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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0011

Affirmed
Requests to Reopen Denied

PROCEDURAL HISTORY: On September 29, 2015, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant was not available for work from June 28, 2015 to July 11, 2015, July 19, 2015 to July 25, 2015 and August 2, 2015 to August 8, 2015 (decision # 80439), and the other concluding that claimant was not available for work from August 16, 2015 to August 22, 2015 and August 30, 2015 to September 5, 2015 (decision # 81837). Claimant filed timely requests for hearing. On November 2, 2015, the Office of Administrative Hearings (OAH) mailed notice of a consolidated hearing scheduled for November 16, 2015, at which claimant failed to appear. On November 16, 2015, ALJ Seideman issued Hearing Decision 15-UI-47709, dismissing claimant's hearing request on decision # 80439, and Hearing Decision 15-UI-47708, dismissing claimant's hearing request on decision # 81837. On December 7, 2015, claimant filed requests to reopen both cases. Claimant's requests did not include written statements explaining why he missed the hearing. On December 14, 2015, ALJ Kangas reviewed claimant's requests to reopen and issued Hearing Decision 15-UI-49283, dismissing his request with respect to decision # 80439, and Hearing Decision 15-UI-49284, dismissing his request with respect to decision # 81837. On January 4, 2016, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-49283 and 15-UI-49284. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0011 and 2016-EAB-0012).

With his application for review, claimant submitted a written argument in which he explained, for the first time, that he missed the November 16th hearing in these matters because he failed to carefully read the notice of hearing, and therefore did not understand that he was expected to call in to the hearing on November 16th. As a preliminary matter, 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), and, therefore, EAB may not consider it. The argument also contained information about his reasons for missing the hearing that was not part of the hearing record, and claimant did not provide any explanation

for his failure to provide that information to the ALJ with his request to reopen, consequently, he also failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We therefore did not consider claimant's new information about the reasons he missed the November 16th hearing when reaching this decision. *See accord* ORS 657.275(2).

Even if we had considered the information, however, the outcome of this decision would remain the same. An individual has good cause to reopen a hearing only if he can establish that he was prevented from appearing due to either an excusable mistake or by factors beyond his reasonable control. OAR 471-040-0040(2). Reading the notice of hearing, or contacting OAH if he failed to understand the instructions contained therein, were well within claimant's reasonable ability to control, and, while claimant's failure to carefully read the instructions on the notice of hearing was, arguably, a mistake, because the instructions for participating in the hearing are so clearly laid out and understandable, failing to read them is not the type of mistake that is generally considered excusable.

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

DECISION: Hearing Decisions 15-UI-49283 and 15-UI-49284 are affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 8, 2016

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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