and asked her about her questionnaire response. Claimant told the representative, “I did not know because my manager told me to go home. I was upset. I didn’t know that day.” Transcript at 10. Claimant told the representative that she “thought [she] had quit.” Transcript at 10. The representative asked claimant why she did not report to the Department that she had quit if she thought she had quit. Claimant responded, “I don’t know.” Transcript at 11.

CONCLUSIONS AND REASONS: Claimant did not willfully make a false statement or misrepresentation or willfully fail to report a material fact to obtain unemployment insurance benefits for week 15-20.

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. Where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Order No. 21-UI-149864 concluded that claimant willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain benefits because at the time she filed her initial claim for benefits, she believed that she had quit, yet reported that she was laid off due to a lack of work. Order No. 21-UI-149864 at 4. In a credibility determination based on inconsistencies among claimant’s statements made in her initial claim, allegedly made to a Department representative in November 2020, in testimony during the work separation hearing with the employer, and at the hearing for this decision,

the order concluded that claimant's testimony was "generally unpersuasive." Order No. 21-UI-149864 at 1. Finding claimant's testimony unpersuasive at hearing, the order concluded that claimant's explanation for why she reported that she was laid off due to lack of work was also unpersuasive. Order No. 21-UI-149864 at 4. However, the record does not support this conclusion.

The Department paid benefits for week 15-20, and therefore had the burden to prove benefits should not have been paid. The Department did not meet its burden to show that claimant willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain benefits. Claimant's testimony was persuasive that she misreported her work separation from the employer due to a mistaken belief. Claimant testified that she did not know when she filed her initial claim that she had been discharged, and did not report that she quit because she thought that quitting was the "same as lack of job." Transcript at 28-29. Claimant testified further that she believed quitting meant she had to tell her store manager she quit, and she never told her store manager that she quit. Transcript at 29-30. Claimant's testimony shows she did not understand not only the nature of her work separation from the employer when she filed her initial claim, but also did not understand the differences between "lack of work" and quitting. Her inaccurate report to the Department was not therefore a willful misrepresentation, but rather, a mistake.

Claimant's apparently inconsistent statements do not undermine her testimony at hearing. Although claimant had a conversation with a Department representative in November 2020, the Department representative from that conversation did not testify at hearing. The hearsay testimony from the Department regarding claimant's November 2020 statements to the Department is afforded less weight than claimant's testimony at the hearing in this matter. The hearsay information did not show precisely what questions were asked of claimant in November 2020, or what her precise statements were to the Department in November 2020. It is not possible to discern from the hearsay what claimant understood when she responded to the Department's questions in November 2020. On this record, the hearsay testimony regarding claimant's conversation with the Department in November 2020 is unreliable as a basis for a credibility determination. In January 2021 claimant stated she was discharged during the hearing regarding her work separation from her employer. However, that testimony does not undermine her credibility at the hearing in this matter because the hearing regarding her work separation occurred after the Department told claimant that it considered her work separation to be a discharge, and claimant testified that she knew after that conversation that the employer had discharged her. Transcript at 17.

The nature of claimant's work separation was objectively unclear. Claimant had no communication with a store manager about her work separation. The employer never reached out to her regarding her work separation, either to say she was discharged, or to confirm that she had quit. When claimant called and left messages for the store manager, and the manager did not return her calls, claimant testified that it "look like maybe they don't need me anymore." Transcript at 20-21. The Department witness testified that claimant had reported in November 2020 that she did not use the online "help buttons" for descriptions of work separation terms when filing her claim. Transcript at 11. Although information that might have helped claimant make an accurate report about her availability for work was available to her at the time she filed each claim for benefits, claimant's failure to use those resources does not mean the mistakes she made while claiming were willful misrepresentations.

For the reasons explained herein, claimant did not willfully make a false statement or misrepresentation or willfully fail to report a material fact to obtain unemployment insurance benefits for week 15-20, and is not subject to a period of disqualification from future benefits pursuant to ORS 657.215.

DECISION: Order No. 21-UI-165365 is set aside, as outlined above.

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

DATE of Service: June 7, 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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