

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1530

*Reversed*  
*Request to Reopen Allowed*

**PROCEDURAL HISTORY:** On July 22, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work from June 29, 2014 through July 19, 2014 (weeks 27-14 through 29-14) (decision # 102353). Claimant filed a timely request for hearing. On July 25, 2014, the Office of Administrative Hearing issued notice of a hearing scheduled for August 11, 2014 at 2:30 p.m. Claimant did not appear at the hearing. On August 11, 2014, ALJ Triana issued Hearing Decision 14-UI-23180, dismissing claimant's request for hearing for failing to appear. On August 12, 2014, claimant filed a timely request to reopen her hearing.

On September 16, 2014, ALJ Lohr conducted a hearing, and ruled on the record that claimant had not shown good cause for reopening her hearing. On September 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On September 23, 2014, ALJ Lohr issued notice of her decision, Hearing Decision 14-UI-25640, reiterating her ruling that claimant had not shown good cause for reopening her hearing.<sup>1</sup>

**CONCLUSIONS AND REASONS:** Hearing Decision 14-UI-25640 should be reversed, and claimant's request to reopen allowed. Claimant missed the hearing because she overslept after taking a Tylenol four and a half hours prior to the scheduled hearing. Claimant was three months pregnant at the time and had been experiencing debilitating migraine headaches during her pregnancy. In Hearing Decision 14-UI-25640, the ALJ concluded "it was reasonably foreseeable that claimant could miss her hearing if she took a nap after taking migraine medication without setting an alarm." Page 3. We disagree.

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<sup>1</sup> Claimant's application for review was received by EAB one day prior to the issuance of Hearing Decision 14-UI-25640. However, during the hearing on September 16, 2014, the ALJ clearly ruled on the record that claimant had not shown good cause for reopening her hearing. Audio at ~15:35. Therefore, claimant's September 22, 2014 application for review was directly in response to Hearing Decision 14-UI-25640, issued the following day. OAR 471-040-0060(1) (an application for review is valid provided the party requests review of, or expresses a present intent to appeal, a specific hearing decision).

Claimant testified that she had not had any untoward reaction to Tylenol prior to her pregnancy. Her failure to appear was the result of an excusable mistake.

Hearing Decision 14-UI-25640 is set aside, and this matter remanded for further proceedings consistent with this order.

**DECISION:** Hearing Decision 14-UI-25640 is set aside, as outlined above.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, 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](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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