

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0665

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 20, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective December 27, 2020 (decision # 114153). Claimant filed a timely request for hearing. On July 28, 2021, ALJ Mott conducted a hearing, and on July 29, 2021 issued Order No. 21-UI-171373, reversing decision # 114153 by concluding that claimant's discharge was not for misconduct, and did not disqualify claimant from receiving benefits. On August 18, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Marie's Carriage House, LLC employed claimant as a caregiver at the employer's adult foster home from October 18, 2020 until December 31, 2020.

(2) The employer used a time card system to record when their employees worked. The employer expected claimant to fill her time card out accurately, unless the employer gave claimant permission to list a later end time than when claimant actually stopped working for a shift. Claimant was aware of and understood this expectation.

(3) On December 11, 2020, claimant was scheduled to work from 4:00 p.m. to 8:00 p.m. Claimant reported for work at 4:00 p.m. but completed all of her work by 6:45 p.m. Claimant listed 6:45 p.m. as her end time on her time card, but as she was preparing to depart the workplace, the employer's owner told claimant to "[j]ust sign out at 8 o'clock." Transcript at 28. Claimant complied by marking out 6:45 p.m. and writing 8:00 p.m. as her end time.

(4) On December 15, 2020, the owner was working on payroll when she observed that claimant had marked out 6:45 p.m. and listed 8:00 p.m. as her end time for the December 11, 2020 shift. The owner believed that she had not given claimant permission to list 8:00 p.m. as her end time for that shift, and concluded that claimant must have improperly changed the end time on the time card. Although the owner thought claimant had improperly changed the end time on the time card, the employer did not amend the time card and paid claimant for the entire 4:00 p.m. to 8:00 p.m. shift.

(5) On December 31, 2020, the employer discharged claimant for changing the end time on her December 11, 2020 time card from 6:45 p.m. to 8:00 p.m.

CONCLUSIONS AND REASONS: Claimant was discharged, 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).

The employer discharged claimant for changing the end time on her December 11, 2020 time card from 6:45 p.m. to 8:00 p.m. At hearing, the parties disagreed as to whether the employer’s owner gave claimant permission to change the end time on the time card to 8:00 p.m. The owner testified that she did not give claimant permission to make the change. Transcript at 5–11. Claimant testified that the owner did give her permission to change the end time on the card. Transcript at 28–35. Viewed objectively, the evidence on whether claimant had permission to change the end time on her December 11, 2020 time card was equally balanced. Where the evidence is no more than equally balanced, the party with the burden of persuasion—here, the employer—has failed to satisfy their evidentiary burden. Consequently, on this disputed issue, EAB based its findings on claimant’s evidence.

Accordingly, the record shows that the employer granted claimant permission to change the end time on her December 11, 2020 time card and then later discharged claimant for making the change. Because claimant had permission to change the end time on her time card, the record fails to show that the employer discharged claimant for engaging in a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her or a disregard of the employer’s interests. Therefore, the employer did not discharge claimant for misconduct under ORS 657.176(2)(a).

The employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 21-UI-171373 is affirmed.

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

DATE of Service: September 17, 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 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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