

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0906

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 10, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct, and claimant was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 90145). The employer filed a timely request for hearing. On August 3, 2022, ALJ Amesbury conducted a hearing, and on August 5, 2022 issued Order No. 22-UI-199881, reversing decision # 90145 by concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective April 24, 2022. On August 22, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant and the employer submitted written arguments. Both arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the parties' reasonable control prevented them 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 the parties' arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) Profile Laser LLC employed claimant as a lead programmer and maintenance manager from May 2017 until April 24, 2022.

(2) On April 19, 2020, claimant and his direct supervisor had a verbal disagreement regarding a technical problem with a piece of equipment. Following the disagreement, on April 20, 2022, the employer suspended claimant.

(3) Under terms set by a suspension letter the supervisor conveyed to claimant, the purpose of claimant's suspension was to give claimant an opportunity to decide if he wanted to continue working for the employer. If claimant wanted to continue working for the employer, he would be required to sign a disciplinary letter that the supervisor would prepare. The disciplinary letter would outline claimant's "commitment" to the employer's workplace rules, "and the consequences of failing to meet this commitment." Exhibit 1 at 1. Claimant could then continue working, but "if another disciplinary

problem occur[ed]” within an unspecified period of time, the employer would terminate claimant’s employment. Exhibit 1 at 1.

(4) On April 24, 2022, claimant sent his supervisor and general manager an email. In the email, claimant stated that “I feel that for my employment to continue, I will need to be informed of what disciplinary restrictions I would be operating under and for what duration before I can agree to sign anything.” Exhibit 1 at 2. Claimant also stated that a meeting with the general manager, the supervisor, and claimant “will have to be held[.]” Exhibit 1 at 2. Claimant’s email then set forth a lengthy description of the events of the April 19, 2022 disagreement, and concluded, “Again it will not be possible for me to continue my employment without a team discussion or similar on how to proceed.” Exhibit 1 at 5.

(5) The general manager read claimant’s email. Based on the email, the general manager formed the impression that it “didn’t feel like [claimant] was . . . wanting to come back to work.” Transcript at 10.

(6) Thereafter, also on April 24, 2022, the general manager sent a response email to claimant. The general manager stated that the purpose of claimant’s suspension was to decide if claimant wanted to continue to work for the employer, and “[i]t does not appear from your email that you have made a clear decision.” Exhibit 1 at 5. The general manager went on to state that “at this time, we are terminating your employment,” and informed claimant his final paycheck would be ready the next day. Exhibit 1 at 5.

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

Nature of the Work Separation. The order under review concluded that claimant voluntarily left work. 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). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The work separation was a discharge that occurred on April 24, 2022. The record shows that the employer suspended claimant on April 20, 2022 to decide if he wanted to continue to work for the employer and, if claimant did want to continue working, required claimant to sign a letter subjecting him to a disciplinary period of unspecified length. On April 24, 2022, claimant sent an email to the employer stating that for him to sign the letter and his employment to continue, claimant wished to have a meeting and learn more about the nature and duration of the disciplinary period. While this communication expressed a desire to tie continuing to work to the conditions of having a meeting and learning more about the disciplinary period, it did not convey an intent to sever the relationship or an unwillingness to continue working for the employer for an additional period of time.

However, while claimant’s request for more detail about the disciplinary period and the like did not state an unwillingness to continue working, the record indicates that the conditions set forth in claimant’s email caused the general manager to *believe* that claimant did not want to continue working, which in turn led the general manager to sever the employment relationship. Specifically, the general manager

testified at hearing that upon reviewing claimant's email, he "didn't feel like [claimant] was . . . wanting to come back to work," and the general manager therefore chose not to elaborate in his response email about the nature or duration of the disciplinary period claimant would be subject to if he signed the letter. Transcript at 10. Operating under the impression that claimant did not want to return to work, the general manager severed the employment relationship by advising in his April 24, 2022 response email that the employer was terminating claimant's employment, and that claimant's final paycheck would be available the next day. The general manager's statement that claimant's employment was terminated showed that the employer was unwilling to continue to allow claimant to continue to work for an additional period of time. The work separation therefore was a discharge that occurred on April 24, 2022.

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 the employer discharged claimant because their general manager believed that claimant decided not to return to work for the employer after considering the matter during his suspension. The employer discharged claimant due to a belief that claimant he did not wish to return to work, not due to any specific conduct on claimant's part alleged to have breached an employer policy. Because the employer discharged claimant because they believed he did not want to continue to work for the employer, the record fails to show that the employer discharged claimant for engaging in a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of him or a disregard of the employer's interests. The record therefore fails to establish that the employer discharged claimant for misconduct under ORS 657.176(2)(a).

For the above reasons, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-199881 is set aside, as outlined above.

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

DATE of Service: November 22, 2022

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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