

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1021

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 4, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective June 18, 2023 (decision # 103452). Claimant filed a timely request for hearing. On August 24, 2023, ALJ Griffin conducted a hearing, and on August 31, 2023 issued Order No. 23-UI-234821, affirming decision # 103452. On September 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Palm Harbor Homes employed claimant as a production line worker from March 31, 2021 until June 23, 2023.

(2) The employer expected production line workers to receive permission from a team leader or supervisor before leaving a shift early.

(3) Claimant was a domestic violence survivor and had Post Traumatic Stress Disorder (PTSD). Claimant worked with an individual, M.T., whom claimant believed had been abusive toward his romantic partners in the past. At some point prior to June 22, 2023, claimant began "hanging out" with M.T. romantically. Audio Record at 21:31.

(4) On June 22, 2023, claimant reported for her shift. Claimant and M.T. worked with another employee, S. M.T. and S. were present at the employer's workplace when claimant reported for her June 22, 2023 shift. Claimant believed that M.T. and S. were also romantically involved and that M.T. wanted to keep

his romantic involvement with S. a secret. While standing in the break room, M.T. said to claimant, “go ahead and say something and see what happens, I dare you, I dare you.” Audio Record at 17:09. M.T. also repeatedly called claimant’s cell phone. M.T.’s statement and calls scared claimant and made her “just want[] to get out of there.” Audio Record at 20:28. Claimant informed a quality control worker who was not her team leader or supervisor that she was leaving her shift early. The quality control worker walked claimant to her car, and claimant left her shift early that day after working for an hour. Claimant did not receive permission from her team leader or supervisor prior to leaving her shift early.

(5) On June 23, 2023, the employer discharged claimant for leaving her shift early on June 22, 2023 without first receiving permission from either her team leader or her supervisor.

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. “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).

The order under review concluded that claimant’s early departure on June 22, 2023 was a willful violation of the employer’s expectations and, as a result, claimant’s discharge on June 23, 2022 was for a reason that constituted misconduct. Order No. 23-UI-234821 at 3. The record does not support this conclusion.

The employer expected production line workers, such as claimant, to receive permission from a team leader or supervisor before leaving a shift early. On June 22, 2023, claimant violated this expectation by leaving her shift early by failing to first receive permission from either her team leader or her supervisor to do so. Although claimant breached this expectation, the employer failed to show that claimant did so willfully or with wanton negligence, and therefore the employer failed to establish that they discharged claimant for misconduct.

Claimant was a domestic violence survivor, had PTSD, and was romantically involved with M.T., a person she believed to have been abusive toward his romantic partners in the past. On June 22, 2023, during claimant’s shift, M.T. made a threatening statement in person to claimant and attempted to call her multiple times. Claimant became scared and “just wanted to get out of there.” Audio Record at 20:28. Claimant then left her shift early after informing a quality control worker of her intent to leave and receiving assistance from that person to her car.

On these facts, claimant did not willfully violate the employer’s expectation because, although she did not obtain permission to leave first, she perceived that the situation was an emergency that required her

to leave. Claimant's failure to obtain permission to leave was not an intentional violation of the employer's expectation but was, more likely than not, simply an oversight that occurred because of the perceived exigency of the situation. Nor was claimant's policy violation wantonly negligent. Claimant was not indifferent to the consequences of her actions, as is required for a policy violation to be wantonly negligent, because she informed the quality control worker of her plan to leave her shift and that individual accompanied claimant to her car when she left. By informing the quality control worker, it was reasonably likely that the employer would learn of claimant's departure and the perceived exigency of the situation. Accordingly, claimant did not act with indifference to the consequences of leaving without permission, and therefore did not act with wanton negligence.

For these reasons, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 23-UI-234821 is set aside, as outlined above.

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

DATE of Service: October 17, 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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