

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0483

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 5, 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 August 30, 2020 (decision # 74945). Claimant filed a timely request for hearing. On May 19, 2021, ALJ Amesbury conducted a hearing, and on May 26, 2021 issued Order No. 21-UI-167516, reversing decision # 74945 by concluding that claimant was discharged but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On June 15, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument in reaching this decision.

FINDINGS OF FACT: (1) Brightstar Care employed claimant as a branch manager from June 28, 2017 until September 4, 2020.

(2) On August 27, 2020, the employer sent an email to all their employees, including claimant, advising that a "signed Arbitration Agreement is now a requirement for employment," and requiring that the employees sign and return the arbitration agreement, which was attached to the email. Exhibit 1 at 25; Exhibit 2 at 5.

(3) On August 28, 2020, claimant responded to the employer's email stating that she planned to have "an independent adviser [*sic*]" review the arbitration agreement and intended to either sign the agreement or inform the employer that she did not plan to do so by September 4, 2020. Exhibit 1 at 26.

(4) On September 1, 2020, the employer sent another email to all their employees, including claimant, stating, “I wanted to clarify that signing the Arbitration Agreement is a condition of your employment . . . If you choose not to sign the Agreement, you are resigning from your employment[.]” Exhibit 2 at 6.

(5) Claimant consulted with her attorney about the arbitration agreement. Based on her attorney’s advice, claimant concluded that the agreement was unlawful because the agreement lacked specific language claimant believed was required by statute to be included in the agreement. Claimant also thought the agreement was unlawful because it contained a provision that purported to bind claimant to the terms of the agreement if she did not sign it but continued to work for the employer for 30 days after receiving it.

(6) On September 3, 2020, claimant advised the employer by email, “I am not signing the agreement. I feel it is illegal you are breaking the law by asking me to sign it.” Exhibit 1 at 28; Exhibit 2 at 7.

(7) On September 4, 2020, the employer responded, “Sorry you feel that way, but we . . . have been clear several times that signing this agreement is a condition of continued employment. As stated, we will process your voluntary refusal to sign as notice of your resignation and process your termination from employment effective today.” Exhibit 1 at 29; Exhibit 2 at 8. Minutes later, claimant responded, “I was also very clear that I am not quitting and I am being terminated for not signing an unlawful agreement.” Exhibit 1 at 30. As stated in their email, the employer viewed claimant as voluntarily quitting and terminated claimant’s employment on September 4, 2020.

(8) At the time claimant’s employment was terminated she “[in]tended . . . to continue [her] employment, do [her] job, and to . . . not sign something that [she] felt was illegal[.]” Transcript at 18.

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

Nature of the Work Separation. 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (September 22, 2020). As relevant here, “the date an individual is separated from work is the date the employer-employee relationship is severed.” OAR 471-030-0038(1)(a).

The employer imposed signing the arbitration agreement as a condition of claimant’s continued employment and viewed claimant’s refusal to sign as a decision to quit. If claimant severed the employer-employee relationship, then it is possible to regard claimant as having prevented herself from working for an additional period of time, which could constitute an unwillingness to continue to work and therefore a voluntary leaving.

However, the record shows that claimant did not sever the employment relationship when she informed the employer on September 3, 2020 that she would not sign the arbitration agreement. Instead, the record shows claimant wished to continue working. The employer severed the employment relationship the next day, September 4, 2020, when the employer separated claimant from work by terminating her

effective that day. Having severed the employment relationship, the employer withheld continuing work from claimant, who “[in]tended . . . to continue [her] employment” and “do [her] job” but could not. Transcript at 18. Thus, because claimant was willing to continue to work, but was not allowed to do so by the employer, she was discharged. While the employer characterized the work separation as a quit, a party’s characterization does not control the outcome of a work separation analysis. The nature of a work separation is governed solely by application of the standard set forth by OAR 471-030-0038(2). Here, claimant was discharged because the employer severed the employment relationship and in so doing prevented claimant from continuing to work for an additional period of time.

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). “[W]antonly negligent’ means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.” OAR 471-030-0038(1)(c). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The record supports that claimant violated the employer’s expectation regarding signing the arbitration agreement with at least wanton negligence. On August 27, 2020 and August 28, 2020, the employer informed claimant by email that they expected all of their employees, including claimant, to sign the arbitration agreement and that doing so was a condition of continued employment. Following consultation with her lawyer, claimant declined to sign the agreement because she believed the agreement was unlawful. Thus, claimant knew and understood that signing the agreement was a standard of behavior the employer expected of her, and by not signing, claimant violated the employer’s expectation.

Nevertheless, claimant’s breach of the employer’s standards of behavior was not misconduct because claimant violated the employer’s expectation regarding signing the agreement due to a good faith error. A good faith error involves a mistake made with the honest belief that one is acting rightly. *See* WEBSTER’S THIRD NEW INT’L DICTIONARY 978 (unabridged ed. 2002) (defining “good faith” as “a state of mind indicating honesty or lawfulness of purpose”). Here, in reliance on her lawyer’s advice, claimant developed the view that the arbitration agreement was unlawful. No opinion is expressed here as to the legality or illegality of the arbitration agreement. However, claimant’s belief that the agreement was unlawful was sincere given that it was based on her lawyer’s advice and premised on articulated reasons relating to the agreement allegedly conflicting with a statute and containing allegedly improper language that purported to bind claimant without her signature. It was this sincere belief and reliance on legal counsel that caused claimant to violate the employer’s expectation by not signing the arbitration agreement. Accordingly, claimant’s violation of the employer’s standards of behavior was a good faith error and did not constitute misconduct pursuant to OAR 471-030-0038(3)(b).

For these reasons, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 21-UI-167516 is affirmed.

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

DATE of Service: July 23, 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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