

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0032

Reversed & Remanded

PROCEDURAL HISTORY: On January 11, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and was disqualified from receiving unemployment insurance benefits effective August 30, 2020 (decision # 124838). Claimant filed a timely request for hearing. On August 30, 2021, ALJ Wardlow conducted a hearing, and on September 2, 2021 issued Order No. 21-UI-173885, affirming decision # 124838. On September 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lehigh Hanson Services LLC employed claimant as a plant operator from June 26, 2019 until sometime between August 20 and September 3, 2020.

(2) The employer's policy, in accordance with the applicable collective bargaining agreement, required that employees submit medical documentation to the employer within three days of an unapproved absence. Failure to comply with this policy could result in the employee being discharged.

(3) In early July 2020, claimant broke his left hand, and as a result was unable to perform his work for the employer after July 2, 2020. The employer subsequently approved claimant for Family Medical Leave Act (FMLA) leave for the period of July 6, 2020 through August 16, 2020.

(4) On August 17, 2020, claimant had not returned to work because his hand had not yet healed. On or around that day, claimant spoke with his manager, who informed claimant that he had three days to obtain medical documentation to either allow him to return to work or extend his medical leave. Claimant told his manager that he was unable to book a doctor's appointment earlier than September 1, 2020, but his manager "didn't even want to hear [it]. . . [and] wanted [the doctor's note] right then and there[.]" Transcript at 19. On or around August 20, 2020, claimant's manager called claimant and informed him that claimant's "job was done" because claimant had not obtained medical documentation by that date. Transcript at 22. Claimant understood this to mean that the employer had discharged him.

(5) On August 31, 2020, the employer sent a letter to claimant advising him that he had three days to provide medical documentation to the employer for his continued absences from work. Claimant received the letter.

(6) On or around September 1, 2020, claimant visited his doctor, who removed the splint claimant's left arm had been in and set the hand in a hard cast. Because the fracture in his hand had not healed yet, claimant was still unable to return to work at that point. Claimant's doctor gave claimant a note confirming the same. However, claimant did not provide a copy of the note to the employer because he and his manager had "had a lot of problems" throughout claimant's tenure with the employer, claimant did not feel that his manager had helped him return to work, and as a result claimant did not believe that the manager "wanted [claimant] back." Transcript at 21. Claimant did not return to work after that point.

(7) On September 3, 2020, because claimant had neither returned to work nor provided a doctor's note, the employer determined that claimant was "terminated." Transcript at 8.

CONCLUSIONS AND REASONS: Order No. 21-UI-173885 is set aside and this matter remanded for further development of the record.

The order under review concluded that the employer "discharged claimant because he did not provide medical documentation as requested by [the] employer to either end or extend his approved medical leave." Order No. 21-UI-173885 at 4. However, the record does not contain sufficient information to determine the nature of the work separation or when it occurred.

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). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

Although the employer decided to "terminate" claimant on September 3, 2020, the record suggests that he may not have been willing to continue working for the employer made that decision. On that point, claimant's account is conflicted. Claimant testified that "*even if* I wanted to go back to work, it – it wouldn't have been a great fit, because of how my manager was going to treat me." Transcript at 24 (emphasis added). Later, he testified that he "was worried of how my job would be when I got back to work, due to how my manager treated me" but that he "wanted to go back to work." Transcript at 29. When read in tandem with claimant's testimony that he did not submit a copy of his doctor's note to the employer because of his concerns about his manager, it appears as if claimant may have decided that he was no longer willing to return to work for the employer before the employer decided to terminate his employment. If so, claimant may have voluntarily quit work before being terminated.

However, further inquiry is needed to determine if claimant had actually made such a decision, and, if so, when. Claimant's testimony *also* suggested that he had previously understood himself to have been discharged on or around August 20, 2020 after his conversation with his manager that day. The record does not show whether claimant's manager had the authority to discharge claimant, and further inquiry

is needed to determine whether claimant's manager had that authority. On remand, the record also should be developed to determine whether claimant believed that he was still employed after the August 20, 2020 conversation with his manager. To the extent that the record on remand shows that claimant *did* believe he remained employed after that conversation, further inquiry should be made to determine whether claimant specifically made a decision not to provide the employer with a copy of the doctor's note because he had decided to quit, or for some other reason. If the record on remand subsequently shows that claimant voluntarily quit work, further inquiry should be made to determine the date on which claimant quit, the specific concerns about claimant's manager (or any other issues) that led him to quit, and whether those concerns constituted a situation of such gravity that he had no reasonable alternative but to quit.

Additionally, while claimant testified¹ that he received the employer's letter dated August 31, 2020, the record does not show *when* claimant received that letter—and in particular, does not show whether he received it before or after the employer's September 3, 2020 decision to "terminate" him. If the record on remand shows that claimant did not quit, the timing of claimant's receipt of this letter is relevant to determine whether claimant's failure to provide the doctor's note to the employer constituted misconduct. To that end, the ALJ should also inquire as to when claimant received the note from his doctor (if other than on the date of the appointment), what the letter specifically stated, and whether claimant had ever previously engaged in behavior that could constitute a willful or wantonly negligent disregard for the employer's standards of behavior.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant voluntarily quit or was discharged and, in either instance, whether the work separation was disqualifying, Order No. 21-UI-173885 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-173885 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: January 13, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-173885 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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¹ Transcript at 19.

You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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