

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0166

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On December 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant benefits for the week of November 22, 2015 to November 28, 2015 for failing to report her earnings during a week she had reported that she had worked. Claimant filed a timely request for hearing. On December 30, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 14, 2016. On January 14, 2016, ALJ R. Frank issued Hearing Decision 16-UI-51053, dismissing claimant's request for hearing because she failed to appear at the hearing. On January 20, 2016, claimant filed a request to reopen the hearing. On January 27, 2016, ALJ Kangas reviewed claimant's request and issued Hearing Decision 16-UI-51805, dismissing her request. On February 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With claimant's application for review, she stated for the first time during these proceedings that she misread the instructions about her hearing because she has "been diagnosed with ADD." The information is relevant and potentially material to this matter, but in order for EAB to consider it, claimant must either have given the information to the ALJ so that it is in the hearing record, or, alternatively, show that factors or circumstances beyond her reasonable control prevented her from offering the information into the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006). However, claimant's statement is new information that was not made part of the hearing record and she did not provide EAB with any reason why she did not notify the ALJ that the reason she did not appear at the hearing was related to her ADD. Therefore, we did not consider claimant's new information when reaching this decision.

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

DECISION: Hearing Decision 16-UI-51805 is affirmed.

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

DATE of Service: February 24, 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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