

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0688**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On April 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100805). Claimant filed a timely request for hearing. On May 11, 2015, ALJ M. Davis issued Hearing Decision 15-UI-38247, dismissing claimant's request for hearing for failure to appear. On May 15, 2015, claimant filed a request to reopen. On May 27, 2015, ALJ Kangas issued Hearing Decision 15-UI-39066, denying claimant's request to reopen. On June 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

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). Therefore, we did not consider claimant's argument when reaching this decision. Even if we had, however, the outcome would remain the same. In her written argument, claimant asked for a new hearing, having missed the May 11, 2015 hearing that was previously scheduled in this matter. Given that claimant's request to reopen was already denied by the Office of Administrative Hearings (OAH), claimant's request for relief would have been construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information only if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Although claimant explained that an unexpected loss of phone service had resulted in her failure to participate in the hearing, claimant did not provide any reasons why she did not provide OAH with that information when she filed her request to reopen, as required. Hearing Decision 15-UI-38247, which dismissed claimant's request for hearing for failure to appear, stated, in pertinent part,

If you did not appear at the hearing, you may request to reopen the hearing. \* \* \* Your request to reopen must: \* \* \* show that factors or circumstances beyond your reasonable control caused you to miss the hearing \* \* \* Include all information regarding your reopen request that you

want the Administrative Law Judge to consider when deciding whether to grant your reopen request. \* \* \*<sup>1</sup>

That information was reiterated on an enclosure that OAH customarily mails with the hearing decisions it issues, titled “Rights of Review of a Hearing Decision,” which also stated,

I missed the hearing, no hearing was held and my appeal was dismissed. What can I do? \* \* \*  
You must include a statement explaining why you failed to appear or your request will be dismissed. Unless your statement shows that circumstances beyond your reasonable control prevented you from appearing at the hearing, your request will be denied.<sup>2</sup>

Given that claimant was informed of the requirement that she explain the circumstances that prevented her from appearing during the hearing, the materials claimant submitted to OAH did not include an explanation, and claimant’s submission to EAB did not identify any reason why she was unable to submit her explanation to OAH with her request to reopen, the record fails to show that factors or circumstances beyond claimant’s reasonable control prevented her from offering the information during proceedings at OAH. Consequently, had EAB considered claimant’s written argument, claimant’s request for EAB to consider her new information explaining why she failed to appear at the hearing would be denied, and the outcome of this decision would remain the same.

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-39066 is affirmed.

J. S. Cromwell and D. H. Hettle, *pro tempore*;  
Susan Rossiter, not participating.

**DATE of Service:** June 9, 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.

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<sup>1</sup> Hearing Decision 15-UI-38247 at 2.

<sup>2</sup> We take notice of this fact, which is within EAB’s specialized knowledge. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.