

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1928

Reversed
Request to Reopen Allowed

PROCEDURAL HISTORY: On October 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124116). Claimant filed a timely request for hearing. On November 6, 2014, the Office of Administrative Hearing (OAH) issued notice of a hearing scheduled for November 20, 2014 at 2:30 p.m. Claimant did not appear at the hearing. On November 21, 2014, ALJ Clink issued Hearing Decision 14-UI-29141, dismissing claimant's request for hearing for failing to appear. On November 25, 2014, claimant filed a timely request to reopen his hearing. On December 15, 2014, ALJ Kangas reviewed claimant's request and issued Hearing Decision 14-UI-30375, denying claimant's request to reopen his hearing and leaving Hearing Decision 14-UI-29141 undisturbed. On December 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-30375 is reversed, and claimant's request to reopen allowed.

A party who fails to appear at a hearing may ask to have the hearing reopened. ORS 657.270(5); OAR 471-040-0040 and OAR 471-040-0041 (February 2, 2012). The request must be in writing, filed within 20 days of the date of mailing of the hearing decision, and explain in detail why the party failed to appear. Unless the party demonstrates "good cause", the request will not be allowed. "Good cause" means, generally, that an excusable mistake or circumstances beyond the party's reasonable control prevented the party from appearing at the hearing.

Claimant missed the hearing because the cell phone he used to participate in the hearing dropped the call, and he was unable to call again in time to join the hearing. In Hearing Decision 14-UI-30375, the ALJ concluded that, because claimant did not provide any information regarding why "he was (un)able to contact the OAH to request the hearing be postponed until he resolved the problems he was having with his cell phone," he failed to establish good cause to reopen the hearing. We disagree.

OAH's Notice of Hearing advises parties against relying on cellular phones to participate in hearings, likely due to the possibility of dropped calls. However, evidence shows that, in this case, claimant did not have a different phone to use.¹ To mitigate the possibility of having a dropped call, claimant contacted his cellular service provider and was told that he lived in a "fair coverage area," in which he had a heightened risk of experiencing a dropped call. However, he then actively worked with his service provider to resolve his coverage issues. Given that claimant did not have or receive any estimated time of resolution from his provider, and given that, as a practical matter, OAH could not postpone claimant's hearing indefinitely, requesting a postponement in this case was impracticable.

In sum, claimant called prepared to participate in the hearing at the scheduled time using the only phone he had. When his phone unexpectedly dropped the call, he successfully placed a second call within six minutes of the first. The fact that 13 minutes passed by the time he made contact with anyone about joining the hearing, and the ALJ had already dismissed the hearing, were beyond his ability to control. The record shows that claimant made every reasonable effort to participate in the hearing by using the only phone he had, checking his coverage, and, when his call unexpectedly dropped, calling again immediately to attempt to join the hearing. His failure to participate in the hearing despite his efforts to do so constituted a factor outside his reasonable control.

Good cause has been shown to reopen the hearing. Hearing Decision 14-UI-30375 is, therefore, reversed. Claimant is entitled to have a new hearing scheduled on the merits of decision # 124116.

DECISION: Hearing Decision 14-UI-30375 is set aside, as outlined above.

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

DATE of Service: December 30, 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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¹ According to popular news outlets, between one-third and one-half of American homes have only wireless telephone service.