

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1243

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 25, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, and that claimant was therefore disqualified from receiving unemployment insurance benefits effective September 25, 2022 (decision # 151728). Claimant filed a timely request for hearing. On December 1, 2022, ALJ Krause conducted a hearing that was continued on December 9, 2022, and on December 13, 2022 issued Order No. 22-UI-209787, reversing decision # 151728 by concluding that the employer discharged claimant, but not for misconduct, and that claimant was therefore not disqualified from receiving benefits based on the work separation. On December 16, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Morasch Meats, Inc. employed claimant in general production at their plant from March 15, 2021 until September 28, 2022.

(2) On August 13, 2022, claimant was injured on the job. Thereafter, he was evaluated by a doctor in connection with a worker's compensation claim, and was excused from work for a period of time.

(3) On August 23, 2022, claimant returned to work with restrictions from his doctor requiring that he not lift, carry, push or pull more than ten pounds, or bend at the waist or twist the spine during more than 25 percent of his shift. The employer was aware of these restrictions and claimant intended to comply with them.

(4) Upon this return to work, the employer's human resources representative told claimant and claimant's shift leader that claimant was limited to working in a part of the plant known as Room 3, performing tasks of folding or unfolding cardboard boxes and sweeping or squeegeeing the floor. Claimant understood from this conversation that his assignment was to "break down the boxes and work along in the vicinity, in that production area." December 1, 2022 Transcript at 39-40. Claimant did not believe the employer's instructions prohibited him from doing other work involving the empty boxes in the vicinity of Room 3 if it was within his doctor's restrictions.

(5) The employer expected their employees to perform only the tasks they were assigned, if instructed to limit their work in this way. Claimant was presented with a written “modified job offer” detailing the employer’s expectations with regard to compliance with the doctor’s restrictions. December 1, 2022 Transcript at 16. The agreement did not state that claimant was only allowed to work in Room 3 or only perform specific tasks.

(6) On September 27, 2022, the shift leader of Room 3 noticed claimant’s absence from the room and reported it to human resources. The human resources representative viewed security footage and observed claimant working outside of Room 3, picking up empty cardboard boxes and putting them in a compactor. The human resources representative approached claimant and sent him home for leaving Room 3 and performing tasks other than what he was assigned.

(7) On September 28, 2022, because of claimant’s actions the previous day, the employer gave claimant the option of resigning with the possibility of eventual rehire or being discharged. Claimant refused to resign because he felt he had not done anything wrong. As a result, the employer discharged claimant that day.

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. OAR 471-030-0038(3)(a) (September 22, 2020) 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. The employer has the burden to prove misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant because he left Room 3 to perform tasks beyond what he was assigned to perform, which the employer felt violated their stated restrictions on claimant’s work. The employer expected that their employees would refrain from performing tasks they were not assigned, if the employees were so instructed. This was a reasonable safety precaution for employees such as claimant, who had medical restrictions concerning the types of tasks they could perform. Claimant understood his doctor’s restrictions and the employer’s expectation that claimant would abide by them. However, he did not interpret the human resources representative’s instructions as limiting him to working only in Room 3 rather than just in the vicinity of it, and to only folding or unfolding the boxes in Room 3 rather than picking up other empty boxes and putting them in the compactor, since this work would have been within the limitations imposed by his doctor.

Claimant’s failure to understand that the employer did not want him to perform other tasks ancillary to what he had been assigned, even if the tasks did not violate the doctor’s restrictions, therefore amounted to no more than mere negligence. As claimant was not acting in violation of the doctor’s restrictions, he did not willfully or with wanton negligence disregard the employer’s interest in workplace safety.

Though the employer communicated to claimant what tasks they wanted him to perform, the record does not show that claimant knew or should have known that performing a very similar and related task would probably result in a violation of the employer's reasonable expectations. Thus, to the extent claimant's performance of an unapproved task outside of Room 3 violated the employer's expectations, the employer has not shown this amounted to wanton negligence. Accordingly, the employer has failed to prove that they discharged claimant for misconduct.

Therefore, the employer discharged claimant, but not for misconduct, and claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-209787 is affirmed.

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

DATE of Service: February 15, 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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