

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1764

Reversed
Request to Reopen Allowed

PROCEDURAL HISTORY: On August 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant committed a disqualifying act (decision # 152418). Claimant filed a timely request for hearing. On September 9, 2014, the Office of Administrative Hearing issued notice of a hearing scheduled for September 23, 2014 at 10:45 a.m. Claimant did not appear at the hearing. On September 23, 2014, ALJ S. Lee issued Hearing Decision 14-UI-25699, dismissing claimant's request for hearing for failing to appear. On September 30, 2014, claimant filed a timely request to reopen his hearing. On October 14, 2014, ALJ S. Lee conducted a hearing, and on October 30, 2014 issued Hearing Decision 14-UI-27881 concluding claimant had not shown good cause for reopening his hearing. On November 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-27881 is reversed, and claimant's request to reopen allowed.

Under OAR 471-040-0040(1) (February 2, 2012), an ALJ may reopen a hearing if a party that failed to appear at the hearing shows "good cause" for the failure to appear.

Claimant missed the hearing because he worked the day of the hearing on a road crew and had access only to his cell phone to participate in the hearing. In his request to reopen, claimant explained he was "outside cell phone coverage" and was unable to participate in the scheduled hearing. In Hearing Decision 14-UI-27881, the ALJ concluded "Claimant's choice of telephone to use to call in for hearing was within his reasonable control as was his choice not to ask for the day off for the hearing." The ALJ further concluded "it was within claimant's reasonable control to contact his cell phone service company to ensure that where he was going to be working did not include a dead zone for his phone." We disagree. OAR 471-010-0040(2)(a)(B) specifically states that "good cause" for missing a hearing includes, for telephone hearings, "unanticipated, and not reasonably foreseeable, loss of telephone service." Claimant credibly testified he had no access to a land line telephone at work, and that he could

not afford to miss work for the entire day. The recommendation by OAH that claimant not use a cell or cordless phone, is simply that: a recommendation, not a requirement. The ALJ's assertion that claimant's phone service "failed because he entered a knowable [sic] area where his service did not work" is not supported by substantial evidence or substantial reasoning. Accordingly, the record does not show that the existence of a dead zone in the area where claimant was working on the day of the hearing was either anticipated or reasonably foreseeable.

Hearing Decision 14-UI-27881 is set aside, and this matter remanded for further proceedings consistent with this order.

DECISION: Hearing Decision 14-UI-27881 is set aside, as outlined above.

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

DATE of Service: December 4, 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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