

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0491

Affirmed
Request to Reopen Allowed
No Disqualification

PROCEDURAL HISTORY: On November 16, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective July 23, 2023 (decision # 82615). Claimant filed a timely request for hearing. On December 5, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 19, 2023. On December 19, 2023, ALJ Fraser conducted a hearing at which the employer failed to appear, and issued Order No. 23-UI-243714 reversing decision # 82615 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On January 4, 2024, the employer filed a timely request to reopen the December 19, 2023, hearing.

On May 21, 2024, ALJ Fraser conducted a hearing and issued Order No. 24-UI-254702, allowing the employer's request to reopen the December 19, 2023, hearing and re-reversing decision # 82615 by again concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On June 6, 2024, the employer filed an application for review of Order No. 24-UI-254702 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-254702 allowing the employer's request to reopen the December 19, 2023, hearing. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-254702 is **adopted**. The rest of this decision addresses claimant's discharge from work.

FINDINGS OF FACT: (1) Sunrise Baptist Church employed claimant as an accountant and office manager from January 27, 2020, through July 25, 2023.

(2) When claimant began working for the employer, she had no prior experience with processing payroll or managing employee benefits.

(3) In or around May 2022, the employer decided to begin offering employer-sponsored health insurance to some of their employees. The employer's administrative pastor and trustee board provided claimant with reports "on what [benefits] to give to [each] employee, and what to withhold from the employee for their benefits." May 21, 2024, Transcript at 19. Claimant entered this information into the employer's payroll system.

(4) At some point after she initially entered the employee benefit information into the payroll system, claimant had "suspicions that something wasn't right," but took no action on those suspicions because she "trusted the system a little too much." May 21, 2024, Transcript at 18.

(5) In or around July 2023, two employees approached the lead pastor and informed him that they were concerned that "their benefits were wrong" and that "their... payroll statements weren't correct" because nothing was being withheld from their paychecks for their health insurance premiums. May 21, 2024, Transcript at 21. The employer investigated the matter, and determined that because claimant had made an error when she initially set up employee health benefits in 2022, the employer had erroneously paid the two employees' health insurance premiums for approximately a year.

(6) On July 25, 2023, the employer discharged claimant because of the payroll error she had made in 2022.

(7) Other than claimant's payroll error in 2022, the employer had never previously raised with claimant concerns about her job performance.

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

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).

The following standards apply to determine whether an "isolated instance of poor judgment" occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to

act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer's reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

OAR 471-030-0038(1)(d).

The employer discharged claimant in July 2023 because, approximately a year prior, claimant had made an error in entering information into the payroll system. This error ultimately led the employer to pay the health insurance premiums of two employees, rather than deducting the amount from those employees' paychecks. The employer has not met their burden to show that this error constituted misconduct.

Although it is not clear from the record precisely what led to the payroll error, the record shows that claimant had no previous experience in the administration of employee benefits. There is no indication in the record that claimant intentionally mis-entered the information that the employer gave her, or that she either knew or had reason to know that she was entering it incorrectly. Therefore, to the extent that the employer discharged claimant for the initial error itself, that error was the result of, at worst, ordinary negligence, which is not misconduct.

To the extent that the employer discharged claimant for her failure to detect and correct the error, that conduct was, at worst, an isolated instance of poor judgment. The record shows that claimant at some point became suspicious that there may have been an error, but ignored it and assumed that the system was set up correctly. At hearing, the employer's witness testified that the two employees at issue had told him that they had first spoken to claimant about the matter, and that claimant told the two employees, "Well it's just gonna be left as is." May 21, 2024, Transcript at 21–22.

This account, coupled with claimant's testimony that she had suspected there might be an issue, suggests that claimant's suspicion arose from the two employees' having approached her with their concerns. Thus, it appears that claimant had reason to believe that she had made an error which had the ongoing effect of causing the employer to pay for employee benefits they had not decided to pay for, but that she failed to act on this information. This arguably was a wantonly negligent violation of the employer's interests. Nevertheless, the record shows that this was an isolated instance of poor judgment. Claimant had never previously been disciplined for any concerns about her job performance, and the record does not show that she had ever engaged in any other willful or wantonly negligent behavior. Likewise, the record does not show that claimant's failure to act on her suspicions violated the law, was tantamount to unlawful conduct, created an irreparable breach of trust, or otherwise made a continued employment

relationship impossible. Therefore, the conduct for which claimant was discharged was, at worst, an isolated instance of poor judgment, which is not misconduct.

For the above reasons, 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-254702 is affirmed.

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

DATE of Service: July 16, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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