

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0161

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On September 27, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant benefits from August 18 through September 9, 2013 (decision # 74815). Claimant filed a timely request for hearing. On November 8, 2013, the Office of Administrative Hearings (OAH) scheduled a telephone hearing for November 21, 2013 at 1:30 p.m. Pacific Time. On November 22, 2013, ALJ Micheletti issued Hearing Decision 13-UI-05097, dismissing claimant's request for hearing for failure to appear. On December 8, 2013, claimant filed a request to reopen the hearing. On January 8, 2014, ALJ S. Lee issued Hearing Decision 14-UI-08079, denying claimant's request. On January 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not part of the record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information into the record with his request to reopen. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) The November 8, 2013 notice of hearing instructed claimant to appear at the November 21, 2013 hearing by telephoning OAH at the scheduled start time of 1:30 p.m. and entering an access code. The notice of hearing further instructed claimant to hang up and call another number at OAH if the ALJ did not appear at the hearing within five minutes of the scheduled start time.

(2) Claimant did not call in for the hearing until, according to his clock, it was 1:34 p.m. Claimant's access code was accepted when, according to his clock, it was 1:37 p.m. The ALJ was not on the line. Claimant waited six minutes before hanging up and calling the other number at OAH. Claimant and OAH determined that claimant's clock was four minutes slow. OAH informed claimant that the ALJ was going to dismiss his request for hearing for failure to appear.

CONCLUSIONS AND REASONS: Claimant failed to establish good cause for failing to appear at the November 21, 2013 hearing.

ORS 657.270(5) allows ALJs to consider a request to reopen after the hearing decision has been served. In such cases, the request must be in writing, filed within 20 days of the date of mailing of the decision, and explain in detail why the party failed to appear. OAR 471-040-0040(1)(b) and (3) (February 10, 2012) and OAR 471-040-0041(1)(b) and (4) (February 10, 2012). Unless the party demonstrates “good Cause,” the hearing may not be reopened. “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0040(2).

In the present case, claimant did not appear at the hearing because he failed to ensure his clock was accurate, called in four minutes after he believed the hearing was scheduled to start, and failed to immediately call the other number at OAH when the ALJ was not on the line. Claimant did not assert or show in his request to reopen that any of those factors were beyond his reasonable control. Nor do we find excusable claimant’s repeated mistakes in failing to ensure he complied with the instructions set forth in the notice of hearing. Claimant therefore failed to establish good cause for failing to appear at the November 21, 2013 hearing, and his request to reopen the hearing is denied.

DECISION: Hearing Decision 14-UI-08079 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: February 25, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.