

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0524

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 15, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 150918). The employer filed a timely request for hearing. On April 24, 2023, ALJ Lucas conducted a hearing at which claimant failed to appear, and on May 2, 2023 issued Order No. 23-UI-223668, reversing decision # 150918 by concluding that claimant was discharged, but not for misconduct, within 15 days of a planned quit without good cause, and was disqualified from receiving benefits effective March 19, 2023 but was eligible for benefits from March 5 through 18, 2023. On May 8, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Ed Staub & Sons Petroleum, Inc. employed claimant as a supervisor from June 21, 2021 until February 27, 2023.

(2) On February 16, 2023, as part of a management-restructuring process, the employer hired a manager who ranked between claimant and claimant's direct supervisor. That person's role with the employer ultimately rendered claimant's role redundant.

(3) On February 27, 2023, claimant informed the employer that he intended to resign, effective March 24, 2023, in order to move several hours away and operate a convenience store he had purchased.

(4) Per their policy, the employer only required employees to give two weeks' notice of intention to resign, rather than the four weeks that claimant gave. As a result of this policy, and in light of the fact that the new manager they had hired rendered claimant's position redundant, the employer paid claimant through March 10, 2023 but did not permit him to work after February 27, 2023.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct, more than 15 days before a planned quit.

Nature and Date of the work separation. 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).

On February 27, 2023, claimant gave notice of his intent to resign four weeks later on March 24, 2023. The employer, however, did not permit claimant to work until March 24, 2023. Instead, they sent claimant home the same day and paid him an additional two weeks of wages, consistent with their policy of requiring that employees provide two weeks' notice of their intention to resign. The order under review found that "[b]ecause the employer paid claimant through March 10, 2023, the employer discharged claimant on March 10, 2023." Order No. 23-UI-223668 at 2. The record does not support this conclusion.

Because claimant intended his resignation to be effective on March 24, 2023, it is reasonable to infer from the record that claimant was willing to work for the employer through that date. By contrast, while the employer *paid* claimant through March 10, 2023, the record shows that the employer did not allow claimant to continue *working* for them after February 27, 2023. The employer sent claimant home on February 27, 2023 and there is no indication that the employer expected claimant to perform any duties, or remain available for work in any way, after that date. The additional two weeks' worth of wages that the employer paid claimant is better understood as severance pay and, in any event, was not compensation for work actually performed. The record therefore shows that the employment relationship was severed by the employer on February 27, 2023. The employer therefore discharged claimant on that date.

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).

ORS 657.176(7) states, “For purposes of applying subsection (2) of this section, when an employer has notified an individual that the individual will be discharged on a specific date and it is determined that: (a) The discharge would not be for reasons that constitute misconduct connected with the work; (b) The individual voluntarily left work without good cause prior to the date of the impending discharge; and (c) The voluntary leaving of work occurred no more than 15 days prior to the date of the impending discharge, then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and the discharge had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the voluntary leaving occurred through the week prior to the week in which the individual would have been discharged.”

The order under review, relying upon its finding of a March 10, 2023 separation date, applied ORS 657.176(8) to conclude that claimant had been discharged, but not for misconduct, within 15 days of a planned quit without good cause. Order No. 23-UI-233668 at 3–5. The record does not support this conclusion. As explained above, the employer discharged claimant on February 27, 2023, which is more than 15 days prior to the date on which claimant had intended to quit. Therefore, ORS 657.176(8) does not apply to claimant’s circumstances, and the outcome in this matter is premised only on the discharge that occurred on February 27, 2023.

The order under review correctly concluded that the employer discharged claimant “because claimant had submitted [his] resignation and because the employer had a lack of work for claimant due to the change in the employer’s administrative structure,” neither of which constituted willful or wantonly negligent violations of the employer’s standards of behavior. Order No. 23-UI-233668 at 4. Because the employer discharged claimant for reasons that were not willful or wantonly negligent violations of the employer’s standards of behavior, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 23-UI-223668 is set aside, as outlined above.

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

DATE of Service: June 13, 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.

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.

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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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