

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1194

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 11, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective July 2, 2023 (decision # 62521). Claimant filed a timely request for hearing. On October 3, 2023, ALJ Scott conducted a hearing, and on October 6, 2023 issued Order No. 23-UI-237866, affirming decision # 62521. On October 24, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) Ran-Tech Engineering & Aerospace, Inc. employed claimant as a sheet cutter from June 5, 2023 until July 7, 2023. Claimant worked for the employer through a staffing agency for approximately three months, starting in March 2023, before the employer hired him directly.

(2) The employer offered to pay for claimant to take a class in blueprint reading in order to improve his work skills. The class was offered through Clackamas County Community College but was to take place at the employer's facility. Claimant accepted the offer and enrolled in the class. However, on or around June 27, 2023, a few weeks before the class was scheduled to begin, claimant realized that the class schedule for that term did not suit his own schedule, and he decided to take the class the following term

instead. Claimant inquired with the college about withdrawing, asking the registrar via email whether the employer would be charged for tuition if he withdrew from the class at that point. The registrar told claimant that the employer would be refunded the tuition they had paid and withdrew claimant from the class without his having explicitly requested to do so.

(3) After claimant saw that the registrar had dropped him from the class, claimant notified the employer's operations manager, who was his supervisor's supervisor, of the development. The operations manager was "upset" with claimant and "reprimanded" him for not taking the class. Transcript at 6.

(4) On June 28, 2023, claimant notified his supervisor via email that he was not taking the class that term, and also informed the supervisor of claimant's interaction with the operations manager. In that email, claimant stated, in relevant part:

I decided NOT to take the blueprint read class this summer term because its two days per week and I can't change my before work schedule to accommodate.

[The operations manager] came and reprimanded me for my decision at my workstation and I was torqued most of my shift about it. Said he won't be offered to me again and stated I'm a "difficult person" and he's trying to "make me a better person", which I didn't comprehend. It's my personal opinion he's toxic and will undoubtedly be looking into other employers soon enough. Probably figures I'm young and somehow need help although I'm older than he is. Wish you were running the show I'd stay.

Exhibit 1 at 2. Claimant's suggestion that he would be looking into other employment was motivated by his displeasure with the operation manager's response to the news that claimant would not be taking the class that term. On June 28, 2023, the supervisor responded to claimant's email, in relevant part:

As for the class, the frustration coming from management about this issue is it cost us 2000.00 dollars per head in this class. Once you are registered, we pay and cant be refunded. Also, there was some wishy washy attitude coming from you on wanting to do the class in the first place. The class wont make you a "better person" but it would have made your skills higher in print reading which would lead to you being a better sheet router operator and beyond.

Additionally, you have gone over my head a few times now as well. If you wanted to NOT do the class after all, you should have come to me with that, not send an email asking to be removed to a Clackamas college employee. We could have had a constructive discussion about why you cant take the class right now, before you stated "it's a waste of time"

I will take this email as your two week notice, your last day will be 7/7/23.

Exhibit 1 at 3.

(5) Claimant did not immediately respond to the supervisor's email or otherwise protest the fact that the supervisor considered claimant's email to be his "two week notice."

(6) On July 7, 2023, claimant sent an email to his supervisor in which he stated, in relevant part:

Despite everything, I'm willing to remain with [the employer] if company needs my production efforts. Please inform as I can plan accordingly.

Exhibit 2 at 5. However, the employer did not accept claimant's offer to continue working. In response to claimant's email on July 7, 2023, the employer's human resources manager told claimant, in relevant part:

Your email on June 28th was a notification that you would be leaving employment, in which your full statement was: "It's my personal opinion he's toxic and will undoubtedly be looking into other employers soon enough. Probably figures I'm young and somehow need help although I'm older than he is. Wish you were running the show I'd stay."

Your supervisor clearly stated he'd take that as your two-week notice. You've had 10 days to respond and have not.

