

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0775

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 3, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective May 3, 2020 (decision # 125656). Claimant filed a timely request for hearing. On September 10, 2021, ALJ L. Lee conducted a hearing, and on September 17, 2021 issued Order No. 21-UI-175074, modifying decision # 125656 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective May 10, 2020.¹ On September 23, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Johnson RV Sales employed claimant as a service technician from July 17, 2017 to March 20, 2020. During his tenure, the employer never encountered a disciplinary situation with claimant and provided claimant multiple pay raises because they viewed claimant as a "good technician" and someone they wanted to "continue to grow" and "give ... opportunities" to. September 10, 2021 (12:50 p.m.) Transcript at 17.

(2) On March 20, 2020, the impact from the COVID-19 pandemic required the employer to lay off multiple employees including claimant. The employer told all of the laid off employees that although they were unable to say when, or even if, the employees would be recalled to work, nor provide the employees with a return-to-work date, their intent was to return the employees to work as soon as possible. The employer removed the laid off employees from their "books," provided the employees their final paychecks and layoff paperwork, and considered the employer/employee relationship to be no

¹ Order No. 21-UI-175074 stated that it modified decision # 125656 by changing the effective date of the disqualification from May 3, 2020 to May 9, 2020. Order No. 21-UI-175074 at 4. However, EAB has inferred from the record and timeframe at issue in this case that Order No. 21-UI-175074's modification to May 9, 2020 as the effective date of disqualification was a scrivener's error, and that Order No. 21-UI-175074 meant to state that the effective date of disqualification was May 10, 2020.

longer “connect[ed].” September 10, 2021 (12:50 p.m.) Transcript at 9. The layoff paperwork informed employees that the employer would “recall . . . employees as business needs warrant,” referred employees to their local unemployment office, and explained available employee options for continuing their health care coverage resulting from the “end of employment: Involuntary – Layoff.” Exhibit 1 at 3.

(3) On May 14, 2020, the employer called claimant to recall him back to work. After claimant’s conversation with the employer, claimant did not return to work for the employer.

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

Nature of the work separation. The first issue is the nature of the work separation. “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (December 23, 2018). 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). 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).

The order under review concluded that claimant voluntarily left work because when the employer laid off claimant in March 2020, they “made clear [their] intent to recall employees when needed,” and when they actually attempted to recall claimant in mid-May 2020, claimant never returned. Order No. 21-UI-175074 at 3. However, the record does not support that conclusion.

The record shows that the employer discharged claimant on March 20, 2020 when they laid him off due to the COVID-19 pandemic. Although the employer’s intent at that time was to recall claimant and their other employees at a later date, the preponderance of the evidence shows that any such recall was not a certainty because the employer was unwilling to provide claimant with a return-to-work date and qualified the possibility of any recall by informing claimant that it would happen “as business needs warrant.” Further, the employer provided claimant his final paycheck, removed him from their books, provided him layoff paperwork that indicated that his “involuntary – layoff” was the “[e]nd of [his] employment,” and otherwise viewed claimant’s layoff as the end of the employer/employee “connection.” September 10, 2021 (12:50 p.m.) Transcript at 10. Accordingly, the preponderance of the evidence shows that as of March 20, 2020, claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow him to do so. Thus, under OAR 471-030-0038(2)(b), the work separation was a discharge on March 20, 2020.

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).

The record shows that claimant was discharged, but not for misconduct. During his employment, the employer viewed claimant as a “good technician” and provided him multiple raises, while never having to impose disciplinary action. Further, the preponderance of the evidence shows that claimant’s discharge resulted from the impact of the COVID-19 pandemic and the employer otherwise failed to offer any evidence that suggested they discharged claimant for violating any of their standards of behavior through willful or wantonly negligent action. As such, the employer discharged claimant, but not for misconduct, and claimant therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 21-UI-175074 is set aside, as outlined above.

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

DATE of Service: October 28, 2021

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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