

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0577

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 22, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective April 21, 2024 (decision # L0004205406). Claimant filed a timely request for hearing. On July 19, 2024, ALJ Buckley conducted a hearing, and on July 26, 2024, issued Order No. 24-UI-260568, reversing decision # L0004205406 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving unemployment benefits insurance benefits based on the work separation. On August 7, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACTS: (1) Lowe's Home Centers, LLC employed claimant as a sales associate from July 20, 2022, until April 22, 2024.

(2) The employer expected employees who could not report for a scheduled shift to notify the store of the absence an hour before the start of the shift or as soon as possible after the shift begins. The employer gave disciplinary write-ups to employees upon their first and second violations of this expectation. Upon a third violation of this expectation, an employee is subject to being discharged. Claimant understood these expectations.

(3) Prior to April 5, 2024, the employer had given claimant disciplinary write-ups on two occasions for violations of their expectation to give notification of an absence an hour before the start of a shift or as soon as possible after the shift begins.

(4) On April 4, 2024, claimant became ill with an inflamed pancreas. On April 5, 2024, at 3:00 a.m. claimant was admitted to the hospital for treatment for suspected pancreatitis. Claimant underwent an endoscopy and, afterwards, was placed on pain medication and fell asleep.

(5) Claimant was scheduled to work a shift on April 5, 2024. The store opened on that date at 5:00 a.m., after claimant had been hospitalized. At 3:30 p.m. on April 5, 2024, after the beginning of her shift, claimant woke up. Claimant called the employer's store at that time and notified the employer that she could not report for her April 5, 2024, shift because of her illness.

(6) The employer regarded claimant's conduct on April 5, 2024, as having violated their expectation that she notify the store of her absence an hour before the start of the shift or as soon as possible after the shift began. As the employer had previously given claimant disciplinary write-ups for a first and second violation of the expectation, the employer decided to discharge claimant for the alleged violation on April 5, 2024.

(7) On April 22, 2024, the employer discharged claimant for her alleged April 5, 2024, violation of their expectation that she notify the store of her absence an hour before the start of the shift or as soon as possible after the shift began.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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 employer discharged claimant for allegedly violating, on April 5, 2024, their expectation that she notify the employer's store of an absence from her scheduled shift an hour before the start of the shift or as soon as possible after the shift began. The employer did not meet their burden to show that claimant violated this expectation on April 5, 2024, and so failed to establish that they discharged claimant for misconduct.

At hearing, the employer's witnesses collectively testified that the nature of the employer's expectation was that employees were expected to provide notification of an absence an hour before the start of a shift or as soon as possible after a shift begins. Transcript at 9, 16. Claimant provided un rebutted testimony that in the early morning hours of April 5, 2024, before the employer's store opened, she had been hospitalized. Transcript at 10, 23-25. Claimant testified that she underwent an endoscopy and, afterwards, was placed on pain medication and fell asleep. Transcript at 23-24. Claimant testified that at 3:30 p.m. on April 5, 2024, after the beginning of her shift that day, claimant woke up and called the employer's store to advise of her absence. Transcript at 24.

Based on the foregoing evidence, claimant notified the store of her absence on April 5, 2024, as soon as was possible for her to do so given her hospitalization, treatment, and the timing of when she awoke on

the afternoon of April 5, 2024, after having taken pain medication. Accordingly, claimant notified the employer of her absence as soon as possible after her April 5, 2024, shift began and did not violate the employer's expectation on that date. The employer therefore failed to prove that they discharged claimant for a willful or wantonly negligent violation of their expectations. As a result, 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-260568 is affirmed.

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

DATE of Service: August 23, 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

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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