

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0164**

*Reversed*  
*Request to Reopen Allowed*

**PROCEDURAL HISTORY:** On October 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 85152). Claimant filed a timely request for hearing. On December 8, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for 8:15 a.m. on December 21, 2015. On December 21, 2015, ALJ Seideman issued Hearing Decision 15-UI-49741, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On January 20, 2016, ALJ Frank conducted a hearing, and on January 22, 2016, issued Hearing Decision 16-UI-51544, denying claimant's request to reopen. On February 8, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument consisted of information that was not part of the hearing record. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the information is relevant and material to EAB's determination, and factors or circumstances beyond a party's reasonable control prevented the party from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). The information claimant presented to EAB consists of a description of her attempts to contact the OAH on December 21, 2015, after she realized that she could not find the hearing notice with information on how to initiate her telephone hearing. Claimant also submitted telephone and computer records in support of her narrative.

In Hearing Decision 16-UI-51544, the ALJ found that claimant's failure to appear at the December 21 hearing resulted initially from a circumstance beyond her reasonable control: her family members "had disposed of the hearing documentation listing appearance instructions." Hearing Decision 16-UI-51544 at 3. The ALJ concluded, however, that it once claimant realized she did not have the "hearing documentation," she could "have used directory assistance, made an internet inquiry or taken other steps to contact the OAH promptly." *Id.* For this reason, the ALJ concluded that claimant failed to demonstrate that circumstances beyond her reasonable control prevented her from appearing at the

hearing, and denied her request to reopen under OAR 471-040-0040 (February 10, 2012).<sup>1</sup> The ALJ failed to inquire if claimant made an “internet inquiry,” and if so, what were the results of that inquiry. In addition, although claimant testified that she called “unemployment” (Audio at 10:20), to try to obtain information about the hearing, the ALJ never asked claimant what number she called. The ALJ’s failure to make a thorough inquiry into the circumstances that resulted in her failure to appear at the December 21 hearing constituted circumstances beyond her reasonable control that prevented her from presenting information at the hearing. The information claimant has presented to EAB is relevant and material to our determination. For these reasons, claimant’s request to present new information is granted. The new information claimant submitted has been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record.

**FINDINGS OF FACT:** (1) Claimant received notice of the December 21, 2015 hearing soon after it was issued by OAH, and noted the date and time of the hearing in her calendar.

(2) On December 21, 2015, at approximately 7 a.m., claimant went to her car to obtain the hearing notice with instructions for calling into the OAH to initiate the hearing. Claimant discovered that while she was sleeping, her children had cleaned her car, and the hearing notice was no longer in her car. Claimant looked for the hearing notice in her home and in the garbage dumpster, but was unable to find it.

(3) After claimant realized she could not find the hearing notice, she searched the internet white pages for “unemployment hearings, 97062,” and also searched the internet for “State of Oregon – Unemployment Hearings, 97062.” These searches resulted in no matches.

(4) At approximately 8 a.m.,<sup>2</sup> claimant called the Tualatin Work Source office; claimant had visited this office on several occasions, and the number for this office was included in correspondence she had received from the Department. Claimant was on hold for approximately 40 minutes. When she was able to speak to a representative, the representative gave her the OAH number.

(5) At approximately 8:39 a.m., claimant called the OAH. A representative told her she had missed the hearing and gave her instructions for requesting a reopening.

**CONCLUSION AND REASONS:** We disagree with the ALJ. We conclude that claimant’s request to reopen should be allowed, and a hearing on the merits of her hearing request should be scheduled.

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<sup>1</sup> Under ORS 657.275(5), an ALJ may reopen a hearing if the party requesting reopening demonstrates “good cause” for failing to appear. 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.” OAR 471-040-0040(2).

<sup>2</sup> We take official notice that the Department’s Tualatin office opens at 8 a.m., information contained in Department records. OAR 471-041-0090(3) (October 29, 2006). Any party that objects to our taking notice of this fact must submit its objection in writing to EAB within 10 days of the date on which this decision is mailed. If no objection is received, or an objection is received and overruled, the noticed fact will remain part of the record.

ORS 657.270(5) provides that a hearing may be reopened upon request of any party that failed to appear at the hearing may request reopening within 20 days after issuance of the hearing decision if the party shows good cause for failing to appear. OAR 471-040-0040(2) provides that "good cause" means an excusable mistake or factors beyond the party's reasonable control.

Here, claimant's failure to appear was caused by a number of circumstances over which she had no control: her children's removal of the hearing notice from her car, where she had stored it; her inability to find information about the hearing on the internet, despite her attempts to do so; and the lengthy wait she experienced when she called a Department telephone number with which she was familiar for assistance. Based on this record, we conclude that claimant demonstrated good cause for her failure to appear at the December 21, 2015 hearing. Claimant's request to reopen is allowed,

**DECISION:** Hearing Decision 15-UI-44478 is set aside, as outlined above, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and D. H. Hettle;  
J. S. Cromwell, not participating.

**DATE of Service: February 26, 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](http://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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