

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0100

Reversed & Remanded

PROCEDURAL HISTORY: On November 20, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective July 30, 2023 (decision # 155302). Claimant filed a timely request for hearing. On December 18, 2023, and continued on January 8, 2024, ALJ Blam conducted a hearing. The employer failed to appear for the December 18, 2023, hearing. On January 18, 2024, ALJ Blam issued Order No. 24-UI-245626, reversing decision # 155302 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On January 23, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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 the employer's argument to the extent it was based on the record.

The parties may offer new information, such as the new evidence included with the employer's written argument,¹ into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

¹ The employer included a video file with their written argument, but also included in their argument links to two other related videos, stored on Microsoft OneDrive. Employer's Written Argument at 2. It is important to ensure that any submitted evidence be permanently made part of the record in this case, and links to files stored in the cloud may not meet that standard. Therefore, if the employer wishes to have those videos considered for admission into evidence, they are advised to contact the Office of Administrative Hearings (OAH) prior to hearing to determine the best manner in which to submit those files.

FINDINGS OF FACT: (1) City Auto Wholesale employed claimant as a sales manager from 2010 until early August 2023.

(2) In or prior to June 2023, claimant began experiencing symptoms of back pain. Claimant consulted with his physician, who ordered medical imaging that revealed three herniated discs. Claimant's physician told claimant that she would refer him to a neurologist for further evaluation, but claimant never received the referral. As a result, claimant decided to seek treatment in Mexico, where some of his friends and family practiced medicine.

(3) On "several" occasions in and around early July 2023, claimant spoke with the owner of the company about his medical condition and the resulting need to take time off from work to seek treatment in Mexico. January 8, 2024, Transcript at 12. The owner told claimant that he could take time off from work if he needed to do so.

(4) Claimant last performed work for the employer on July 28, 2023. Later that evening, claimant was engaged in a text message conversation with the owner. In relevant part, claimant asked the owner, "do u want me to come back[?] And it's a yes or no answer[.] Exhibit 1 at 2. The owner responded, "Yes. But as a person that brings everyone together and helps build the place up." Exhibit 1 at 2.

(5) On August 1, 2023, at 9:05 a.m., claimant sent the owner a text message stating, "I want to come back but I don't feel comfortable now that you've told me [three of claimant's coworkers] have said that I don't do deals right. I'm not going to do a deal where I don't have everything I need when the person has a low credit score." Exhibit 1 at 2. The owner responded to claimant shortly thereafter, suggesting that he return to work, and asking him if he was "planning on coming in." Exhibit 1 at 8. Later that morning, the owner sent claimant text messages stating, "I need to know what your doing [*sic*]. On or off. This I'm coming back just to call in at 905 is absolutely not gonna work. I try to call. You don't answer. I just don't understand you. If you want to be quit [*sic*] just say it. If you want to be here act like it. This constant state of being in the middle isn't healthy for anyone." Exhibit 1 at 8. Claimant did not respond to the owner's text messages that day.

(6) On August 2, 2023, the owner sent claimant a text message stating, "Well it's my assumption since you don't answer a text or call that you quit. I wish you the absolute best. Please drop off your keys and credit cards to the lot or give to [one of claimant's coworkers]." Exhibit 1 at 9. Claimant responded to the owner's message to notify him where the credit cards were, and that claimant intended to bring in his keys. Exhibit 1 at 9.

(7) On August 3, 2023, the employer's office manager sent claimant a text message informing him that both he and his wife were "banned" from the employer's premises. January 8, 2024, Transcript at 15–16.

(8) On August 6, 2023, claimant travelled to Mexico to seek medical treatment.

CONCLUSIONS AND REASONS: Order No. 24-UI-245626 is set aside and this matter remanded for further development of the record.

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 appeared to dispute the nature of the work separation. At hearing, the employer's witness testified that claimant quit on or around August 1, 2023, stating that claimant "didn't give any notice, [but] just left and never came back to work." January 8, 2024, Transcript at 5. The employer's witness also testified that he believed that claimant had been terminated in the employer's system "a little after" August 1, 2023, based on claimant's failure to indicate when he would be returning to work. January 8, 2024, Transcript at 6.

By contrast, claimant's testimony suggested that the decision to sever the employment relationship was not his. For instance, claimant testified that he worked for the employer "From 2010 'til when [the owner] said I can take my leave of absence to find out what was going on with me, and I found out after I went out of the country." January 8, 2024, Transcript at 7. While the ALJ did not explicitly ask claimant whether he quit or was discharged, this testimony suggests that claimant found out that he had been discharged while he was out of the country seeking medical treatment.

The order under review concluded, "The employer discharged claimant on August 2, 2023, when they advised claimant that he was discharged and asked for his credit cards and keys to be returned." Order No. 24-UI-245626 at 3. The order under review supported this conclusion by explaining that claimant "took leave to attend to a medical issue," and "never advised the employer that he quit and was always willing to return to work." Order No. 24-UI-245626 at 3. The record as developed does not support this conclusion.

As a preliminary matter, it is not clear from the record that claimant actually *was* willing to return to work. Claimant last worked on Friday, July 28, 2023, and did not return to work after that point. The record does not indicate that his failure to return to work the following week was due to the employer having told him not to do so. Rather, the record shows that the owner attempted several times to convince claimant to return to work, and that claimant either rebuffed or ignored the owner's attempts. From the text messages included in Exhibit 1, claimant appeared to be reticent to return to work due to an ongoing conflict with one or more of his coworkers. Additionally, while claimant suggested that he simply left work temporarily in order to seek medical treatment, claimant did not travel to Mexico until August 6, 2023, which was more than a week after his last day of work.

On remand, the ALJ should develop the record to show whether claimant was actually willing to return to work after July 28, 2023, and, if not, what the reason for that unwillingness was. This inquiry should include an examination of the apparent conflict between claimant and his coworkers and what role, if any, such conflict played in claimant's failure to return to work as the employer had requested. The ALJ should also inquire as to why claimant did not leave for Mexico until more than a week after his last day of work. Depending on the results of this inquiry, the ALJ should, as explained below, develop the record to show why the employer discharged claimant, or alternatively if claimant voluntarily quit work; and whether, in either case, the separation was for a disqualifying reason.

To the extent that the record on remand shows that the employer discharged claimant, it appears that such a discharge could have been the result of claimant failing to return to work or claimant leaving

work without prior notice and approval of specific leave dates. The ALJ should develop the record to what policy the claimant violated. If so, the ALJ should inquire as to why claimant did not return to work when the employer asked him to do so, whether claimant's failure to do so constituted a willful or wantonly negligent violation of the employer's standards of behavior, and, if so, whether that violation constituted an isolated instance of poor judgment under OAR 471-030-0038(1)(d) or was the result of a good faith error.²

To the extent that the record on remand shows that claimant voluntarily quit, the record suggests that claimant may have done so due to the apparent conflict with his coworkers. If so, the ALJ should further inquire as to the causes of this conflict, how it affected claimant, and whether any reasonable alternatives to quitting work were available to claimant. If the record shows that claimant quit for some other reason, the ALJ should inquire as to why claimant quit and whether that reason for quitting constituted "good cause" under OAR 471-030-0038(4).

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant voluntarily quit or was discharged, and, in either case, whether the separation disqualifies claimant from receiving benefits, Order No. 24-UI-245626 is reversed, and this matter is remanded.

DECISION: Order No. 24-UI-245626 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 1, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-245626 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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² Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).



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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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