

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1024**

*Affirmed*  
*Requests to Reopen Denied*

**PROCEDURAL HISTORY:** On April 7, 2015, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant was not able to or available for work from February 15, 2015 to April 4, 2015 (decision # 122427), and the second concluding that claimant was discharged for theft and canceling benefit rights based on wages earned prior to the date of her discharge (decision # 135911). On April 11, 2015, claimant filed timely requests for hearing. On April 16, 2015, the Office of Administrative Hearings (OAH) mailed two notices of two hearings scheduled for April 30, 2015. On April 30, 2015, ALJ R. Davis issued Hearing Decisions 15-UI-37728 and 15-UI-37732, dismissing claimant's requests for hearing for failure to appear. On May 20, 2015, Hearing Decisions 15-UI-37728 and 15-UI-37732 became final without claimant having requested reopening. On May 26, 2015, claimant filed late requests to reopen. On June 5, 2015, ALJ Kangas issued Hearing Decisions 15-UI-39602 and 15-UI-39609, dismissing claimant's requests. On June 10, 2015, claimant filed applications for review of Hearing Decisions 15-UI-39602 and 15-UI-39609 with the Employment Appeals Board (EAB). On July 7, 2015, EAB issued Appeals Board Decisions 2015-EAB-0703 and 2015-EAB-0704, reversing Hearing Decisions 15-UI-39602 and 15-UI-39609 and remanding the matters to OAH for additional proceedings. On July 27, 2015, ALJ R. Davis conducted two hearings, and on August 4, 2015 issued Hearing Decisions 15-UI-42517 and 15-UI-42518, denying claimant's requests to reopen. On August 24, 2015, claimant filed applications for review of Hearing Decisions 15-UI-42517 and 15-UI-42518 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-42517 and 15-UI-42518. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 15-EAB-1024 and 15-EAB-1058).

**FINDINGS OF FACT:** (1) On April 16, 2015, OAH mailed claimant notice of two hearings scheduled for April 30, 2015. Claimant received the notices and planned to attend the hearings.

(2) Between April 16, 2015 and April 25, 2015, claimant pled guilty to Theft in the second degree because she had taken property (medication) valued between \$100 and \$1,000 from her former

employer with the intent to deprive her former employer of the property. Beginning April 25, 2015, claimant began serving a term of incarceration based on her guilty plea to that crime. She did not have access to a phone to call into the hearing on April 30, 2015 because of her commission of the crime and guilty plea.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's requests to reopen should be dismissed.

ORS 657.270 provides that parties may request reopening if they failed to appear at a hearing and show good cause for failing to appear. "Good cause" means an excusable mistake, such as a "not reasonably foreseeable [] loss of telephone service," or a factor beyond the individual's reasonable control. OAR 471-040-0040(2).

Claimant did not show good cause to reopen the hearings she missed on April 30, 2015. Her failure to appear at the hearings was not because of an excusable mistake. Claimant knowingly pled guilty to a crime that included a jail sentence, and therefore her loss of telephone service, or access to telephone service, during her incarceration was a reasonably foreseeable result. Although claimant's immediate ability to access a telephone on April 30 at the time of her hearings was, in all likelihood, dictated by the terms of her incarceration and outside claimant's control, claimant was incarcerated because she intentionally committed a crime and knowingly pled guilty to it, understanding at the time she entered her plea, just five days before her hearings were to be held, that she would have to serve jail time. It was reasonably foreseeable that those events would result in her inability to participate in the hearing. It was within claimant's reasonable control to request a postponement of the April 30<sup>th</sup> hearings until after she was released from jail. Regardless, claimant's failure to attend the hearings was not caused by a factor outside her reasonable control.

Claimant did not show good cause to reopen the April 30<sup>th</sup> hearings. Her requests to reopen are, therefore, denied.

**DECISION:** Hearing Decisions 15-UI-42517 and 15-UI-42518 are affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** September 4, 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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