

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1454

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On August 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 90659). Claimant filed a timely request for hearing. On September 14, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for September 28, 2015. On September 28, 2015, ALJ Frank issued Hearing Decision 15-UI-47234, dismissing claimant's hearing request for failure to appear. Claimant filed a timely request to reopen. On October 21, 2015 the OAH issued notice of a hearing scheduled for November 5, 2015. On November 5, 2015, ALJ Frank issued Hearing Decision 15-UI-47234, dismissing claimant's request to reopen for failure to appear. Claimant filed a timely request to reopen. On November 24, 2015, ALJ Kangas issued Hearing Decision 15-UI-48243, dismissing claimant's request to reopen. On December 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB. However, 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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Because claimant did not comply with the rules governing written arguments, we considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Even if we had considered claimant's argument and/or new information, the outcome of this decision would remain the same. By way of explaining his failure to appear at the November 24th reopen hearing, claimant wrote, "You all have never called me or the [*sic*] you could be calling someone else but not me." Claimant is correct – OAH did not call claimant to ask him to participate in the November 24th hearing. However, as the ALJ explained in Hearing Decision 15-UI-48243, the notice of hearing OAH mailed to claimant to let him know the date and time of the scheduled hearing required that claimant call to participate in the hearing. Therefore, it was claimant's responsibility to call to participate in the November 24th hearing, as well as the previous hearing he had missed. Because it was

claimant's responsibility to call, the fact that OAH "never called" claimant does not constitute good cause to reopen the hearing. Accordingly, decision # 90659, which disqualified claimant from receiving benefits, remains undisturbed.

EAB reviewed the entire record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-48243 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 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. 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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