

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0110

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 3, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective July 23, 2023 (decision # 102151). Claimant filed a timely request for hearing. On January 2, 2024, ALJ Frank conducted a hearing, and on January 10, 2024, issued Order No. 24-UI-245258, modifying decision # 102151 by concluding that claimant was discharged, not for misconduct, within 15 days of the date claimant planned to voluntarily quit work without good cause, and was therefore disqualified from benefits effective August 6, 2023. On January 29, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Grayguns, Inc. employed claimant as a machinist from December 2020 until July 28, 2023.

(2) At some time during claimant’s employment, likely early 2023, the employer placed a large quilting machine in the building where claimant worked. The machine was for the personal use of one of the employer’s owners. Claimant was upset that the machine was placed there because he believed the space should be used differently and had safety concerns about its placement. Claimant kept some personal tools behind the machine that were rarely used and which he intended to take home once the machine was moved. Claimant was thereafter “fixated” on having the machine moved. Transcript at 16.

(3) For several months, claimant complained to several other employees in the shop about the machine, perceived failures in the owners’ leadership for failing to move the machine, and about other “grudges and grievances . . . pretty much unique to [claimant].” Transcript at 16. Claimant was unaware that the employees did not like hearing these complaints.

(4) By the week of July 23, 2023, some of these employees had reported claimant’s complaints to the owners, causing the owners to believe that claimant was “affecting morale.” Transcript at 16. Tensions between the owners and claimant over the machine “came to a head” that week when “it was brought to

[the] attention” of one of the owners, B.G., that claimant “was upset” about the machine. Transcript at 16-17.

(5) On July 26, 2023, B.G. approached claimant to discuss the machine and claimant’s interactions with coworkers. Claimant complained about the machine and B.G. not doing things he said he would do, likely referring to moving the machine. Transcript at 17. B.G. told claimant that many other employees had complained to him about claimant airing complaints to them and directed claimant to address any future complaints to him only. B.G. perceived claimant as “emotionally very distraught. . . out of proportion. . . to the issues that we were discussing.” Transcript at 18.

(6) After the conversation, the machine was moved to a different location. Approximately an hour after that, claimant removed his personal tools from behind the machine and took them home. Claimant was “flabbergasted” to learn during his conversation with B.G. that his coworkers had complained to the owners about claimant’s complaints to them, and to learn that he was perceived as having a “negative attitude.” Transcript at 11. Claimant contacted his two immediate managers, one of whom said he was “completely unaware” of the coworkers’ perceptions, and the other said, “If there was an issue. . . I would have let you know[.]” Transcript at 11.

(7) On July 27, 2023, claimant attempted to have a conversation with B.G. B.G.’s recollection of the conversation was “something along the lines of. . . slow your roll. Let’s talk on Monday and cooler heads can prevail[.]” Transcript at 18. B.G. did not intend to discharge claimant at that time and was “trying to save his job.” Transcript at 18-19. Claimant believed from this conversation that B.G.’s intention was to discharge him imminently and did not understand that B.G. intended to discuss matters with him further on Monday.

(8) On Friday, July 28, 2023, claimant had been excused from work for the day to attend to a personal matter. However, based on his belief that his discharge was imminent, claimant wrote a letter of resignation, stating that it would be effective August 11, 2023, and brought it to the worksite that morning. Claimant took it to the employer’s chief financial officer (CFO), who looked at it and told claimant she “didn’t feel comfortable accepting his resignation ‘cause that I was understanding we were going to have a meeting on Monday, to discuss all his concerns,” and handed it back to claimant. Transcript at 29. Claimant, who had been unaware of the scheduled meeting, perhaps due to being “distraught” when B.G. had suggested it to him during their previous conversation, was “elated” that the employer did not accept his resignation and that he would have a chance to discuss matters on Monday. Transcript at 9.

