

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0184

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and that claimant was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 75246). The employer filed a timely request for hearing. On January 3, 2022, ALJ L. Lee conducted a hearing, and on January 11, 2022 issued Order No. 22-UI-183816, affirming decision # 75246. On January 28, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Lane County Human Resources employed claimant as a financial services supervisor from January 17, 2017 to September 23, 2021.

(2) Claimant's job responsibilities included being the employer's payroll supervisor and accounts payable supervisor, and supervising his support staff. Claimant was also responsible for preparing the cash and investments portion ("CIP") of the employer's annual financial statement, which was "a significant chunk of work to do." Transcript at 9. The employer expected claimant to prioritize his work requirements so he would meet all established work-related deadlines, including the deadline for submission of the annual CIP.

(3) Claimant repeatedly had difficulty meeting work-related deadlines. In the four years he worked for the employer, claimant never submitted the CIP on time. In 2020, the employer imposed a "salary sanction" against claimant because he missed the CIP deadline for that year. Transcript at 41. The employer attributed claimant's difficulties in meeting deadlines to a lack of "focus and attention," which caused him to prioritize lower priority projects over those of more significance. Transcript at 32. Despite these challenges, the employer respected the time, effort, and energy claimant put into his work.

(4) On or about May 11, 2021, the employer placed claimant on a performance improvement plan (PIP) to address and improve his work performance and, in particular, his difficulties with meeting deadlines. The PIP required claimant to have weekly meetings with his direct supervisor to address his progress and areas needing improvement. During these meetings, the direct supervisor emphasized the importance of claimant meeting his September 7, 2021 CIP deadline, but also told claimant on at least one occasion that “everything is a priority.” Transcript at 51.

(5) In June 2021, claimant’s medical provider diagnosed claimant with adult attention-deficit/hyperactivity disorder (“ADHD”) and prescribed claimant medication to treat his condition. Claimant’s direct supervisor noticed that claimant’s work performance improved after he began using the medication and that he was “able to concentrate and focus a lot more.” Transcript at 58.

(6) On July 30, 2021, the employer and claimant entered into a last-chance agreement (“LCA”) in lieu of claimant’s termination because although claimant’s performance had improved in some areas, he still needed to improve with respect to meeting deadlines. In addition to addressing areas where claimant needed to improve, the LCA also imposed responsibilities on claimant regarding the employer’s “800-fund.” Transcript at 11, 78. Claimant continued to meet with his direct supervisor on a weekly basis to discuss his progress, and during these meetings, claimant’s direct supervisor continued to emphasize the importance of claimant meeting his September 7, 2021 CIP deadline.

(7) Between July 30, 2021 and September 7, 2021, claimant’s “very demanding” *peer* supervisor directed claimant to complete a reconciliation of the employer’s 800-fund (“the reconciliation project”). Transcript at 19. Claimant’s peer supervisor felt “stress” that they were not going to meet their own deadline if they did not get the reconciliation project completed “right away.” Transcript at 71-72. Despite the employer placing a higher priority on the completion of the CIP, as repeatedly emphasized during claimant’s weekly PIP meetings, claimant prioritized working on the reconciliation project over the CIP and, as a result, did not complete the CIP by the original September 7, 2021 deadline.

(8) On September 9, 2021, claimant’s direct supervisor learned that claimant had not completed the CIP by the September 7, 2021 deadline. Claimant’s direct supervisor was “surprised” that claimant missed the deadline in light of the emphasis that the direct supervisor had placed on the importance of claimant completing the CIP on time. Transcript at 16. Claimant told the direct supervisor that he did not complete the CIP because he had been working on the reconciliation project over the previous weekend, but would complete the CIP by September 16, 2021.

(9) On September 16, 2021, claimant’s direct supervisor checked with claimant to see if claimant had completed the CIP. Claimant told the direct supervisor that he had not completed it because he had been responding to a number of different staff requests and other supervisors’ questions. Claimant told the direct supervisor that he intended to work throughout the weekend to complete the CIP by September 20, 2021.

(10) On September 20, 2021, claimant had not completed the CIP. Although claimant worked on the CIP and the reconciliation project during the previous weekend and thought he would be able to complete both by “work[ing] around the clock”, both the CIP and the reconciliation project required more time to complete than claimant had anticipated. Transcript at 72.

(11) On September 23, 2021, claimant completed the CIP. The employer discharged claimant that same day because he did not meet the September 7, 2021 deadline for completion of the CIP, nor any of the deadline extensions that followed.

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, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because claimant failed to complete the CIP by September 7, 2021, or by the several extension deadlines that followed. By failing to meet the deadlines, claimant continued a pattern of repeatedly failing to meet the annual CIP deadline, despite the emphasis the employer had placed on this deadline through a salary sanction, a PIP (with weekly meetings), and a LCA, and thus violated the employer’s reasonable expectations. However, despite claimant’s difficulties with meeting required deadlines and prioritizing his work responsibilities to complete the CIP on time, the record shows that his failures in this regard were not the result of any willful or wantonly negligent conduct, but rather were the result of mere inefficiency resulting from a lack of job skills and the impact of his medical condition on his ability to perform his work tasks as assigned by the employer.

The record shows that claimant was faced with the competing expectations of his direct supervisor to complete the CIP, and his peer supervisor to complete the reconciliation project. While the record shows that the employer viewed timely completion of the CIP as the more critical priority, it also demonstrates that claimant’s peer supervisor was stressed about having the reconciliation project completed and, more likely than not, created conditions where claimant felt pressure to meet both of his supervisors’ respective expectations, notwithstanding the priority status of the CIP. Further supporting this conclusion is the direct supervisor’s acknowledgment that he had previously told claimant that, “everything is a priority,” and claimant’s testimony that claimant’s responsibility for the reconciliation project was a new requirement that had been specifically included in his LCA.

The preponderance of the evidence shows that claimant was not indifferent to the consequences of his actions, but instead that he was trying to meet both his supervisors’ deadlines. Additionally, the preponderance of the evidence shows that claimant lacked the skills necessary to prioritize deadlines and that claimant’s medical condition may have been a factor that contributed to his difficulties meeting concurrent deadlines. The record shows that with respect to the September 7, 2021 CIP deadline, claimant was unable to balance the competing work demands he faced from his two supervisors and that

his lack of necessary job skills prevented him from properly prioritizing the CIP deadline over the reconciliation project. Critically, the record also shows that claimant's inability to meet the September 7, 2021 deadline was not for lack of dedication and effort in trying to do so. Claimant spent approximately "160 hours" outside of his regular workday, and "countless overnights" trying to meet both deadlines. Transcript at 72. Moreover, the employer acknowledged and respected claimant's work ethic and believed that he possessed "great technical skills." Transcript at 58. However, the employer testified that ultimately, claimant's skills were not well suited for the multiple responsibilities attendant to his job with the employer, and were better suited to a job "concentrated [in] one area." Transcript at 57. As such, the record shows that claimant's inability to meet the employer's expectations was not the result of misconduct, but rather the result of mere inefficiency resulting from a lack of job skills and claimant was therefore discharged, but not for misconduct. Accordingly, claimant is not disqualified from receiving unemployment insurance benefits based upon his work separation.

DECISION: Order No. 22-UI-183816 is affirmed.

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

DATE of Service: March 21, 2022

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 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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