

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1229

Affirmed
Backdating Request Denied

PROCEDURAL HISTORY: On January 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's backdating request (decision # 133926). Claimant filed a timely request for hearing. On March 3, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for March 12, 2014 between 1:00 p.m. and 3:00 p.m. On March 13, 2014, ALJ Murdock issued Hearing Decision 14-UI-12298, dismissing claimant's request for hearing on decision # 133926 for failure to appear. Claimant filed a timely request to reopen his hearing. On April 28, 2014, OAH issued notice of a hearing scheduled for May 9, 2014 at 3:30 p.m. On May 12, 2014, ALJ Wyatt issued Hearing Decision 14-UI-17381, dismissing claimant's request for hearing on decision # 133926 for failure to appear.

On June 17, 2014, claimant filed a late request to reopen his hearing. On June 25, 2014, ALJ Kangas reviewed claimant's request to reopen and issued Hearing Decision 14-UI-20317, dismissing claimant's June 17th request to reopen. On July 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. 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.

Even if we had considered claimant's new information, the outcome of this decision would remain the same. For claimant to be entitled to have the period in which he may request reopening extended, claimant has to prove that he had "good cause for failing to request reopening within the time allowed" and acted within seven days of when the circumstances preventing a timely filing ceased to exist. Here, claimant missed the hearing and missed the reopen request filing deadline because he remained with his father for a month, and he "forgot until [he] returned home and received the forms stating [he] had missed [his] hearing." Claimant did not provide any explanation for forgetting the hearing under the circumstances, including that he had already requested a hearing, missed it, requested reopening, and

therefore knew he had an important hearing scheduled and knew his request for hearing would be dismissed if he did not appear or request a postponement. Nor did he provide any explanation for why it took him almost six weeks before he ultimately filed his late request to reopen. Moreover, claimant's reasons for failing to appear at the May 12th hearing did not amount to good cause, either, given that he failed to request a postponement or take reasonable any steps to avoid missing that hearing or asking that it be rescheduled to accommodate his need to be with his parents.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-20317 is affirmed.

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

DATE of Service: July 21, 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. 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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