

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1187

Reversed
Disqualification Weeks 39-22 through 41-22

PROCEDURAL HISTORY: On October 11, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving unemployment insurance benefits for the week of September 25, 2022 through October 1, 2022 (week 39-22) and until the reason for the disqualification had ended because claimant was unemployed due to a labor dispute that was in active progress (decision # 162633). Claimant filed a timely request for hearing. On September 25, 2023, ALJ Mott conducted a hearing at which claimant appeared through a representative. On October 4, 2023, ALJ Mott issued Order No. 23-UI-237688, reversing decision # 162633 by concluding that claimant was not disqualified from receiving benefits for the weeks of September 25, 2022 through October 15, 2022 (weeks 39-22 through 41-22) because claimant was unemployed due to a lockout that rendered the disqualifying provision of ORS 657.200(1) inapplicable. On October 24, 2023, the Department and the employer filed applications for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the Department's argument in reaching this decision.

FINDINGS OF FACT: (1) Weyerhaeuser Company employed claimant as an equipment operator including during the months of September and October 2022. Claimant was represented by a union, the International Association of Machinists and Aerospace Workers (IAMAW), Local 246.

(2) On May 31, 2022, the contract between claimant's union and the employer expired. Thereafter, the union and the employer attempted to negotiate a new contract regarding the wages and benefits of the employer's union-represented employees.

(3) On September 12, 2022, claimant's union informed the employer that the union had decided to strike. On September 13, 2022, the union began the strike against the employer.

(4) After the strike began, the employer locked their gates at some of their locations, which may not have included claimant's worksite. Represented employees were not allowed to be on any company premises during the strike period or perform work for the employer.

(5) Claimant participated in picketing the employer during the strike. Claimant picketed "for the income" paid to him by the union to do so. Transcript at 21.

(6) On September 27, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks including September 25, 2022 through October 15, 2022 (weeks 39-22 through 41-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(7) Shortly after claimant filed his initial claim for benefits, the Department sent him a labor dispute questionnaire. Claimant answered the questions contained in the questionnaire and returned the document to the Department. Among other questions, the questionnaire asked, "Did you refuse to cross the picket line?" to which claimant answered "Yes." Transcript at 8.

(8) On October 28, 2022, IAMAW concluded its strike against the employer and the lockout by the employer was ended. Thereafter, claimant resumed working for the employer.

CONCLUSIONS AND REASONS: Claimant was unemployed due to a labor dispute in progress and was disqualified from receiving benefits pursuant to ORS 657.200(1) for the weeks of September 25, 2022 through October 15, 2022 (weeks 39-22 through 41-22).

Where the Department has paid benefits, it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

ORS 657.200(1) provides that "[a]n individual is disqualified for benefits for any weeks with respect to which [the Department] finds that the unemployment of the individual is due to a labor dispute that is in active progress at the factory, establishment or other premises at which the individual is or was last employed or at which the individual claims employment rights by union agreement or otherwise." Under OAR 471-030-0097 (January 11, 2018), "The term 'labor dispute' as used in the Employment Department law means any concerted or deliberate action by two or more individuals or by an employing unit resulting in either a strike or lockout in which wages, hours, working conditions or terms or employment of the individuals are involved."

Although ORS 657.200(1) has the effect of disqualifying an individual from receiving benefits for weeks of unemployment for which the elements of ORS 657.200(1) are met, ORS 657.200(3)(a) provides as follows:

(3) This section does not apply if it is shown to the satisfaction of the director that the individual:

(a) Is unemployed due to a lockout, as defined in ORS 662.205, at the factory, establishment or other premises at which the individual was last employed[.]

ORS 662.205(4) defines “Lockout” to mean “any refusal by an employer to permit employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of their employment.”

Thus, if claimant’s unemployment during the weeks at issue was due to a strike, it was due to a labor dispute in active progress and, under ORS 657.200(1), claimant would be disqualified from receiving benefits for the weeks at issue. If, instead, claimant’s unemployment during the weeks as issue was due to a lockout, it too would meet the OAR 471-030-0097 definition of a labor dispute, but would satisfy the elements of ORS 657.200(3)(a), which renders the disqualifying effect of ORS 657.200(1) inapplicable and therefore would result in claimant not being disqualified from receiving benefits for the weeks at issue.

The Oregon Court of Appeals has held that, for purposes of ORS 657.200(1), the words “due to a labor dispute” means “caused by a labor dispute.” *Barrier v. Employment Division*, 29 Or. App. 387, 391, 563 P.2d 1230, 1232 (1976) (citing *Skookum Co. v. Employment Division*, 24 Or. App. 271, 545 P.2d 914 (1976)). Under these precedents, it is not sufficient to meet the disqualifying provision of ORS 657.200(1) “if the unemployment merely occurred during the course of a strike.” *Barrier*, 29 Or. App. at 391.

The order under review concluded that “claimant’s unemployment during the weeks at issue was caused, at least in part, by an employer lockout,” making the disqualification provision of ORS 657.200(1) inapplicable because of the exception set forth in ORS 657.200(3). Order No. 23-UI-237688 at 4. While the record supports the conclusion that a lockout existed, it does not support that claimant’s unemployment was due to the lockout rather than the strike.

The record shows that a labor dispute involving the employer was in progress during the weeks at issue. A picket line formed in front of claimant’s worksite as a result. The employer did not allow represented employees to cross the picket line or enter the premises to work during the strike. The employer’s conduct therefore amounted to a refusal to permit employees to work as a result of a dispute affecting terms or conditions of employment, and accordingly amounted to a lockout as defined by ORS 662.205(4).

However, the record fails to show that claimant’s unemployment was caused by the lockout. Claimant’s response to the Department’s questionnaire indicated that he was unwilling to cross the picket line to work for the employer during the strike had he been allowed to do so. He did not offer further explanation or clarification of this statement. He also actively participated in the strike by picketing the employer, though his motive for doing so was, at least in part, financial. As the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden of proving by a preponderance of evidence that his unemployment was due to a lockout rather than due to the strike. Considering the evidence of claimant’s participation in strike activity and his stated refusal to cross the picket line to

work, claimant has not met that burden. Therefore, more likely than not, claimant's unemployment was due to the strike, which was the labor dispute in active progress, and not due to a lockout. Accordingly, the lockout exception to disqualification provided by ORS 657.200(3)(a) is inapplicable, and ORS 657.200(1) disqualification applies.

For these reasons, claimant was unemployed due to a labor dispute in progress and was disqualified from receiving unemployment insurance benefits pursuant to ORS 657.200(1) for the weeks of September 25, 2022 through October 15, 2022 (weeks 39-22 through 41-22).

DECISION: Order No. 23-UI-237688 is set aside, as outlined above.

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

DATE of Service: December 12, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. 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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.