Although not everyone is going to get along with their supervisor or manager every single day, and frustrations may occur, you made it very clear that you do not want to work for [the operations manager]. That's OK, you have to do what's best for you. You've made it clear this is not working out for you. Today will remain your last day, [the supervisor] will have your check ready. We wish you luck!

Exhibit 2 at 2. Claimant did not work for the employer again after July 7, 2023.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

Nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The parties disputed the nature of the work separation. At hearing, claimant testified that he "did not decide to leave the job." Transcript at 6. However, the employer considered claimant's June 28, 2023 email to be tantamount to notice that claimant intended to resign. The order under review agreed, concluding that claimant quit because he had "sent an email to his supervisor... expressing an intention to leave work," "took no action to renounce the perception that he intended that email as a notice of intention to leave the job," and that "[i]t was not until that final day that claimant expressed willingness to continue working for this employer for an additional period of time." Order No. 23-UI-237866 at 3. The record does not support the conclusion that claimant quit work.

The record shows that, following a negative interaction with the operations manager, claimant suggested to his supervisor that he would "undoubtedly be looking into other employers soon enough." It is not clear from the record whether claimant had genuinely decided to begin looking for work elsewhere, with the intention of eventually quitting, or whether this statement amounted to a bluff made out of

frustration. Regardless, a mere expression of intent to *eventually* quit, without reference to an actual date or time period on which the person plans to leave work, is too vague and indefinite to constitute a severance of the employment relationship.

By contrast, when claimant's supervisor read claimant's statement that he would "be looking into other employers soon enough," the supervisor responded by telling claimant, "I will take this email as your two week notice, your last day will be 7/7/23." Thus, irrespective of the fact that the supervisor "took" claimant's statement as a "two week notice," the employer made the first move toward actually severing the employment relationship by telling claimant what his last day of work would be.

The order under review suggested that claimant's failure to express a willingness to continue working for the employer until July 7, 2023 lent support to the conclusion that the work separation was a voluntary leaving. This apparently was informed by the supervisor's testimony that, had claimant expressed a willingness to continue working for the employer prior to July 7, 2023, the supervisor would have "sat down" with claimant and the operations manager and "probably coulda worked something out" to avoid the work separation. Transcript at 20. However, the supervisor also testified:

[w]hen somebody says to me they are undoubtedly gonna look for another job, that to me is then saying, "I'm on my way out the door." Around here, just my kind of preference on that, if somebody tells me that they're undoubtedly looking for another job, I – I can't have them stick around and cause issues, so I kind of set a day[.]

Transcript at 17. This testimony further shows that the supervisor decided to preemptively discharge claimant due to claimant's statement that he intended to look for another job. Even if the employer might have relented and allowed claimant to stay if claimant had expressed a desire to do so prior to his last day of work, employer gave claimant no indication of that. And when claimant *did* express a desire to stay on his last day of work, and the employer *did not* permit him to do so. In light of the foregoing, because claimant was willing to continue to work for the employer for an additional period of time but the employer did not allow him to do so, the work separation was a discharge occurring on July 7, 2023.

Discharge. 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). "[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 employer discharged claimant on July 7, 2023 following claimant's statement on June 28, 2023 that he intended to look for other work. Because of the dispute regarding the nature of the work separation, the employer did not explicitly state why they discharged claimant. However, it can be inferred from the supervisor's testimony, above, that the employer discharged claimant because claimant stated that he

intended to look for other work and, perhaps, because he failed to tell the employer that he was willing to continue working for them until his last day of work. The employer has not met their burden to show that either of these reasons for discharge constituted misconduct. In either case, the employer did not show either that claimant knew or had reason to know that engaging in such behavior would violate the standards of behavior they expected of their employees, or that any such expectation was reasonable. The employer therefore has not met their burden to establish that claimant was discharged for misconduct.

DECISION: Order No. 23-UI-237866 is set aside, as outlined above.

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

DATE of Service: December 7, 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.

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.

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.