

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0235

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 13, 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 October 17, 2021 (decision # 94439). Claimant filed a timely request for hearing. On January 31, 2022, ALJ Kaneshiro conducted a hearing and issued Order No. 22-UI-185263, reversing decision # 94439 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On February 10, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) K Hill & Sun LLC employed claimant as a shift supervisor from March 22, 2021 until October 23, 2021.

(2) The employer's policy prohibited employees from stealing from the business, and considered violation of the policy grounds for termination. The employer provided claimant with a copy of the policy when they hired her.

(3) As part of her daily duties, claimant was required to count the cash in the till at the end of her shift, complete a cash deposit slip, enter the deposit amount into a "store summary" kept on a spreadsheet, and drop the deposit into the store's safe. Transcript at 7. Claimant was also required to sign her initials on the deposit slips she completed. Another employee was always present when claimant counted the till and entered the deposit amounts. The store's general manager and another shift supervisor had access to both the deposit slips and the store summary after claimant entered deposit information into them.

(4) The owner of the company expected that the store safe would remain locked. However, claimant was never informed of this expectation, and the store's management team engaged in a practice of leaving the safe unlocked.

(5) Around mid-October 2021, the employer's accountant notified the owner that she had discovered two separate discrepancies between deposit amounts that claimant had written on deposit slips and the amounts she had entered in the store summary. The first discrepancy, for the store's September 15, 2021 deposit, showed that the actual deposit amount was \$220 less than claimant had entered in the store summary. The second discrepancy, for the store's October 6, 2021 deposit, showed that the actual deposit amount was \$400 less than claimant had entered in the store summary. On or around October 13, 2021, the owner suspended claimant pending an investigation into the matter.

(6) On October 23, 2021, the owner, believing that claimant had stolen the money missing from the September 15 and October 6, 2021 deposits, called claimant into a meeting and confronted her about the discrepancies. Claimant denied that she had taken the money or that she had any knowledge of the discrepancies. During the meeting, the owner showed claimant some deposit slips that she had previously completed. Claimant noted that one of the deposit slips, from August 25, 2021, had her initials on it, but did not look like how she wrote her slips, and she believed that someone had forged her initials on the slip. The owner discharged claimant that day due to his suspicion that she had stolen money from the employer.

(7) After the owner met with claimant on October 23, 2021, he discovered that another deposit discrepancy, in the amount of \$200, had occurred on October 7, 2021. The owner never discovered what happened to the money that went missing in connection with the three discrepancies.

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 due to their suspicion that claimant had stolen money from them in connection with cash deposits from September 15 and October 6, 2021.¹ At hearing, claimant denied the allegations that she had stolen from the employer, and testified that she had no knowledge of what led to the discrepancies. Transcript at 28, 19. Claimant further testified that during a meeting with the owner regarding the theft allegations, the owner showed her some of the deposit slips that she had initialed, and that one of them—from August 25, 2021—looked like it had been forged by another person using her initials. Transcript at 29–30. The record also shows that, despite the owner's expectation that the store safe remain locked, the practice of the store's management team was to leave the safe unlocked, thereby

¹ While the employer later found that an additional sum was missing in connection with the cash deposit from October 7, 2021, the record fails to show that the owner discovered the third discrepancy before discharging claimant.

making the store's cash deposits and deposit slips available to other employees. Other employees also had access to the store summary.

The employer's position—that claimant stole the money and falsified the accompanying documentation—is based on the circumstantial evidence that claimant had access to the deposits, deposit slips, and store summary. The record contains no indication that the owner, or anyone else, personally observed claimant take money or alter documents and claimant denied doing so. Nor did the employer offer evidence to show that other employees lacked the opportunity to commit the theft and falsification of which claimant was accused. In their written argument, the employer asserted that “if [claimant] had posted to the spreadsheet the number matching her deposit, the shortage would have appeared as -\$200, -\$220 and -\$400,” whereas “[if] someone came in later and adjusted the spreadsheet, they would have put numbers in that caused things to balance and not putting [*sic*] the focus on [claimant].” Employer's Written Argument at 1. However, the employer's argument lacks merit because it essentially suggests that any other person who forged deposit amounts in the store summary (spreadsheet) would have covered their tracks so as to avoid raising suspicion, without explaining why claimant would not have done the same.

Overall, the record contains sufficient evidence to show that other employees had the opportunity to take money from the safe or change entries in the deposit slips or the store summary. The evidence that claimant was the guilty party therefore is, at best, equally balanced. As the employer bears the burden of proof in a discharge case, the employer has not met their burden to show that claimant committed the offenses for which she was discharged. The employer therefore failed to establish misconduct, and claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-185263 is affirmed.

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

DATE of Service: April 14, 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 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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