(9) Later that day, the CFO informed B.G. of her interaction with claimant, including that she had not accepted his resignation letter and allowed claimant to take it with him. B.G. interpreted claimant’s proffered resignation as expressing an unwillingness to attempt to preserve his employment and “at that point felt that there was enough insubordination and enough tribulation. . . with this that I wasn’t interested in continuing.” Transcript at 22. B.G. emailed claimant that afternoon that the employer accepted claimant’s resignation and that he should pick up any personal property from the worksite on Monday morning. Claimant replied, requesting clarification, and asking about serving a notice period. B.G. sent another email stating he was aware that claimant had shown his resignation letter to the CFO and that claimant took it with him after speaking with her. B.G. also wrote, “I consider you as having left your position here when you removed your tool boxes a couple days ago. I accept your resignation

effective today, to simplify things. You are no longer employed by [the employer].” Exhibit 1 at 1.¹ Claimant replied, “OK. I am to understand then, you terminated my employment, July 26, 2023, because I took a couple toolboxes out of the shop. Correct?” Exhibit 1 at 1. B.G. did not reply.

(10) Claimant did not work for the employer after July 28, 2023. On July 31, 2023, claimant “was still trying” to preserve his employment but was told by B.G. “to refer to his previous email.” Transcript at 35. Claimant desired to continue working for the employer indefinitely after the moment the CFO declined to accept his resignation.

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

Nature of the work separation. If an 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 an 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).

ORS 657.176 provides, in relevant part:

* * *

(8) For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The voluntary leaving would be for reasons that do not constitute good cause;
- (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and
- (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,

then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

* * *

The order under review concluded that claimant planned to voluntarily leave work on August 11, 2023, for reasons that do not constitute good cause, but claimant was discharged, not for misconduct, on July 28, 2023, and therefore the work separation is properly adjudicated as a voluntary leaving pursuant to ORS 657.176(8). Order No. 24-UI-245258 at 5. The record does not support this conclusion, but instead supports that the work separation was a discharge.

¹ Exhibit 1 consists of 10 pages, though only the last 7 pages were marked.

The record shows that in the morning of July 28, 2023, claimant planned to voluntarily leave work on August 11, 2023, as evidenced by claimant bringing a letter of resignation containing a statement to that effect to the employer's CFO. The CFO looked at the letter but "didn't feel comfortable accepting it," and declined to accept it, instead inviting claimant to a discussion with the owners, previously scheduled for July 31, 2023, of which claimant had been unaware. Claimant testified that he wrote the letter because B.G. told him he was going to be fired, but that he "[d]id not really wanna resign." Transcript at 6-7. Claimant was therefore "elated" that the employer declined to accept his resignation and that he would have a chance to resolve any problems with B.G. on July 31, 2023. Claimant left the worksite with the resignation letter. That afternoon, B.G. emailed claimant that his resignation had been accepted and would be given immediate effect, though B.G. had been informed that the CFO had already declined to accept the resignation and that claimant had taken the resignation letter back immediately.

The evidence regarding claimant's willingness to work for at least some period of time beyond July 28, 2023, and the employer's refusal to allow him to do so, is not in dispute. Therefore, claimant was discharged on July 28, 2023. However, the applicability of ORS 657.167(8) depends, in part, on whether claimant had "notified" the employer that he would leave work on August 11, 2023, and whether the discharge occurred no more than 15 days prior to a "planned voluntary leaving."

Claimant's resignation letter would have served to notify the employer on July 28, 2023, that claimant would leave work on August 11, 2023, but the CFO declined to accept this notice when offered. As claimant's reason for offering the resignation was his mistaken belief that he "wasn't welcome there" and was facing imminent discharge, the CFO's actions demonstrated to him that he was mistaken and claimant immediately changed his mind about resigning. Transcript at 7. Based on the CFO's reaction, claimant rescinded the notice by agreeing to attend a meeting on Monday instead of quitting, and by leaving the CFO's office with the letter.

