

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1188

Affirmed
Request to Reopen Denied
No Disqualification

PROCEDURAL HISTORY: On July 17, 2015, the Oregon Employment Department (the Department) served notice of an amended administrative decision concluding that claimant voluntarily left work with good cause (decision # 81545). The employer filed a timely request for hearing. On August 4, 2015, the Office of Administrative Hearings (OAH) issued notice of a telephone hearing scheduled for 2:30 p.m. on August 27, 2015. On August 27, 2015, the notice of hearing mailed to the employer was returned to the OAH as undeliverable. Also on August 27, 2015, an ALJ from the OAH¹ issued Hearing Decision 15-UI-43623, dismissing the employer's hearing request for failure to appear. The employer filed a timely request to reopen the hearing. On September 30, 2015, ALJ Frank conducted a hearing and on October 1, 2015, issued Hearing Decision a5-UI-45195, denying the employer's request to reopen. On October 6, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's representative 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 considered the employer's argument, it would not have changed the outcome of our decision. In his argument, the employer's representative asserted that he is entitled "to have this case reopened because I did not receive [sic] the notice for 8-27-15 hearing." The record shows, however, that an OAH representative contacted the employer's representative sometime during the morning of August 27, and confirmed that the employer had not received the hearing notice because of a typographical error. The OAH representative told the employer's representative that he had the right to ask that the hearing be rescheduled, but could participate in the hearing that afternoon if he wished to do so. Audio recording at 15:59. Despite the fact that the employer's representative had meetings scheduled throughout the day, he told the OAH representative he would participate in the hearing and received instructions for doing so. However, the employer's representative did not call in for the hearing because he was attending a meeting at the time

¹ Hearing Decision 15-UI-43623 does not contain the name of the ALJ who issued it.

the hearing was scheduled to begin. Audio recording at 17:55. The ALJ correctly found that it was well within the reasonable control of the employer's representative to carefully review his schedule, realize that it might prevent him from participating in the August 27 hearing, and request that the hearing be rescheduled. The ALJ therefore did not err in concluding that the employer's representative failed to show good cause for reopening the hearing under OAR 471-040-0040 (February 10, 2012).²

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 675.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-45195 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: October 12, 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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² OAR 471-040-0041(1) provides that a hearing may only be reopened if an applicant demonstrates good cause for doing so; under OAR 471-040-0041(2), good cause "exists when an action or failure to act arises from an excusable mistake or factors beyond an applicant's reasonable control."