

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0853**

*Reversed*  
*Request to Reopen Granted*

**PROCEDURAL HISTORY:** On April 7, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #93158). Claimant filed a timely request for hearing. On April 14, 2015, the Office of Administrative Hearings (OAH) issue notice of a telephone hearing scheduled for April 29, 2015 at 10:45 a.m. On April 29, 2015, ALJ Triana issued Hearing Decision 15-UI-37657, dismissing claimant's request for hearing for failure to appear. On May 22, 2015, claimant filed a request to reopen the hearing with OAH. On July 7, 2015, ALJ Holmes-Swanson conducted an interpreted hearing, and on July 8, 2015, issued Hearing Decision 15-UI-41188, denying claimant's request to reopen. On July 13, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant is a native Vietnamese speaker with limited English proficiency. In the request for hearing she filed on decision #93158, she indicated that she needed a Vietnamese interpreter for the hearing.

(2) The notice of the April 29, 2015 hearing OAH mailed to claimant stated,

At the time of hearing, you must call 1-877-622-4041. Using the telephone keypad, enter the Access code **8831991** followed by the # key. (Emphasis in original.)

(2) Sometime during the evening of April 28, 2015, the son of claimant's employer gave her the hearing notice for the April 29, 2015 hearing.

(3) On April 29, 2015, claimant called the number on the hearing notice. She was unable to understand the instructions given to her when she called this number and never connected to the hearing. Exhibit 1.

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that claimant has shown good cause to reopen her hearing.

Under OAR 471-040-0040(1) (February 10, 2013), an ALJ may reopen a hearing if the party requesting reopening failed to appear at the hearing and demonstrates good cause for failing to appear. Good cause for reopening exists if the party's failure to act arises from an excusable mistake or factors beyond the party's reasonable control. OAR 471-040-0040(1)(a).

Claimant apparently called the number stated on the hearing notice that gave her directions for connecting to the April 29, 2015 hearing; she was unable to understand these directions because of her limited English proficiency and never connected to the hearing. The ALJ concluded that claimant's failure to appear at the hearing was not due to a circumstance beyond her reasonable control or an excusable mistake because "the [hearing] notice includes information in Vietnamese regarding assistance in understanding the English language notice." Hearing Decision 15-UI-41188. We disagree. Claimant was able to understand the instructions in the hearing notice – to call a particular number. Claimant's difficulties occurred when she called this number. Claimant had no way of realizing that she would be given instructions she would be unable to understand until she called the number on the hearing notice. In addition, claimant would have no way of realizing that the Vietnamese interpreter she had requested would not be provided until she had followed directions in English for connecting to the hearing. Claimant's inability to participate in the April 29 hearing thus resulted from her mistaken belief about the extent of English proficiency required to connect to the hearing, or the availability of a Vietnamese interpreter. We conclude that claimant's mistake was excusable and that claimant has therefore demonstrated good cause for reopening her hearing.

Hearing Decision 15-UI-41188 is reversed. In accordance with ORS 657.275(1), this matter is remanded to the OAH for a hearing and a decision on the merits of claimant's work separation.

**DECISION:** Hearing Decision 15-UI-41188 is set aside, as outlined above.

Susan Rossiter and D. P. Hettle;  
J. S. Cromwell, not participating.

**DATE of Service: July 21, 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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