The Court of Appeals has previously considered the effect of an employee attempting to rescind notice of their resignation, prior to their employer accepting it, when characterizing a work separation. In *Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999), substantial evidence was found to support EAB's conclusion that when the employee's resignation, which the employer had not yet acted upon to accept or reject, was followed by an attempt to rescind the resignation if the employer was "willing to take [the employee] back," the employer could reject the attempted rescission and accept the resignation. *Counts* 159 Or App at 27. The present work separation can be distinguished from *Counts* in that the employer here immediately acted to reject claimant's notice of resignation by the CFO declining to accept it, and claimant's immediate decision to rescind the notice by taking back the resignation letter was implicitly allowed by the CFO. Accordingly, both the employer and claimant knew there was no "planned voluntarily leaving" as of the afternoon of July 28, 2023, when the employer purported to accept claimant's previously rejected and rescinded resignation with immediate effect. ORS 657.167(8) is therefore inapplicable, and the work separation is properly characterized as a discharge.

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) (September 22,

2020). “[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).

A discharge analysis focuses on the proximate cause of the discharge, which is the incident without which the discharge would not have occurred when it did. *See e.g. Appeals Board Decision 09-AB-1767*, June 29, 2009. The friction between claimant and B.G. that led to the events of July 28, 2023, arose from the placement of a quilting machine in the area where claimant worked, and claimant’s reaction to it being there. The machine was moved, as claimant desired, on July 26, 2023, signaling a potential end to any conflict. However, during this week, B.G. learned that claimant had voiced criticism of him to several other employees, largely about his failure to promptly address claimant’s complaints about the machine. B.G. confronted claimant, alleging that he was “affecting morale” and undermining his leadership by constantly complaining to others. Transcript at 16. Claimant, previously unaware that his remarks and attitude toward the owners displeased his coworkers, became “distracted” and felt that he was no longer wanted in that workplace. Claimant therefore told B.G. when he asked claimant “what he wanted to do” that he was “very dissatisfied.” Transcript at 18. B.G. testified that he did not intend to discharge claimant but instead was “trying to save his job,” and suggested to claimant that they discuss the matter on July 31, 2023, when “cooler heads can prevail.” Transcript at 18-19. The record therefore shows that claimant’s actions prior to July 28, 2023, were not the proximate cause of his discharge.

Instead, claimant’s actions on July 28, 2023, caused the employer to decide not to allow claimant to continue working after that date, even for a notice period, and are properly analyzed as the proximate cause of his discharge. Claimant’s only contact with the employer on that date was a brief interaction with the CFO in which he offered his resignation, it was declined, and he “elated[ly]” agreed instead to a meeting on July 31, 2023, to resolve his differences with the owners. B.G. testified that he nonetheless decided to accept claimant’s rescinded resignation, knowing it was no longer on offer, and without allowing claimant to work any notice period, “because I could see that he was not interested in continuing a positive. . . conversation to try and keep his employment.” Transcript at 21-22.

To the extent this testimony described a reasonable expectation of the employer regarding their employees’ behavior, the employer has not shown that claimant’s behavior on July 28, 2023, violated that expectation. To the contrary, as soon as he realized that he was mistaken in his belief that the employer wanted to discharge him, claimant immediately rescinded his resignation and readily agreed to engage in the conversation scheduled for July 31, 2023, in order to preserve his employment. Claimant was newly aware, from conversations with B.G. earlier that week, of the harmful effects his criticisms were having on his coworkers’ morale. Additionally, the primary source of contention—the quilting machine—had recently been removed from claimant’s work area. These factors suggest not only that claimant intended to engage in “a positive conversation” to preserve his employment at the July 31, 2023, meeting, but that the meeting may well have repaired, at least to some degree, the frayed relationship between claimant and B.G. The employer has therefore failed to demonstrate that claimant’s behavior on July 28, 2023, violated their reasonable expectation.

Accordingly, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-245258 is set aside, as outlined above.

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

DATE of Service: March 6, 2024

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.

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.

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