

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0317**

*Reversed*  
*Request to Reopen Allowed*

**PROCEDURAL HISTORY:** On January 15, 2016, the Oregon Employment Department (the Department) served notice of the following two administrative decisions: decision # 90251 concluded that claimant voluntarily left work without good cause, and decision # 91132<sup>1</sup> concluded that claimant was ineligible for unemployment benefits for the week of January 3 through 9, 2016 because she had failed to provide information requested by the Department. On January 20, 2016, claimant filed requests for hearing on both decisions; the hearing requests were mailed to the Office of Administrative Hearings (OAH) in the same envelope. Also on January 20, 2016, the Department issued notice of an administrative decision (# 71037) which stated, in pertinent part: "This decision cancels by amending the administrative decision issued on January 15, 2016." Decision # 71037 allowed claimant benefits for the week of January 3 through 9, 2016, but did not provide the number or a description of the January 15 decision it cancelled.

On January 26, 2016, ALJ Seideman issued Hearing Decision 16-UI-51704, dismissing claimant's request for hearing. Hearing Decision 16-51704 stated, in pertinent part: "The claimant's request for hearing is dismissed based on the cancellation or amendment of the administrative decision dated January 15, 2016." The hearing decision did not provide the number or a description of the administrative decision to which it referred.

On February 3, 2016, the OAH issued notice of a hearing scheduled for February 11, 2016. The hearing notice stated that it was "regarding the Administrative Decision(s) dated January 15, 2016", and that the issue for the hearing would be: "[s]hall claimant be disqualified from the receipt of benefits because of a separation, discharge, suspension or voluntary leaving from work?" On February 11, 2016, ALJ M. Davis issued Hearing Decision 16-UI-52809, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On March 15, 2016, ALJ Kangas issued

<sup>1</sup> We take notice of this administrative decision, claimant's request for hearing, and the disposition of claimant's hearing request, which are facts contained in Department records. OAR 471-041-0090(3) (October 29, 2006). Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

Hearing Decision 16-UI-55080, dismissing claimant's request to reopen. On March 19, 2016, claimant filed an application for review of Hearing Decision 16-UI-55080 with the Employment Appeals Board (EAB).

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that claimant demonstrated good cause to reopen.

ORS 657.270(5) provides that a hearing may be reopened upon request of any party that failed to appear at the hearing if the party requests reopening within 20 days of the date on which the hearing decision was mailed, and 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.

Although claimant provided no reasons for failing to appear at the February 11, 2016 hearing, we conclude that record demonstrates that claimant's failure to appear more likely than not resulted from an excusable mistake. Claimant received two administrative decisions, each of which denied claimant unemployment benefits, which were issued on January 15, 2016. On January 20, 2016, the same date claimant requested hearings on these administrative decisions, the Department issued a decision that cancelled "by amending the administrative decision issued on January 15, 2016" and allowed claimant benefits for the week of January 3 through 9, 2016. On January 26, 2016, the OAH issued a hearing decision that dismissed claimant's hearing request "based on the cancellation or amendment of the administrative decision dated January 15, 2016." Neither the January 20 administrative decision nor the January 26 hearing decision identified, described, or otherwise specified to which of the January 15 administrative decisions it referred, or explained that they did not apply to both. Parties understandably expect to receive notice that a claim for unemployment benefits has been allowed or denied; they do not expect to be denied on one ground and allowed on another in separate documents. When a party receives more than one administrative decision and timely requests a hearing, the party expects to receive one hearing on what is understood as a single issue – whether benefits will be allowed. *Lavonne R. Saeb*, 10-AB-2774 (September 30, 2010). When claimant received administrative decisions denying benefits, requested hearings, and then received an administrative decision allowing benefits and a hearing decision dismissing her hearing request, claimant could have reasonably concluded that the issue had been resolved – benefits had been allowed – and a hearing was therefore no longer needed. Claimant's failure to appear at the February 11 hearing, which likely resulted on the belief that it was unnecessary, was therefore based on an excusable mistake. *See, e.g. John N. Iturra* (Employment Appeals Board, 12-AB-1712 (July 16, 2012) (claimant's failure to appear at a hearing, when he requested hearings on four different administrative decisions and received notice of four separate hearings was an excusable mistake). We also note that even if claimant had carefully read the hearing decision that dismissed a January 15, 2016 hearing request, claimant would have been unable to determine which hearing request had been dismissed. Nor would a careful reading of the subsequently mailed notice of hearing allow claimant to determine that she was still expected to attend a hearing despite the fact that her January 15, 2016 hearing request had been dismissed.

Claimant's request to reopen the hearing on administrative decision # 90251 is granted. This case is reversed and remanded to the ALJ for a hearing on the merits of claimant's work separation.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-55080 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

**DECISION:** Hearing Decision 16-UI-55080 is set aside, as outlined above.

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

**DATE of Service: March 31, 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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