

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0339**

*Reversed*  
*Request to Reopen Allowed*

**PROCEDURAL HISTORY:** On September 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 110535) concluding that claimant did not actively search for work from June 28 through July 18, 2015 (weeks 26-15 through 28-15).<sup>1</sup> On October 7, 2015, decision # 110535 became final without a request for hearing having been filed. On October 22, 2015, the Department served notice of an administrative decision (decision # 13317) concluding that as a result of decision # 110535, claimant was overpaid benefits in the amount of \$1,438. On November 4, 2015, claimant filed an untimely request for hearing on decision # 110535, and a timely request for hearing on decision # 13317.

On January 25, 2016, the Office of Administrative Hearings (OAH) issued notice of the following hearings scheduled for February 9, 2016: a hearing at 9:30 a.m. on claimant's late request for hearing on decision # 110535, and a hearing at 10:45 a.m. on claimant's request for hearing on decision # 13317. On February 9, 2016, ALJ Seideman issued the following hearing decisions: Hearing Decision 16-UI-52632 dismissed claimant's request for hearing on decision # 110535 for claimant's failure to appear at the hearing, and Hearing Decision 16-UI-52631 affirmed decision # 13317. Claimant filed a timely motion to reopen the hearing on decision # 110535. On March 10, 2016, ALJ Kangas issued Hearing Decision 16-UI-54784, dismissing claimant's request to reopen. On March 24, 2016, claimant filed an application for review of Hearing Decision 16-UI-54784 with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he provided information about his work search during the weeks at issue in decision # 110535. EAB may consider new information only if the information is relevant and material to EAB's determination. OAR 471-041-0090(2)(a). Because information

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<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.

regarding claimant's work search activities is not relevant to EAB's decision whether to allow claimant's request to reopen, we did not consider it.<sup>2</sup>

**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.

At the February 9, 2016 hearing on the overpayment decision (decision # 13317), claimant explained that although he received a packet from the OAH containing notices of hearing for both cases, he did not see the notice for the 9:30 a.m. hearing. (Exhibit 6). When a claimant requests a hearing on Department decisions concerning matters that are closely related, such as eligibility for benefits and overpayment of benefits, a claimant can reasonably expect that one hearing will be scheduled to resolve all issues. We have therefore held that a claimant's failure to appear at one of several hearings scheduled for the same day because he did not know about it is an excusable mistake. *See, e.g. John N. Iturra* (Employment Appeals Board, 12-AB-1712 (July 16, 2012) (claimant's failure to appear at one of four separate hearings scheduled for the same day, because he was unaware of the fourth hearing, was an excusable mistake). As we did in *Iturra*, we hold that claimant's failure to appear at the 9:30 a.m. hearing on February 9 resulted from an excusable mistake and that claimant showed good cause to reopen the hearing on decision # 110535.

Claimant's request to reopen is granted, and this case reversed and remanded to the ALJ for a hearing on whether claimant filed his hearing request within the 20-day time limit, and if not, whether there is good cause for extending the time limit a reasonable time. If the ALJ determines that claimant's hearing request was filed within the 20-day time limit, or that good cause exists for extending the time limit, then the ALJ can proceed to consider the merits of claimant's hearing request.

**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-54784 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** March 31, 2016

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<sup>2</sup> We note that this information will be relevant if, at the hearing on remand, the ALJ finds that claimant's hearing request on decision # 110535 was filed within the 20-day time limit, or that good cause exists for extending the time limit, and proceeds to a hearing on the merits of the hearing request.

**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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