

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1789

Affirmed
Request to Reopen Denied
Overpayment and Penalties

PROCEDURAL HISTORY: On June 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,377 overpayment, \$206.55 in monetary penalties, and 12 penalty weeks. Claimant filed a timely request for hearing. On October 8, 2014, the Office of Administrative Hearings (OAH) issued a notice of hearing scheduled for October 23, 2014, at 2:30 p.m. Claimant did not appear at the hearing. On October 23, 2014, ALJ Murdock issued Hearing Decision 14-UI-27480, dismissing claimant's request for hearing for failure to appear. On October 27, 2014, claimant filed a timely request to reopen the hearing. On November 6, 2014, ALJ Murdock reviewed claimant's request to reopen and issued Hearing Decision 14-UI-28317, re-dismissing claimant's request for hearing. On November 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

CONCLUSION AND REASONS: Claimant failed to show good cause for reopening his hearing, and his request to reopen is denied.

We construe the ALJ's dismissal of claimant's request for hearing in Hearing Decision 14-UI-28317 as a denial of claimant's request to reopen his hearing.¹

OAR 471-040-0040(1)(c) (February 2, 2012) allows a hearing to be reopened by the ALJ upon a finding of good cause. Under OAR 471-040-0040(2), "good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control.

Claimant missed his hearing by one day because he thought the hearing was scheduled for October 24, 2014. EAB DR Exhibit 5. The Notice of Hearing states "(t)his hearing has been scheduled for **October 23, 2014** and will begin at **2:30 PM Pacific Time**." Claimant failed to carefully read the Notice of Hearing and follow its instructions. It was well within claimant's reasonable control to carefully read. Therefore, claimant has not shown good cause to reopen his hearing.

DECISION: Hearing Decision 14-UI-28317 is affirmed.

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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¹Claimant's request to reopen is marked as EAB Exhibit 1, and admitted as an EAB Exhibit. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, within 10 days of the date on which this decision is mailed. Unless any such objection is received, EAB Exhibit 1 will remain part of the record.