

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1499

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 134737). On July 14, 2014, claimant filed a timely request for hearing. On July 17, 2014, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 31, 2014 at 9:30 a.m. Claimant did not appear at the hearing. On August 1, 2014, ALJ Holmes-Swanson issued Hearing Decision 14-UI-22664, dismissing claimant's request for hearing for failure to appear. On August 12, 2014, claimant filed a timely request to reopen her hearing. On August 28, 2014, ALJ Kangas reviewed claimant's request to reopen and issued Hearing Decision 14-UI-24234, denying claimant's request to reopen her hearing. On September 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant included information regarding the reasons why she did not appear at the July 31 hearing; this information was not previously provided to the OAH. Claimant explained that in July 2014, she was in the process of selling her house, she was under "extreme stress" because of the home sale, and she filed a change of address with the U.S. postal service. Claimant asserted that she did not receive notification of the hearing until "well after July 31st (hearing date). I wrongly assumed I was covering all bases by paying and notifying USPS. At the time of the selling of my house, looking for new accommodation, packing and moving the last thing on my mind was my hearing." Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information shows that it was prevented by circumstances beyond its reasonable control from presenting the information at a hearing.

Claimant filed a request for hearing with OAH on July 14, 2014, at a time when she knew that she would soon be changing addresses because of the sale of her home. Claimant knew that her hearing request was pending on the date her home sale closed,¹ and was expecting notification of the hearing

¹ Claimant closed the sale of her home on July 17, 2014. (Motion to Reopen).

from OAH. Claimant did not promptly notify OAH or the Department of her address change; she only did so on August 12, 2014, when she filed her motion to reopen. Claimant asserted that her failure to notify OAH or the Department of her address change resulted from her erroneous belief that she was “covering all bases by paying and notifying USPS [of her address change].” It is well within a party’s reasonable control to avoid the type of human error that caused claimant to miss her hearing. Accordingly, claimant failed to demonstrate that circumstances beyond her reasonable control prevented her from participating in the hearing and presenting the new information she asks EAB to consider. Claimant’s request to present new information is denied.

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-24234 is affirmed. Hearing Decision 14-UI-22664 remains undisturbed.

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

DATE of Service: September 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. 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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