

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0281

Reversed & Remanded

PROCEDURAL HISTORY: On December 16, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits effective March 15, 2020 because he quit working for the employer without good cause (decision # 113511). Claimant filed a timely request for hearing. On February 8, 2022, ALJ Amesbury conducted a hearing, and on February 11, 2022 issued Order No. 22-UI-186212, affirming decision # 113511 by concluding that claimant was disqualified from receiving benefits effective March 15, 2020 because he was discharged by the employer for misconduct. On March 1, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Miss Hannah's Gourmet Popcorn Co. employed claimant, most recently as a kitchen manager, from June 1, 2019 until March 15, 2020. Claimant was both an employee and a member of the family that owned the employer.

(2) Prior to June 1, 2019, claimant had attended a rehabilitation program for drug and alcohol abuse. After completing the program, claimant found that stressful work situations were very intense for him and caused him to have "a very short fuse." Transcript at 7.

(3) Around September 2019, claimant began becoming argumentative with his superiors and would contest the employer's recipes, how products were made, and the quality control procedures used in the employer's kitchen. When argumentative, claimant often was angry and raised his voice at others.

(4) On January 10 through 15, 2020, the employer held an annual planning meeting. At some point during the multiple day meeting, the employer's owners sat down with claimant and gave him a "strong scolding" about his argumentative behavior. Transcript at 10. Following this meeting, claimant "somewhat" understood the owners' expectations, but was "very stubborn" and continued to argue with his superiors about recipes and other matters. Transcript at 12.

(5) On January 31, 2020, the employer held another meeting with claimant about this argumentative behavior. The meeting "got heated," and claimant yelled at one of the owners, who prepared a final paycheck for claimant "in case [the employer] needed to fire claimant that day[.]" Transcript at 21. Rather than terminate claimant's employment that day, the employer decided to release claimant from his kitchen manager duties and transfer him to an office position.

(6) At some point before March 8, 2020, the employer informed claimant that his employment would be terminated effective March 15, 2020. Claimant worked in the employer's office until March 15, 2020, when the employer discharged him.

CONCLUSIONS AND REASONS: Order No. 22-UI-186212 is set aside, and this matter remanded for further proceedings consistent with this order.

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) (December 23, 2018). "[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 order under review concluded that claimant was discharged for misconduct connected with work. Order No. 22-UI-186212 at 3-4. The record as developed does not support that conclusion.

It is not evident from the record precisely when the employer informed claimant that his behavior was not in compliance with their expectations. The record suggests that during the period of January 10 through 15, 2020, the employer met with claimant and conveyed a "strong scolding" about claimant's argumentativeness, and that claimant "somewhat" understood the employer's expectations thereafter. Transcript at 10, 12. On remand, the ALJ should ask questions for more detail about what the employer told claimant during the January 10 through 15, 2020 meeting, and what claimant knew and understood thereafter. Further, the record does not show when the employer decided to discharge claimant effective March 15, 2020. The record suggests the employer may have decided to discharge claimant on January

31, 2020. However, the record also suggests that the employer may have decided to discharge claimant on March 7, 2020, because claimant testified that March 7, 2020 was when the employer told him he was losing his job. Transcript at 10. Therefore, on remand, the ALJ should inquire as to when the employer decided to discharge claimant effective March 15, 2020. The ALJ should then inquire as to every potential instance of claimant violating the employer's expectation, and whether such violations were willful or wantonly negligent, from the point claimant knew and understood them to the point the employer decided to discharge claimant effective March 15, 2020. Finally, claimant asserted at hearing that the employer discharged him in part because the employer was owned by family members who believed he could not simultaneously work and maintain his sobriety, and therefore discharged claimant so he could focus on sobriety. Transcript at 6, 9. On remand, the ALJ should inquire whether this was a reason the employer discharged claimant.

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 the employer discharged claimant for misconduct connected with work, Order No. 22-UI-186212 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-186212 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: May 4, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-186212 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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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 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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