

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1004

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On June 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 74311). Claimant filed a timely request for hearing. On July 1, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 16, 2015 at 3:30 p.m. On July 17, 2015, ALJ Shoemake issued Hearing Decision 15-UI-41660, dismissing claimant's hearing request for failure to appear at the hearing. On July 23, 2015, claimant filed a request to reopen the hearing. On August 13, 2015, ALJ Buckley conducted a hearing, and on August 18, 2015 issued Hearing Decision 15-UI-43130, denying claimant's request to reopen. On August 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 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. Even if we had, the outcome of this decision would remain the same for the reasons that follow.

FINDINGS OF FACT: (1) The notice of hearing mailed to claimant stated, in relevant part:

1. This hearing has been scheduled for **July 16, 2015** and will begin at **3:30 PM Pacific Time** with Administrative Law Judge R. Shoemake.
2. At the time of hearing, you must call 1-877-622-4041. * * *
4. If you requested the hearing and you do not call **1-877-622-4041** at the time set for your hearing, the hearing will be dismissed.

(Emphasis in original.)

(2) Claimant did not call into the hearing because he had been told, and mistakenly believed, that he would receive the conference call and did not have to call in himself. Claimant later received the notice

of hearing, but he read only the time and date of the hearing and not read the other instructions explaining how to participate in the hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen should be denied.

ORS 657.270(5) provides that parties who failed to appear at a hearing may request that it be reopened, and that an ALJ may reopen the hearing if the party shows, among other things, "good cause" for failing to appear. OAR 471-040-0040(2) provides,

“Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

Claimant's failure to appear at the hearing in this matter was not the result of an excusable mistake or a factor or circumstance beyond his reasonable control. Although it was suggested to claimant orally when he filed his request for hearing that he would receive a call for the hearing, he was later provided with a packet containing specific instructions about how to attend and participate in the hearing. The first page of those instructions directed claimant to call into the hearing, provided the phone number and access code for doing so, and stated that claimant's hearing would be dismissed if he did not call in. The instruction to call and the phone number provided were presented underlined or in bold font to draw the reader's attention. It was within claimant's reasonable control to read the instructions he was provided, and his failure to attend the hearing because he chose not to read the instructions was not consistent with the sort of unforeseeable or unpreventable events described in the examples of "good cause" in the Department's rule. Therefore, claimant did not show good cause to reopen the hearing.

DECISION: Hearing Decision 15-UI-43130 is affirmed.

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

DATE of Service: August 31, 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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