EO: 200
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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1193

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 6, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving benefits for the week of September 25 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 # 94607). Claimant filed a timely request for hearing. On September 20, 2023, ALJ Mott conducted a hearing. On October 4, 2023, ALJ Mott issued Order No. 23-UI-237672, reversing decision # 94607 by concluding that claimant was not disqualified from receiving benefits for the weeks from September 25 through October 29, 2022 (weeks 39-22 through 43-22) because claimant was unemployed due to a lockout. On October 24, 2023, the Department and the employer filed applications 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 truck driver beginning January 18, 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 and did not allow represented employees to enter the premises. Although the employer was aware that some of their employees wanted to continue working during the strike, the employer chose not to allow employees who wanted to work during the strike to do so.

(5) Claimant worked for the employer at a facility located in Goshen, Oregon. On September 13, 2022, claimant arrived for his scheduled shift, unaware that the strike had begun. Claimant saw that the employer's gates were locked. Claimant called his supervisor and asked if he could work despite the strike, to which the supervisor replied, "[N]ope. There's no work available for anyone." Transcript at 27. Claimant's supervisor further stated, "No crossing the line if you wanted to." Transcript at 28. Claimant did not work for to employer for the duration of the strike.

(6) If the employer had allowed claimant to work during the strike, he would have done so.

(7) On September 13, 2022, after learning that the employer would not permit him to work, claimant was contacted by a union representative who offered claimant payment for picketing if he "put in so many hours a week while we were on strike." Transcript at 29. Claimant began picketing the employer because he needed the money he would earn from doing so.

(8) On September 26, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from September 25 through October 29, 2022 (weeks 39-22 through 43-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(9) Shortly after claimant filed his initial claim for benefits, the Department sent him a labor dispute questionnaire. On September 29, 2022, 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.

(10) 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 lockout under ORS 657.200(3)(b) that rendered the disqualifying provision of ORS 657.200(1) inapplicable, and so was not 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."

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.

Here, more likely than not, claimant's unemployment during the weeks at issue was caused by the employer's lockout, and not the union's strike. After the strike began, the employer locked their gates and did not allow represented employees to enter the premises. Although the employer was aware that some of their employees wanted to continue working during the strike, the employer chose not to allow employees who wanted to work during the strike to do so. 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).

Further, the record shows that it was the employer's lockout that caused claimant's unemployment during the weeks at issue, notwithstanding the fact that the unemployment occurred while a strike was ongoing. The Department's labor dispute questionnaire asked claimant "Did you refuse to cross the picket line?" to which claimant answered, "Yes." Transcript at 8. However, it can reasonably be inferred that claimant answered affirmatively because his supervisor told him that crossing the picket line would not be permitted "even if [claimant] wanted to." Transcript at 28. At hearing, claimant testified that upon

learning of the strike, claimant told his supervisor, "I'm ready to go to work. I've got to make money." Transcript at 27. It was only after the employer refused to allow claimant to work that claimant began picketing, and he testified that he did so because of need for the money he would be paid for picketing. Transcript at 29. The evidence demonstrating that claimant would have worked if allowed is sufficient to establish by a preponderance of evidence that claimant's unemployment during the weeks at issue was caused by the employer's lockout.

For the foregoing reasons, claimant's unemployment during the weeks at issue was due to the lockout, and not the strike. Accordingly, because claimant was unemployed due to a lockout as defined by ORS 662.205(4) at the establishment at which he was last employed, claimant meets the elements of ORS 657.200(3)(a), which renders the disqualifying effect of ORS 657.200(1) inapplicable.

Claimant is not disqualified from receiving unemployment insurance benefits based on ORS 657.200(1)

DECISION: Order No. 23-UI-237672 is affirmed.

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.

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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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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