

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0455

Affirmed
Reopen Request Denied
Overpayment Assessed

PROCEDURAL HISTORY: On February 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$602 overpayment based on under-reported earnings (decision # 201378). Claimant filed a timely request for hearing. On March 24, 2015, the Office of Administrative Hearings (OAH) issued a notice of hearing scheduled for April 7, 2015 at 9:30 a.m. Claimant did not appear at the hearing. On April 7, 2015, ALJ M. Davis issued Hearing Decision 15-UI-36446, dismissing claimant's request for hearing for failure to appear. On April 10, 2015, claimant filed a request to reopen with OAH. On April 15, 2015, ALJ Kangas reviewed claimant's request and issued Hearing Decision 15-UI-36915, denying claimant's request to reopen his hearing. On April 21, 2015, 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. But even if we had considered his argument, our decision would be unchanged. In his argument, claimant asserted that he was very busy at work and mistakenly believed that the hearing would begin at 10:30 a.m. We agree with the ALJ that carefully reading the hearing notice, which clearly stated that the hearing would begin at 9:30 a.m., and following its instructions were within claimant's reasonable control. Additionally, claimant provided no information to demonstrate that if he had realized his hearing was at 9:30 a.m., he would have been unable to attend the hearing. Therefore claimant has not shown that an excusable mistake or circumstances beyond his reasonable control caused him to miss the hearing, so good cause has not been shown.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-36915 is affirmed. Hearing Decision 15-UI-36446 remains undisturbed.

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

DATE of Service: April 22, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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