

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0743

Reversed
Disqualification

PROCEDURAL HISTORY: On June 4, 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 May 5, 2024 (decision # L0004376675). Claimant filed a timely request for hearing. On October 17, 2024, ALJ Fraser conducted a hearing, and on October 18, 2024, issued Order No. 24-UI-270008, reversing decision # L0004376675 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving benefits as a result of the work separation. On October 22, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dallas School District No. 2 employed claimant as an office manager from August 16, 2023, until May 8, 2024.

(2) The employer expected that their employees would not report on their time sheet having worked time that they had not actually worked. Claimant understood this expectation.

(3) Claimant worked full time and was paid on an hourly basis. Her duties included working on the employer's payroll. Claimant was often required to work in excess of 40 hours per week and, at first, was told by her supervisor to keep track of the excess time worked and that she would receive compensatory time off later.

(4) At some point thereafter, claimant requested to take a compensatory day off and was told that she, as an hourly employee, was ineligible to take such days. Claimant "was mad that that was taken from [her]" and "felt like [she] deserved free time [off]" in compensation for unpaid overtime work. Transcript at 26.

(5) In April 2024, during the employer's spring recess, claimant decided to take a Thursday off work without telling her supervisor or the employer as compensation for the unpaid overtime she had worked. Claimant could have used accrued leave to be paid for the day off had she requested it. After failing to

work as scheduled that day, claimant completed a time sheet saying that she had worked eight hours. One of claimant's coworkers noticed claimant missing from work that day and later asked claimant whether she had been at work, to which claimant responded that she had. The coworker reported the matter to claimant's supervisor. Claimant's supervisor then made comments such that claimant suspected that the supervisor knew she had been absent, but claimant failed to volunteer that she had been absent or attempt to correct her time sheet.

(6) On April 19, 2024, after watching surveillance footage confirming that claimant had not reported for work on the day at issue, claimant's supervisor asked claimant whether she had been at work. Claimant admitted that she had not been at work and that she had reported the hours worked for that day on her time sheet as compensation for the unpaid overtime. The supervisor told claimant that she believed that claimant would not do this again. However, the employer decided to further investigate the matter.

(7) On May 8, 2024, the employer discharged claimant for having falsified her time sheet. The employer concluded that lesser discipline was inappropriate given the level of trust required of an office manager.

CONCLUSIONS AND REASONS: Claimant was discharged 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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). 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 for falsely reporting on her time sheet that she had worked on a day that she had not worked. The employer reasonably expected that their employees would not falsely represent that they had worked on their time sheets, and claimant was aware of that expectation. The order under review concluded that claimant's actions constituted a willful or wantonly negligent violation of the employer's policy, but that it was not misconduct because it was an isolated instance of poor judgement. Order No. 24-UI-270008 at 4. The record supports that claimant violated the employer's time sheet policy with at least wanton negligence. However, claimant's actions exceeded mere poor judgment and cannot be excused as an isolated instance of poor judgment.

Claimant testified that on a Thursday during the employer's spring recess, she intentionally failed to come to work without notifying the employer. Transcript at 17. Claimant further testified that she reported working this day on her timesheet to receive compensation for unpaid overtime previously worked, despite having been told that as an hourly employee she was not entitled to such compensatory days. Transcript at 17-18. While claimant felt justified in her actions at the time due to the employer's failure to pay her for working overtime, she was indifferent to the consequences of her actions, which she knew would violate the employer's time sheet policy. Claimant's actions therefore constituted misconduct unless excused as an isolated instance of poor judgment.

Claimant testified that she denied being absent from work to a coworker when asked if she was present on the day at issue. Transcript at 19. Claimant further testified that before her supervisor confronted her about her absence, the supervisor "hinted around that somebody was lying," and claimant "suspected that she might have been talking about [claimant], but [the supervisor] did not come straight out and ask the question." Transcript at 28. Claimant did not volunteer at that time that she had been absent or attempt to correct her time sheet and waited to see if her supervisor would confront her before admitting it. It can reasonably be inferred from these facts that claimant intended to deceive the employer to be paid for a day she did not work.

The employer's witness testified that claimant was discharged, as opposed to receiving lesser discipline, "due to the nature of her position" because her work as an office manager required a "high degree of . . . honesty." Transcript at 12. In contrast, claimant testified that her direct supervisor told her that she believed that what claimant did would not "ever happen again." Transcript at 20. A determination of whether a claimant's conduct caused a breach of trust is objective, not subjective, and the dispositive question is whether the "employer's loss of trust was a reasonable reaction to claimant's acts." *Callaway v. Employment Dep't.*, 225 Or App 650, 202 P3d 196 (2009). That claimant's work involved the employer's payroll supports that the employer's loss of trust in claimant for attempting to deceive the employer into paying her for time not worked on a specific day was reasonable. Accordingly, pursuant

to OAR 471-030-0038(3)(b)(D), claimant's actions exceeded mere poor judgment and constituted misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective May 5, 2024.

DECISION: Order No. 24-UI-270008 is set aside, as outlined above.

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

DATE of Service: November 18, 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، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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