

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1287

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On June 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105244). Claimant filed a timely request for hearing. On June 25, 2014, ALJ Kirkwood conducted a hearing, at which claimant failed to appear, and on June 26, 2014 issued Hearing Decision 14-UI-20413, dismissing claimant's request for hearing. On July 8, 2014, claimant filed a timely request to reopen the hearing. On July 17, 2014, ALJ Kangas issued Hearing Decision 14-UI-21676, dismissing claimant's request. On July 29, 2014, claimant filed an application for review of Hearing Decision 14-UI-21676 with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not establish good cause to reopen the hearing.

A party who fails to appear at a hearing may ask to have the hearing reopened. ORS 657.270(5); OAR 471-040-0040. The request must be in writing and filed within 20 days of the date of mailing of the hearing decision. The party requesting reopening must also "set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing." OAR 471-040-0040(3). Unless the party demonstrates "good cause," the request will not be allowed.

For claimant to establish good cause to reopen the hearing, he must have submitted a written statement setting forth the reason he missed the hearing. In this case, however, claimant did not submit any such written statement. His request to reopen must, therefore, be denied.

In Hearing Decision 14-UI-21676, the ALJ also considered information claimant orally provided to OAH on June 27, 2014, after having taken "official notice" of that information. In so doing, the ALJ erred in two respects. First, there is no provision under the above referenced rule allowing for a party to establish good cause to reopen a hearing by means of an oral statement. Second, even if there was, the ALJ did not place the evidence of which she took official notice into the record, and, as that information

is not in the record, it is incapable of being reviewed by EAB pursuant to ORS 657.275(2). Because the ALJ did not admit that evidence into the record, EAB did not consider that information when reaching this decision.

Finally, claimant submitted a written argument to EAB, in which he argued his reasons for being unable to participate in the June 25, 2014 hearing. Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also 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 in writing with his request to reopen as required by OAR 471-041-0090 (October 29, 2006). Therefore, we did not consider that information when reaching this decision. *See* ORS 657.275(2).

Even if we had, the outcome of this decision would remain the same. Claimant argued that the reason he did not provide the information the ALJ explained was missing from his oral explanation for missing the hearing was that he was not asked. Although the unidentified person at OAH with whom claimant spoke on June 26th might not have asked claimant for that information, both the hearing decision that dismissed his request for hearing and the document titled "rights of review of a hearing decision," which is customarily mailed to parties with their hearing decisions, explained that parties requesting reopening must provide a written statement establishing good cause for missing the hearing. Moreover, although the ALJ identified what information claimant had not provided with his oral statement, insofar as establishing whether claimant had good cause for missing the hearing, claimant still did not provide that information. Nor would claimant's submission of that information at this point alter the outcome of these proceedings, considering he did not provide the information at the time he requested reopening, as required under OAR 471-040-0040(3).

For the foregoing reasons, we conclude that claimant failed to show good cause to reopen the hearing. His request to reopen is, therefore, denied.

DECISION: Hearing Decision 14-UI-21676 is affirmed. Decision # 105244 remains undisturbed.

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

DATE of Service: August 19, 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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