

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0224

*Affirmed*  
*Request to Reopen Dismissed*  
*Ineligible*

**PROCEDURAL HISTORY:** On September 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 81938) concluding that claimant was not eligible for the Supplemental Unemployment for Dislocated Workers (SUD) extension program because she became eligible for an Alternative Base Year (ABY) claim against the state of California on April 6, 2014. On October 20, 2014, decision # 81938 became final without a request for hearing having been filed. On October 27, 2014, claimant filed a late request for hearing. On November 3, 2014, ALJ Kangas issued Hearing Decision 14-UI-30922, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting responses to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.<sup>1</sup> On November 7, 2014, the Office of Administrative Hearings (OAH) received claimant's timely response. On December 3, 2014, OAH issued a letter entitled, "Cancellation of Hearing Decision" for Hearing Decision 14-UI-30922.

On January 7, 2015, the OAH mailed notice of a hearing scheduled for January 22, 2015 at 10:45 a.m., at which claimant failed to appear. On January 22, 2015, ALJ R, Davis issued Hearing Decision 15-UI-32193, re-dismissing claimant's request for hearing because claimant failed to appear. On January 28, 2015, claimant filed a timely request to reopen her hearing. On February 24, 2015, ALJ Seideman conducted a hearing, and on February 25, 2015 issued Hearing Decision 15-UI-34032, dismissing claimant's request to reopen the hearing on the Department's administrative decision # 81938. On March 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Although these proceedings are based upon the Department's September 29, 2014 decision # 81938, denying claimant SUD benefits because she became eligible for an ABY claim against California, EAB's review in this matter is confined to the matter at issue in Hearing Decision 15-UI-34032, claimant's request to reopen. Only if claimant were to establish good cause for failing to appear at the

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<sup>1</sup>Hearing Decision 14-UI-30922.

hearing, and good cause for filing a late request for hearing on decision # 81938, would we then have jurisdiction to address the merits of the SUD eligibility itself. Because we have determined, for the reasons explained below, that claimant did not have good cause for failing to appear at the hearing, the issues of claimant's late request for hearing and SUD eligibility cannot be addressed. We have no jurisdiction in this case to address the SUD eligibility issue or the late request for hearing issue. While claimant initially had the right to a hearing on the Department's decision concerning her SUD eligibility, she allowed her rights to lapse first by failing to timely request a hearing, and second by failing to appear at the hearing she was given to show good cause for her late hearing request. Accordingly, we have no jurisdiction to consider the circumstances of claimant's SUD eligibility, and she has exhausted her rights to administrative review of that matter.

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Although claimant received notice of the January 22, 2015 hearing, she failed to appear because she was traveling from Fontana, California to Oregon and was unable to find cell phone service at the time of her 10:45 a.m. hearing.

(4) At the February 24, 2015 hearing, an OAH administrative specialist testified that the only recorded contact claimant had with OAH on January 22, 2015 was a phone call at 1:15 p.m. The OAH witness testified from notes taken during this January 22, 2015 phone call. At that time, claimant reported she was late for the hearing, and finally got cell phone service approximately one-half hour after the scheduled hearing time. The phone call ended at 1:18 p.m.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen is dismissed.

Although the parties disagreed as to when claimant called in for the January 22, 2015 hearing, claimant acknowledged several times during the February 24 hearing that she called in late for the hearing. Audio at ~13:58. Claimant also acknowledged that she was aware that cell phone reception was not uniform on the I-5 corridor. OAR 471-040-0040(2)(B) provides that good cause includes, for telephone hearings, unanticipated, and not reasonably foreseeable loss of telephone service. However, given that claimant understood prior to the hearing that cell phone reception was not uniform on the I-5 corridor, her loss of cell phone service was not unforeseeable. Claimant had it within her reasonable control to use a land line or to predetermine a location which would provide her cell phone reception at the time of the hearing. Claimant had the burden of proof to show that an excusable mistake or factors beyond her reasonable control prevented her from participating in her hearing. Claimant did not meet this burden. Therefore, claimant has not shown good cause for failing to appear at the hearing and her request to reopen her hearing must be dismissed.

**DECISION:** Hearing Decision 15-UI-34032 is affirmed. Administrative decision # 81938 remains undisturbed.

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

**DATE of Service: March 5, 2015**

**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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