

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1058

*Reversed*  
*Request to Reopen Allowed*

**PROCEDURAL HISTORY:** On April 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92147). Claimant filed a timely request for hearing. On May 7, 2014, ALJ Holmes-Swanson conducted a hearing, at which claimant failed to appear, and issued Hearing Decision 14-UI-16969, dismissing claimant's request for failure to appear. On May 12, 2014, claimant filed a request to reopen that included a written statement explaining why she failed to appear. On June 9, 2014, ALJ Kangas reviewed her statement and issued Hearing Decision 14-UI-19232, denying claimant's request to reopen. On June 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 14-UI-19232 is reversed, and a hearing on decision # 92147 is required.

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. OAR 471-040-0040(2) provides, "[g]ood cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

(b) Good cause does not include:

- (A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;
- (B) Not understanding the implications of a decision or notice when it is received.

In Hearing Decision 14-UI-19232, the ALJ wrote, “The appellant failed to appear at the previously scheduled hearing because she thought the hearing was scheduled for 8:30 am,” and, because “[c]arefully reading the notice and following its instructions were within the appellant’s reasonable control,” claimant did not show good cause for reopening. *See* Hearing Decision 14-UI-19232 at 2.

Claimant’s actual statement as to why she missed the hearing was, in its entirety,

I miss read [*sic*] the hearing time. I thought it was at 8:30 not 8:15 am. I called in, and *I thought I was calling in early*, to find out I had the time wrong.

(Emphasis added.) The ALJ did not ask, and the record fails to show, what time claimant called in “early” to participate in the hearing. In her written argument, claimant wrote,

I phoned in at 8:15 am on May 7, 2014. I thought I was actually going to be early in calling in. After going through a number of prompts to get me to where I needed to be, it was 8:20. I sat on hold for a good 10 minutes. The recording told me to hang up and call another number if I had been on hold for 10 minutes or more, which I had. So I hung up and phoned the other number and spoke with a gentlemen [*sic*] who said nobody was on the line any longer. I was there, and was trying to get through.<sup>1</sup>

Absent a reason to disbelieve claimant’s statement, we conclude that claimant was on the conference call attempting to participate in the hearing at the time scheduled for the hearing, notwithstanding any mistaken belief she might have held as to the scheduled time for the hearing. However, in Hearing Decision 14-UI-16969, the ALJ holding the May 7, 2014 hearing wrote that he “checked the telephone line attendance system 10 minutes after the scheduled hearing and confirmed that the claimant was not present.” Hearing Decision 16969 at 1.

Given that claimant the ALJ was unable to discern claimant’s presence on the hearing conference line despite the fact that she dialed in at the scheduled hearing time of 8:15 a.m., it appears more likely than not that claimant’s failure to appear at the hearing was *not* caused by her inexcusable mistake about what time the hearing was scheduled to begin, but rather by either a technical problem with the phone line that was beyond her reasonable control or an inadvertent, excusable error in claimant’s attempt to call in to the hearing.

Having concluded that claimant’s failure to participate in the May 7<sup>th</sup> hearing was the result of a circumstance beyond her reasonable control or an excusable mistake, Hearing Decision 14-UI-19232 is

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<sup>1</sup> Claimant’s new information is admissible under OAR 471-041-0090(2), as the information is relevant and material to our determination and, as claimant was not necessarily in a position to know the level of detail she would need to provide about her reasons for missing the hearing, we conclude that it is more likely than not that factors or circumstances beyond her reasonable control prevented her from providing the information with her reopen request.

reversed, claimant's request to reopen is allowed, and claimant is entitled to a hearing on the merits of decision # 92147.

**DECISION:** Hearing Decision 14-UI-19232 is set aside.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, not participating.

**DATE of Service:** June 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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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