

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1209

Modified
Disqualification

PROCEDURAL HISTORY: On October 3, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, disqualifying claimant from receiving benefits effective July 10, 2022 (decision # 145937). Claimant filed a timely request for hearing. On October 27, 2022, ALJ Lewis conducted a hearing, and on October 28, 2022, issued Order No. 22-UI-206143, affirming decision # 145937. On November 15, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument to the extent it was based on the hearing record.

FINDINGS OF FACT: (1) Department of Human Services employed claimant as a registered nurse from September 2017 until July 5, 2022.

(2) Claimant's position required that he maintain a valid driver license, as he was required to drive to multiple jobsites during his shift to interact with the employer's clients.

(3) On March 6, 2022, while off duty from his employment, claimant drove a vehicle while under the influence of intoxicants and was arrested for violating ORS 813.010.

(4) On June 7, 2022, claimant pleaded guilty to and was convicted of driving while under the influence of intoxicants, and his driver license was suspended for one year. Claimant continued to work by having his niece transport him as necessary to complete his duties.

(5) On July 5, 2022, the employer learned of claimant's conviction and discharged him for failing to maintain a valid driver license.

CONCLUSIONS AND REASONS: The employer discharged claimant for misconduct.

Date of discharge. 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) (September 22, 2020). “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 order under review found the employer discharged claimant for misconduct on July 15, 2022, and therefore disqualified him from receiving benefits effective July 10, 2022. Order No. 22-UI-206143 at 3. However, claimant testified that the employer notified him of his discharge on July 5, 2022, and that he performed no work after that date except for submitting timesheets on July 15, 2022, so that he would be properly paid for work performed prior to his discharge. Audio Record at 6:20 to 6:39. This submission did not serve to continue the employment relationship beyond the last occasion on which claimant was permitted to perform his regular job duties. As claimant was not allowed by the employer to work after July 5, 2022, he was discharged on that date.

Misconduct. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. A willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual. OAR 471-030-0038(3)(c). Otherwise, OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as 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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b). Acts that violate the law exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D).

The employer discharged claimant for failing to maintain a valid driver license. However, the record shows only that the employer expected claimant to maintain a valid driver license to be able to perform his job duties, and not that registered nurses are legally required to maintain a driver license to engage in that occupation. Therefore, the record does not show that maintaining a valid driver license was necessary to perform claimant's occupation, and his discharge must be analyzed under OAR 471-030-0038(3)(a).

While claimant's driver license suspension did not initially prevent him from performing his nursing duties because he made alternate transportation arrangements, he admitted that such alternate arrangements could not be sustained for the duration of his license suspension. Audio Record at 16:12 to 16:24. The employer had the right to expect their employees would personally perform the services for which they were being paid, including driving between jobsites. As claimant was unable to drive due to his license suspension, he violated the employer's reasonable expectation.

The record does not show that claimant's alcohol consumption before driving was inadvertent or anything other than a conscious act on claimant's part. Claimant's conviction for a violation of ORS 813.010 establishes beyond a preponderance of evidence that claimant drove while intoxicated in violation of that statute. Claimant knew or should have known that driving a vehicle while intoxicated would probably result in being stopped by a police officer, arrested and charged with a crime, and ultimately having his driver license suspended. Claimant's conscious decision to drive while intoxicated demonstrated indifference to the consequences of his actions. His failure to maintain a valid driver license therefore was wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. While claimant may have experienced tragic events in his life that prompted him to drink to excess on the occasion leading to his arrest, this conduct ultimately prevented him from performing a job duty that was an integral part of his nursing position. Claimant's wantonly negligent behavior violated the law and therefore exceeded mere poor judgment. Further, claimant's conduct cannot be excused as a good faith error. Claimant did not show that he sincerely believed, and had a rational basis for believing, the employer would allow him to continue working if his license was suspended for driving under the influence of intoxicants for a year. Accordingly, claimant's conduct does not fall within the exculpatory provisions of OAR 471-030-0038(3).

Therefore, the employer discharged claimant for misconduct on July 5, 2022. Claimant is disqualified from the receipt of unemployment insurance benefits effective July 3, 2022.

DECISION: Order No. 22-UI-206143 is modified, as outlined above.

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

DATE of Service: January 18, 2023

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 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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