

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0823

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 8, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving benefits effective May 5, 2024 (decision # L0005562313).¹ Claimant filed a timely request for hearing. On October 24, 2024, ALJ Monroe conducted a hearing, and on November 4, 2024, issued Order No. 24-UI-271919, reversing decision # L0005562313 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On November 25, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) Outside In employed claimant as a nurse practitioner at a school-based health center from January 18, 2019, until May 9, 2024.

(2) The employer expected employees to treat others in a courteous, respectful, and professional manner. Claimant understood these expectations.

¹ Decision # L0005562313 stated that claimant was denied benefits from June 9, 2024 to June 7, 2025. However, decision # L0005562313 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 5, 2024 (the Sunday of the week in which the decision concluded claimant had been discharged) and until she earned four times her weekly benefit amount. See ORS 657.176.

(3) Claimant suffered from post-traumatic stress disorder (PTSD). Claimant's PTSD symptoms were triggered by "any mention of punishment or... discipline." Transcript at 33. When triggered, these symptoms could include a "revving up of [claimant's] sympathetic nervous system," causing an increased heartrate and sweaty palms, and leading claimant to "react in ways that... the better version of [her] wouldn't react." Transcript at 33.

(4) In July 2023, in an effort to avoid having her PTSD symptoms triggered at work, claimant requested that the employer grant her the accommodation of notifying her of any disciplinary actions against her via email, rather than confronting her in person with such concerns. Claimant's psychiatrist, who had been treating claimant for her PTSD, advised her to make this request. Although claimant spoke to her supervisor about her PTSD symptoms on multiple occasions, the employer did not grant claimant the accommodation she requested.

(5) On April 9, 2024, per the requirements of the applicable collective bargaining agreement, the employer notified claimant via email that she would be required to attend a disciplinary meeting the following day. The employer also sent claimant a copy of the written warning they intended to issue to her during the meeting. Although the employer sent the written warning to claimant by email, claimant did not receive the emailed copy of the written warning in her inbox, and therefore was unable to review the written warning prior to the meeting.

(6) On April 10, 2024, claimant met with her supervisor to discuss the written warning, which alleged that claimant had incurred several violations of the employer's code of conduct between February and April 2024, largely relating to how claimant interacted with her colleagues. Shortly after the meeting began, the employer handed claimant a printed copy of the written warning. Upon receipt of the written warning, claimant became upset, called the process "bullshit," crumpled up the warning and threw it on the ground, began crying, and left the meeting in an effort to calm down. Transcript at 9. Claimant did not read the written warning in its entirety. Claimant's behavior in the meeting was the result of her PTSD having been triggered, and she had not been able to consider her actions before responding as she did. Claimant later recognized that she had behaved inappropriately at the meeting.

(7) After the April 10, 2024, meeting, the employer arranged for claimant and her supervisor to engage in "restorative, collaborative communications" to repair their working relationship. Transcript at 9. The first of these meetings occurred on April 12, 2024. Around this time, claimant began making an effort to be "more respectful and kind to [her] coworkers." Transcript at 40.

(8) On May 7, 2024, a second "restorative" meeting was scheduled with claimant and her supervisor. The employer's equity director was also present as a mediator. The meeting was not intended to be disciplinary in nature, and claimant understood as much. However, at the beginning of the meeting, claimant's supervisor raised concerns that claimant had violated the employer's code of conduct by allegedly having sent "angry text messages to a coworker a few weeks before that date." Transcript at 29. Claimant, believing that the meeting had become disciplinary in nature and that she was in trouble, again experienced a triggering of her PTSD symptoms. Claimant became upset and began crying, and the supervisor felt that claimant was acting in a "threatening" manner. Transcript at 23. The equity director had the supervisor leave the room while she helped claimant calm down. Later that day, after she had calmed down, claimant apologized to the supervisor for her actions.

(9) After claimant's conduct during the May 7, 2024, meeting, the employer felt that it would not be possible to restore the working relationship between claimant and her supervisor. The employer also felt that claimant's conduct had violated their expectations regarding the treatment of others. As a result, the employer discharged claimant on May 9, 2024.

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 employer discharged claimant because of her conduct during the May 7, 2024, meeting, which had been intended as an opportunity for claimant and her supervisor to restore their working relationship after a similar incident had occurred about a month prior. At the start of the meeting, the supervisor raised concerns that claimant had incurred additional violations of the employer's code of conduct in the preceding weeks. This triggered claimant's PTSD symptoms, causing claimant to become upset and start crying. The supervisor felt that claimant's conduct during the meeting was "threatening." However, it is unclear what claimant did during the meeting that the supervisor interpreted as "threatening." Neither the supervisor nor the equity director, the only other persons present for the meeting, testified at hearing, and the employer's witnesses did not clarify exactly what the supervisor interpreted as a threat.

Claimant testified that she did not believe that she engaged in any behavior that she thought would have been perceived as threatening. Transcript at 35. However, her testimony also suggested that, because she was upset during the meeting, she did not recall all of the specifics of what she said or did at the meeting. See Transcript at 34-36. Claimant suffered from PTSD, which was specifically triggered by disciplinary confrontations such as the supervisor's statements at the beginning of the meeting. Being so triggered caused claimant to behave impulsively and emotionally in a way that she was unable to control. Her behavior during the May 7, 2024, meeting was essentially involuntary, and not conscious behavior that she had the ability to control. Nor was claimant indifferent to the consequences of such behavior. She had attempted to minimize the possibility of being triggered at work by requesting that the employer notify her of any disciplinary concerns via email, rather than in person. She also made efforts after the written warning was issued on April 10, 2024, to improve how she interacted with her coworkers. These show that claimant made good-faith efforts to mitigate the possibility of violating the employer's expectations while suffering from an episode of PTSD symptoms.

For these reasons, claimant's conduct during the May 7, 2024, meeting was not willful or wantonly negligent. Her discharge therefore was not for misconduct, and she is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 24-UI-271919 is affirmed.

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

DATE of Service: December 26, 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 stated above.** See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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 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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