

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0901

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 27, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and was disqualified from receiving benefits effective June 4, 2023 (decision # 74219). Claimant filed a timely request for hearing. On August 3, 2023, ALJ Logan conducted a hearing, and on August 4, 2023 issued Order No. 23-UI-232412, affirming decision # 74219. On August 12, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Valley Machine LLC employed claimant as a machine operator from October 11, 2021 until June 6, 2023.

(2) The employer expected that their employees would report to work as scheduled and remain there for the entirety of their shifts unless excused. Typically, an employee was expected to request time off in advance and in writing. Claimant understood these expectations.

(3) From March through May 18, 2023, claimant missed full or partial shifts on several occasions for varying reasons. On May 18, 2023, claimant was warned about his attendance and advised that any further violations of the attendance policy would result in discipline. Claimant understood this warning.

(4) On the morning of June 5, 2023, claimant spoke with his supervisor regarding it being claimant's thirtieth wedding anniversary that day. Claimant said to the supervisor, "[I]f you don't mind. . . I'm just going to work half a day." Transcript at 11. The supervisor replied, "[O]kay." Transcript at 22. Claimant believed he had been granted permission to leave early by this statement and therefore did not also make a written request to leave early. Claimant left work at approximately 11:00 a.m., several hours prior to the scheduled end of his shift. When claimant's absence was noticed later in the day, claimant's supervisor reported to the employer that claimant had discussed the possibility of leaving early but decided against it, and therefore had not been granted permission to leave early.

(5) On June 6, 2023, the employer discharged claimant for violating their attendance policy because they believed he left work early without permission on June 5, 2023.

CONCLUSIONS AND REASONS: Claimant was discharged, 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. “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) (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). 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). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The order under review concluded that “claimant left the workplace without notifying employer of his absence or requesting time off,” and thereby “was at least wantonly negligent” in violating the employer’s attendance policy. Order No. 23-UI-232412 at 3. The record does not support this conclusion.

The employer discharged claimant because they believed he left work early on June 5, 2023 without permission. The employer reasonably expected that their employees would remain at work until the end of their shifts unless excused to leave early. Claimant understood this expectation after having been warned about attendance policy violations as recently as May 18, 2023.

The parties offered conflicting evidence as to whether claimant was granted permission to leave early on June 5, 2023. Both parties agreed that claimant discussed with his supervisor that it was his wedding anniversary and he therefore desired to work only half of his shift. They also agreed that claimant left work at approximately 11:00 a.m. before the scheduled conclusion of his shift. However, the employer’s witness testified that claimant’s supervisor reported to the employer that after claimant talked with him about leaving early, claimant then said, “[W]ell, I’m not going to leave because I need—I need the money.” Transcript at 6. After “an hour and a half,” claimant’s absence “was noticed” and the supervisor, according to his hearsay account, texted claimant for an explanation, to which claimant replied that he “had left early for the day because it was his anniversary.” Transcript at 6. In contrast, claimant testified that he simply requested to leave after working half a day, explaining to his supervisor that after he got the machines running he would have “nothing else to do,” and the supervisor replied, “[O]kay.” Transcript at 11, 22. The evidence regarding what was said during this interaction is no more than equally balanced. As the employer bears the burden of proof by a preponderance of the evidence when an employee is discharged, they have failed to meet their burden, and the facts have been found accordingly. Therefore, claimant left work early after being told it was “okay” by his supervisor.

Claimant did not act willfully or with wanton negligence in leaving work early. That claimant asked his supervisor for permission to leave early suggests that claimant did not willfully violate the employer’s attendance policy and was not indifferent to the consequences of leaving early without permission. If claimant was mistaken in his belief that the supervisor approved of his request to leave early, and that

making the same request in writing was therefore unnecessary, such a mistake amounted to no more than a good faith error given the supervisor's apparent verbal assent after discussing the request. Good faith errors are not misconduct. Accordingly, the employer has not proven that claimant was discharged for a willful or wantonly negligent violation of their attendance policy.

For these reasons, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving benefits as a result of the work separation.

DECISION: Order No. 23-UI-232412 is set aside, as outlined above.

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

DATE of Service: September 25, 2023

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.

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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