

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0580

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 28, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was suspended by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the suspension (decision # 73604). The employer filed a timely request for hearing. On April 26, 2023, ALJ Taylor conducted a hearing at which claimant failed to appear, and on May 4, 2023 issued Order No. 23-UI-223962, affirming decision # 73604. On May 10, 2023, the employer filed an application for review with the Employment Appeals Board (EAB). On May 25, 2023, ALJ Taylor issued Amended Order No. 23-UI-226060, which corrected a number of typographical errors that appeared in Order No. 23-UI-223962. EAB treated the employer's application for review of Order No. 23-UI-223962 as an application for review of Amended Order No. 23-UI-226060.¹

FINDINGS OF FACT: (1) SAS Retail Services, LLC employed claimant as a retail reset merchandiser from June 23, 2022 until March 7, 2023.

(2) The employer had a policy prohibiting violence and harassment in the workplace. On January 30, 2023, claimant threw a merchandising schematic in the direction of a coworker. On February 5, 2023, the employer placed claimant on a suspension. The purpose of the suspension was to investigate whether claimant's conduct on January 30, 2023 violated the employer's workplace policies and, if so, to determine the appropriate disciplinary action. In February 2023, the employer's human resources (H.R.) department investigated the matter, which included interviewing claimant.

¹ The ALJ issued Amended Order No. 23-UI-226060 more than 20 days after she issued Order No. 23-UI-223962. ORS 657.270(6) states that "the decision of the administrative law judge is final unless the director or any other party to the hearing files an application for review with the Employment Appeals Board within 20 days" of the date the order is delivered. However, given that the employer appealed Order No. 23-UI-223962 on May 10, 2023, which was within 20 days of the May 4, 2023 date Order No. 23-UI-223962 was issued, Order No. 23-UI-223962 did not become final and it was not improper for the ALJ to amend it by issuing Amended Order No. 23-UI-226060. Since issuing Amended Order No. 23-UI-226060 was not improper, treating the employer's timely appeal of Order No. 23-UI-223962 as an appeal of Amended Order No. 23-UI-226060 is appropriate in the interest of efficiency.

(3) On or about March 2, 2023, the employer's H.R. department finished their investigation of claimant's conduct. The employer's H.R. department concluded that claimant could not provide an adequate explanation for his actions and had violated its workplace policies in throwing the schematic. The employer discharged claimant on March 7, 2023.

CONCLUSIONS AND REASONS: Claimant was suspended, but not for misconduct.

ORS 657.176(2)(b) requires a disqualification from unemployment insurance benefits if the employer suspended claimant from work for misconduct connected with work. "As used in ORS 657.176(2)(a) and (b) 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) (September 22, 2020). "[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).

The record shows that rather than suspend claimant on February 5, 2023 to discipline him for his conduct on January 30, 2023, the employer suspended claimant to investigate whether his throwing of the schematic violated its workplace policies and, if so, to determine the appropriate disciplinary action. At hearing, when asked whether an investigation was ongoing as of the date of the February 5, 2023 suspension, the employer's witness testified affirmatively. Audio record at 14:03. The witness further testified that the H.R. department interviewed claimant and finished their investigation on March 2, 2023, and that the employer discharged claimant on March 7, 2023 following the conclusion of the investigation. Audio Record at 17:01, 14:16, 14:24.

While the investigation eventually resulted in the employer deciding to discharge claimant, the record shows that suspension itself was conducted to investigate claimant's conduct on January 30, 2023, and not to discipline him for that conduct. The reason for claimant's suspension therefore was to conduct the investigation, and not for a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee. The record therefore fails to establish that the suspension was for misconduct.

The employer suspended claimant, but not for misconduct. Claimant is not disqualified from receiving benefits based on the suspension.

DECISION: Order No. 23-UI-226060 is affirmed.

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

DATE of Service: June 14, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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