

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0661

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and that claimant was disqualified from receiving unemployment insurance benefits effective March 7, 2021 (decision # 120510). Claimant filed a timely request for hearing. On July 27, 2021, ALJ L. Lee conducted a hearing, and on August 3, 2021 issued Order No. 21-UI-171682, concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits. On August 13, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) PFD OPCO, LLC employed claimant from November 18, 2020 until March 10, 2021 at their warehouse. The employer initially hired claimant to be a key account manager, but changed his duties in December 2020 to cold storage manager. The employer gave claimant no formal training to assist claimant with his transition from key account manager to cold storage manager. Claimant assumed the duties and “tried to implement the systems that [his predecessor] had in place.” Transcript at 37.

(2) Prior to January 9, 2021, one of the employer’s key clients contacted claimant to confirm the client’s scheduled January 9, 2021 inventory date at the warehouse. Because claimant was new to the position of cold storage manager, and because claimant’s predecessor had previously scheduled the inventory date with the client, claimant decided to confirm the date with the employer’s vice president before responding to the client. The vice president told claimant to reschedule the client’s inventory for a later date due to a warehouse conflict. Claimant rescheduled the client’s inventory for March 23, 2021.

(3) On February 23, 2021, the employer provided claimant a 90-day review of his job performance and identified claimant’s lack of communication as one area, among others, where claimant needed to improve. Claimant understood this feedback to mean that he needed to keep the employer’s vice president updated on the day-to-day operations in the warehouse and on any problems as they arose. Claimant began copying the vice president on his emails, sending her updates, and getting her approval before making any scheduling decisions.

(4) On March 4, 2021, the employer provided claimant a written disciplinary report after claimant authorized an unscheduled truck to dock at the warehouse. Claimant authorized the truck to dock after he received approval to do so from the employer's operations manager, whom claimant believed had the authority to make the decision. The employer believed that claimant should have known that the operations manager did not have the authority to approve the docking and viewed claimant's mistake as another instance of poor communication.

(5) On March 10, 2021, the employer's vice president spoke to the employer's key client and learned that the client's planned inventory scheduled for March 23, 2021 had been unilaterally cancelled by claimant. The employer discharged claimant because his employment was "not working out" due to his continued lack of communication with coworkers. Transcript at 32.

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

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). "[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).

Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The record shows that after the employer shifted claimant to the cold storage manager position, the employer began to have concerns about claimant's lack of communication surrounding day-to-day operations. Effective communication for any manager in a warehouse setting is a reasonable employer expectation and the employer conveyed that expectation to claimant in both his 90-day review and the March 4, 2021 written disciplinary report. However, the record also shows that, at all relevant times, claimant remained inexperienced in his job as a cold storage manager and that the employer transitioned him to the position without the benefit of a formal training program. Claimant testified that he tried to implement the systems that his predecessor had in place, but that "there weren't a lot of obvious instructions on . . . what I needed to be doing, or how I needed to be doing it." Transcript at 37, 53. The preponderance of the evidence shows that claimant was conscientious when he carried out his duties and, when told by the employer of deficiencies in his communication, instituted needed changes like copying the vice president on operations emails and getting approval before making scheduling decisions. This evidence shows that claimant responded to his employer's concerns, attempted to make needed changes, and tried to prioritize the employer's interests.

The employer discharged claimant on March 10, 2021 because they believed him responsible for the cancellation of the key client's March 23, 2021 inventory, and that this was a result of claimant's continued communication issues. However, at hearing, claimant denied that he cancelled the March 23, 2021 inventory. Transcript at 36, 42. Because the hearing testimony revealed that claimant cancelled an earlier January 2021 inventory of the same client at the direction of the employer's vice president, the record suggests that the client may have been confused when they later conveyed to the vice president that claimant had cancelled the March 23, 2021 inventory. Transcript at 57-58. Either way, the preponderance of the evidence supports the conclusion that claimant's discharge was not for misconduct because claimant's deficiencies in communication more likely than not resulted from a lack of job skills or inexperience and not from a willful or wantonly negligent disregard of the employer's expectations. Claimant is therefore not disqualified from receiving unemployment insurance benefits because of the work separation.

DECISION: Order No. 21-UI-171682 is affirmed.

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

DATE of Service: September 15, 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 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 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 الإستئناف 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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