

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0247

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 18, 2024, 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 September 10, 2023 (decision # 62453). Claimant filed a timely request for hearing. On February 23, 2024, ALJ Christon conducted a hearing, and on February 28, 2024 issued Order No. 24-UI-249097, reversing decision # 62453 by concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On March 6, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant and the employer both submitted written arguments. EAB considered the employer's argument when reaching this decision. Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her 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 claimant's argument to the extent it was based on the record.

As the order under review noted, the primary dispute in this matter is the nature of the work separation, as claimant asserted that the employer had discharged her, but the employer asserted that claimant quit. *See* Order No. 24-UI-249097 at 3. In his written argument, the employer supported his position that claimant had quit, stating,

[Claimant] had explained that she had another pending offer that would be paying her [the wage claimant had requested] and thanked me for the time I had worked with her. That text message was followed by my reply, simply stating I cannot afford to pay her that and wanted to know when her last day would be. She then provided me with a date and emailed me from her personal email, a formal two-week notice. If she had been fired, a two-week period would not have been followed.

Employer's Written Argument at 1. In response, claimant stated,

I had written [the employer] a text explaining all the reasons that I felt I deserved a raise and had looked into the wages of other dental assistants with my years of experience. I chose several sources online... to find this information. I simply did what any normal employee would do to go about asking for a raise. I never once said I was taking another job, nor did I threaten to leave if [the employer] didn't give me a raise like he had claimed. I never said I had a pending job or that they would be paying me 9 dollars more an hour. [The employer] claimed under oath, that I had lied about having an offer. I never lied about anything. I was merely presenting the facts about how I felt I deserved a raise. He replied that he could not afford a raise and then coldly said "When is your last day?" I reluctantly said, "Well, as a professional it would be 2 weeks." I then told him I didn't expect to be fired for asking for more money.

Claimant's Written Argument at 1.

Both of these passages reference a series of text messages between the two parties which led to the work separation. On Thursday, August 31, 2023, claimant sent the initial message to the employer, seeking a significant pay raise and explaining the reasons why she felt it was warranted. In relevant part, she stated, "I've been offered 34.00 an hour elsewhere without the added stress put on my job... I just feel like I'm not shown appreciation by compensating me for what I bring to the table." Exhibit 1 at 5. The employer responded by stating, in relevant part, "I appreciate you reaching out but as a new business owner, [your current rate of pay] is all I am able to afford. Thank you for your help and I wish you luck with your new position. Please let me know when your last day at the office will be." Exhibit 1 at 6. Claimant responded the same day by stating, "As a professional I would always give 2 weeks notice. So that would be Sept 14th as my last day." Exhibit 1 at 6. The employer did not respond to claimant's last text message. On Friday, September 1, 2023, claimant sent the employer another text message stating, in relevant part, "I didn't expect to be fired for asking for more money for what I call an exaggerated schedule. I was letting you know that I was offered more money, but I never said I was taking a job elsewhere." Exhibit 1 at 7. The employer did not respond to this text message either.

Thus, in brief, claimant asked the employer for a raise and intimated that she had received a better offer elsewhere,¹ the employer understood this to mean that claimant was resigning and asked when her final day would be, and claimant responded by giving the employer what appeared to be a two-week notice of resignation. Although it was reasonable for the employer to have taken claimant's messages to mean that she was resigning, the record shows that this was not what she had intended. As noted above, claimant clarified the day after she sent the message designating her last day as September 14, 2023 that she "didn't expect to be fired," suggesting that she had not meant that she wanted to quit. Further, in her initial messages requesting a pay raise, claimant never stated that she was quitting, or even threatened to quit if the employer did not meet her demands for a raise. It was only after the employer specifically asked claimant what her last day would be that she offered the September 14, 2023 date. Thus, even if claimant's last message on August 31, 2023 appeared to be a resignation, it was not.

¹ Although the record shows that claimant did not have a pending job offer elsewhere as of August 31, 2023, it is unclear from the record whether claimant's statement here was merely a bluff designed to bolster her request for a raise, or was, as claimant suggested at hearing, simply meant to signify that she had received such offers in the past. *See* Transcript at 24.

At hearing, claimant testified that she came in to work on the Monday after the text message exchange and “explained to [the employer] there was some sort of... miscommunication over the text messages, that I was not intending to quit[.]” Transcript at 27. This shows that claimant was still willing to continue working for the employer for an additional period of time. By contrast, the employer testified that even if claimant was willing to continue working for him at her current rate of pay, he still would not have allowed claimant to continue working for him because he felt that “she seemed very disgruntled” about her pay rate and other working conditions, and he was concerned about how her attitude would impact his dental practice. Transcript at 38–39. The record also shows that before claimant’s final day of work, the employer had already hired someone to replace her. The employer’s testimony and actions here both show that the employer did not allow claimant to continue working for him for an additional period of time. The order under review therefore correctly determined that the work separation was a discharge under OAR 471-030-0038(2)(b) (September 22, 2020).

EAB considered the entire hearing record. EAB agrees with Order No. 24-UI-249097’s findings of fact, reasoning, and conclusion that claimant was discharged, but not for misconduct. Pursuant to ORS 657.275(2), Order No. 24-UI-249097 is **adopted**.

DECISION: Order No. 24-UI-249097 is affirmed.

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

DATE of Service: April 17, 2024

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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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