

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1190

Reversed
Disqualification

PROCEDURAL HISTORY: On October 12, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving benefits for the weeks from September 18 through October 8, 2022 (weeks 38-22 through 40-22) and until the reason for the disqualification had ended, because claimant was unemployed due to a labor dispute that was in active progress (decision # 144836). Claimant filed a timely request for hearing. On September 19, 2023, ALJ Mott conducted a hearing. On October 4, 2023, ALJ Mott issued Order No. 23-UI-237679, reversing decision # 144836 by concluding that claimant was not disqualified from receiving benefits for the weeks from September 18 through October 29, 2022 (weeks 38-22 through 43-22) because claimant was unemployed due to a lockout. On October 24, 2023, the Department filed an application for review with EAB.

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

FINDINGS OF FACT: (1) Weyerhaeuser Company employed claimant as a heavy equipment operator beginning in January 2018. Claimant was represented by a union, the International Association of Machinists and Aerospace Workers (IAMAW), Local 246. Claimant's wages and benefits were governed by the terms of a contract between the employer and IAMAW.

(2) On June 1, 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) Negotiations between the employer and the union were unsuccessful and, on September 13, 2022, the union began a strike against the employer. Claimant voted in favor of the strike.

(4) Claimant worked for the employer at a saw mill located in Lebanon, Oregon. After the strike began, the employer locked the gates of the saw mill and had non-union salaried employees remain present to inform picketers not to enter the property. Union-represented employees were not allowed on the premises and the employer would not allow any union-represented employee to cross the picket line and work. If a union-represented employee had tried to work while the strike was ongoing, the employer would have advised the employee to leave the saw mill and discuss their desire to work with the union.

(5) After the strike began, claimant spent time picketing at the entrance of the saw mill. The union provided strike pay to employees who picketed five days a weeks, four to six hours per day. Claimant did not receive strike pay because he lacked transportation necessary to picket often enough to meet the requirements for receiving strike pay.

(6) If the employer had allowed union-represented employees to cross the picket line and work during the strike, claimant would not have done so.

(7) On September 18, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from September 18 through October 29, 2022 (weeks 38-22 through 43-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(8) 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. The questionnaire asked “Is your unemployment due to a lockout?” Transcript at 9. Claimant provided an answer indicating that his unemployment was due to a lockout. The questionnaire also asked, “Did you refuse to cross the picket line?” and “Are you involved in picketing?” Transcript at 7. Claimant answered “yes” to both of these questions. Transcript at 7, 26.

(9) On October 28, 2022, IAMAW concluded its strike against the employer and the lockout by the employer was ended. On October 31, 2022, claimant resumed working for the employer.

CONCLUSIONS AND REASONS: Claimant was unemployed due to a labor dispute in active progress under ORS 657.200(1), and so was disqualified from receiving benefits for the weeks at issue.

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.”

The order under review concluded that claimant’s unemployment during the weeks at issue was caused by the employer’s lockout under ORS 657.200(3)(b) such that the disqualifying effect of ORS 657.200(1) was inapplicable, and claimant was therefore not disqualified from receiving benefits for the weeks at issue. Order No. 23-UI-237679 at 3-4. However, the record does not support the conclusion that claimant’s unemployment during the weeks at issue was caused by the employer’s lockout.

The record shows that, after claimant’s union began to strike, the employer engaged in conduct that amounted to a lockout within the meaning of ORS 662.205(4). After the strike began, following unsuccessful contact negotiations over wages and benefits, the employer locked the gates of the saw mill and had non-union salaried employees remain present to inform picketers not to enter the property. Union-represented employees were not allowed on the premises and the employer would not allow any union-represented employee to cross the picket line and work. If a union-represented employee had tried to work while the strike was ongoing, the employer would have advised the employee to leave the saw mill and discuss their desire to work with the union. These facts are ample to meet the ORS 662.205(4) definition of “any refusal” by an employer to permit employees to work as a result of a dispute affecting, among other things, employee wages.

At hearing, the Department’s witness stated that because “the union was the moving party” the employer’s responsive measure of locking the gates and declining to allow employees to work “was not a lockout.” Transcript at 10. The witness elaborated that in the Department’s view, “if the union . . . is in negotiations and the [e]mployer locks out everybody during the negotiations that would be considered a lockout.” Transcript at 10. This testimony suggests that where an employer engages in a lockout as a measure responsive to a strike, as was the case here, the Department does not regard the employer’s activities as a lockout.

The Department’s interpretation of the administrative rules governing the unemployment insurance program is typically entitled to deference. *See Ring v. Employment Dep’t.*, 205 Or App 532, 134 P3d 1096 (2006) (The Department’s interpretation of its rule receives deference unless it is inconsistent with the rule’s text, context, or any other source of law.). However, ORS 662.205(4) is a statute enacted by the Legislative Assembly, not an administrative rule, and any deference owed to the Department does not extend to legislative enactments. ORS 662.205(4) makes no distinction relating to whether a lockout is engaged in by an employer offensively or as a response to a strike that is ongoing. The statute defines

the term broadly to mean *any* refusal to allow employees to work as a result of a dispute regarding wages, hours or other conditions of employment. Thus, regardless of whether the employer locks out employees offensively, or as a response to strike in progress, if an employer engages in any refusal to allow employees to work because of a dispute over wages and benefits, as occurred in this case, the employer's conduct would meet the ORS 662.205(4) definition of a lockout.

Thus, in this case, both a strike and a lockout were ongoing during the weeks at issue. The question is to assess which was responsible for claimant's unemployment during the weeks at issue. If claimant's unemployment during the weeks at issue was due to the 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 at issue was due to the 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" mean "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.

In this case, despite the employer's lockout in response to the strike, claimant's unemployment during the weeks at issue was caused by the strike itself. Claimant voted in favor of the strike and spent time during the strike picketing at the entrance of the employer's saw mill. When asked at hearing whether claimant would have worked during the strike if the employer had allowed him to do so, claimant declined to answer the question. Transcript at 24. In his answers to the Department's labor dispute questionnaire, however, claimant answered "yes" to the questions "Did you refuse to cross the picket line?" and "Are you involved in picketing?" Transcript at 7, 26. Based on this evidence, the record supports a finding that claimant became unemployed due to the strike, and not the lockout, and would have remained unemployed during the strike, absent the lockout. Therefore, the weight of the evidence supports that claimant's unemployment during the weeks at issue was due to the strike.

Accordingly, claimant's unemployment was due to a strike, which amounted to a "labor dispute" within the meaning of OAR 471-030-0097 because it involved a concerted action by two or more individuals resulting in a strike in which wages and other terms of employment were involved. The labor dispute that caused claimant's unemployment during the weeks at issue was in active progress at the premises at which claimant was employed. Therefore, ORS 657.200(1) applies and claimant was disqualified from receiving benefits for the weeks at issue. Because claimant's unemployment during the weeks at issue was not due to the employer's lockout, ORS 657.200(3)(b) does not apply to render the disqualifying effect of ORS 657.200(1) inapplicable.

For these reasons, claimant is disqualified from receiving unemployment insurance benefits for the weeks at issue.

DECISION: Order No. 23-UI-237679 is set aside, as outlined above.

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

DATE of Service: December 8, 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 الاستئناف 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.