

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0675

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 22, 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 benefits based on the work separation (decision # 105327). The employer filed a timely request for hearing. On May 31, 2023, ALJ Fraser conducted a hearing, and on June 1, 2023 issued Order No. 23-UI-226587, reversing decision # 105327 by concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving benefits effective January 29, 2023. On June 15, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision. Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

In her argument, claimant asserted that the ALJ erred in admitting the employer's exhibit into the record. Claimant's Written Argument at 1. At hearing, prior to taking evidence, the ALJ acknowledged receiving seven pages from the employer, which she marked as Exhibit 1. Audio Record at 5:27. However, the employer's representative confirmed that he had not served the documents on claimant prior to the hearing. Audio Record at 5:43. Claimant objected to admission of the documents because she had not been served with them and the ALJ stated, "I'm not going to admit Exhibit 1 because [claimant] has not received those." Audio Record at 6:14 to 6:44. Despite the foregoing, the order under review, in its "Evidentiary Rulings" section, states that Exhibit 1 was admitted into the record. Order No. 23-UI-226587 at 1.

The ALJ erred in admitting Exhibit 1. OAR 471-040-0023(4) (August 1, 2004) requires a party to provide opposing parties with copies of documentary evidence that they will seek to introduce into the record prior to commencement of the hearing. Although, under OAR 471-040-0023(5), an ALJ is permitted to admit documentary evidence not served prior to the hearing if necessary to conduct a full

and fair hearing (subject to the parties' right to request a continuance to obtain and review the evidence), there is no indication that the ALJ invoked this rule. Further, review of Exhibit 1 shows the documents to be primarily a collection of invoices of limited evidentiary value because they are largely repetitious of testimony offered at hearing, and therefore unnecessary for a full and fair hearing. Nevertheless, although the ALJ erred in contradicting her oral ruling and failing to abide by OAR 471-040-0023(4), because Exhibit 1 was largely repetitious of testimony, the error was harmless because it did not substantially prejudice claimant's rights. *See* OAR 471-040-0025(5) (“[E]rroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party.”) (August 1, 2004).

Claimant also contended in her argument that her documentary evidence was not properly considered by the ALJ. Claimant's Written Argument at 1. At hearing, prior to the ALJ taking evidence, claimant requested that her documentary evidence be admitted as an exhibit and confirmed that she had served the documents on the employer's representative. Audio Record at 7:30, 7:58 to 8:19. The ALJ advised that she had not received claimant's documents, was emailing the hearing coordinator to check whether the coordinator had received them, and informed claimant that she was free to testify to the contents of the documents. Audio Record at 7:47, 9:39 to 9:57. Later in the hearing, claimant revisited whether the ALJ would admit her documentary evidence, including a questionnaire she filled out for the Employment Department when she filed her initial claim for benefits. Transcript at 31. The ALJ advised “I don't need the questionnaire,” and explained that the questionnaire would be repetitious of claimant's testimony, but stated that the coordinator had found claimant's documents and that she was marking them as Exhibit 2. Transcript at 31-32. The ALJ then admitted Exhibit 2, including the questionnaire, into evidence. Transcript at 32-22. The order under review, in its “Evidentiary Rulings” section, states that Exhibit 2 was admitted into the record. Order No. 23-UI-226587 at 1.

Thus, Exhibit 2, including the questionnaire, was admitted into evidence. The ALJ was warranted in pointing out that the questionnaire would be repetitious of claimant's testimony as review of the questionnaire reflects that it covers the circumstances of claimant's discharge, which was the focus of the testimonial evidence offered at hearing. *See* Exhibit 2 at 9-13. Nevertheless, the questionnaire is part of the hearing record and there is no indication that it was not properly considered by the ALJ, as claimant argues. EAB considered Exhibit 2 when reaching this decision.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 23-UI-226587 is affirmed.

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

DATE of Service: July 27, 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

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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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