

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0525**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 12, 2015, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant voluntarily left work without good cause to attend school (decision # 93233), and the other concluding claimant was not available for work because of his school attendance (decision # 91324). On March 27, 2015, claimant filed a timely request for hearing using forms attached to each decision. On April 6, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing on decision # 91324 scheduled with ALJ R. Frank for April 16, 2015 at 1:30 p.m. On April 8, 2015, OAH mailed notice of another hearing, on decision # 93233, scheduled with ALJ Murdock the same day but at 10:45 a.m.

On April 16, 2015, ALJ Murdock convened a hearing at 10:45 a.m., at which claimant appeared. On April 16, 2015, ALJ R. Frank convened a hearing at 1:30 p.m., at which claimant failed to appear. On April 16, 2015, ALJ R. Frank issued Hearing Decision 15-UI-37006, dismissing claimant's request for hearing on decision # 91324 for failure to appear. On April 17, 2015, ALJ Murdock issued Hearing Decision 15-UI-37072, affirming decision # 93233.

On May 6, 2015, claimant filed an application for review of Hearing Decision 15-UI-37072 with the Employment Appeals Board (EAB). Claimant included a written argument with his application for review, which we considered to the extent it was relevant and based on the hearing record.

As a preliminary matter, claimant included information addressing the merits of decision # 91324, which found him ineligible to receive benefits based on the conclusion that he was not available for work because he attended school, with his application for review. That issue is not before us, as claimant has not requested EAB review that matter. Because nothing in his argument addressed why he failed to appear at the hearing in that matter, EAB did not construe the written argument as a request to reopen. However, while reviewing the record of the 10:45 a.m. hearing in this matter, it was apparent that claimant attempted to address the merits of decision # 91324 and told the ALJ that he thought the reason for the 10:45 a.m. hearing was to discuss his availability for work based on his school attendance. Claimant was, clearly, confused that the Department had issued two decisions about the effect of his

school attendance on his claim for benefits, and it was also clear that he did not understand that he had two separate hearings scheduled for the same day, a few hours apart, one for each decision. The ALJ during the 10:45 a.m. hearing correctly informed claimant that the 10:45 a.m. hearing was scheduled and convened to cover the merits of decision # 93233, and that decision # 91324 was being treated as a separate matter altogether. However, for unknown reasons, the ALJ did not look up claimant's cases in OAH records in order to provide claimant with accurate information that might resolve his confusion, but instead referred to proceedings on decision # 91324 as though claimant had never requested a hearing on that matter, even though he had, and as though no hearing was scheduled even though a hearing, with another ALJ from OAH, was scheduled to be held less than three hours later. Given claimant's confusion, which was likely exacerbated by the confusing information he received about the 1:30 p.m. hearing during the 10:45 a.m. hearing, it is no surprise that claimant then failed to appear for the 1:30 p.m. hearing the same day, resulting in the dismissal of his request for hearing on that matter.

Claimant has the right to request that the 1:30 p.m. hearing be reopened, however. Because of the amount of time that has passed since Hearing Decision 15-UI-37006 was issued, claimant's request to reopen would be considered "late." If claimant chooses to file a late request to reopen with the Office of Administrative Hearings, claimant's request must 1) be in writing, 2) show good cause for failing to appear at the 1:30 p.m. hearing on April 16<sup>th</sup>, 3) show good cause for filing the request to reopen more than 20 days after hearing Decision 15-UI-37006 was issued, and 4) be filed within 7 days of the date the circumstances that caused claimant to file a late request to reopen ceased to exist. "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond claimant's reasonable control. Claimant should include all information regarding the reopen request that he wants the ALJ to consider when deciding whether or not to allow claimant's reopen request, as he might not have any additional opportunity to do so later.<sup>1</sup> Only if his request to reopen is allowed by an ALJ at OAH would claimant be given the opportunity to present evidence concerning decision # 91324.

**FINDINGS OF FACT:** (1) Roger Langelier's Construction Company employed claimant as a laborer from June 9, 2014 through September 4, 2014.

(2) Claimant's work was seasonal, the amount of available work was decreasing, and he expected the job to end by October or November 2014. He was admitted to college in approximately September 2014, and decided attend in the absence of steady work. On September 4, 2014, claimant quit work to attend college.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). OAR 471-030-0038(5)(b)(D) (August 3, 2011) expressly provides that leaving work without good cause includes "[l]eaving to attend school, unless required by law."

---

<sup>1</sup> The information in this paragraph explaining the reopen request procedures at the Office of Administrative Hearings is paraphrased from information contained in Hearing Decision 15-UI-37006 at 4, under the heading "Appeal Rights." If claimant has any questions about the reopen request procedures, he should contact the Office of Administrative Hearings directly at (800) 311-3394.

In this case, the only reason given for claimant's decision to quit work was his school attendance. He did not assert or show that he was required by law to attend school. Claimant argued that the work he left was seasonal, and it would have ended anyway within a month or two had he not quit the job. However, the facts remain that he quit the job of his own volition before an involuntary work separation could occur, and, under the above-cited rule, it is immaterial whether the work might have ended shortly after claimant quit, because claimants who quit work for school attendance do not have good cause for quitting unless they are required by law to attend school. Therefore, we must conclude that claimant quit work without good cause. He is, therefore, disqualified from receiving unemployment insurance benefits because of his work separation until he has earned four times his weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 15-UI-37072 is affirmed.

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

**DATE of Service:** May 13, 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](http://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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.