

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0586

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On June 9, 2015, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding the employer discharged claimant for misconduct (decision # 72137), and the other concluding that claimant was not able to work during the week of April 26 through May 2, 2015 (decision # 74223). Claimant filed timely requests for hearings on both decisions. On July 1, 2016, the Office of Administrative Hearings (OAH) served notice of hearings on decisions # 72137 and 74223 scheduled for July 15, 2015. On July 15, 2015, ALJ Frank issued Hearing Decision 15-UI-41504, dismissing claimant's request for hearing on decision # 72137 because she failed to appear at the hearing on that decision, and Hearing Decision 15-UI-41516, dismissing claimant's request for hearing on decision # 74223 because she withdrew her request for hearing on that decision. On August 4, 2015, Hearing Decisions 15-UI-41504 and 15-UI-41516 became final without a request to reopen the hearing on decision # 72137 having been filed with OAH, or applications for review of Hearing Decisions 15-UI-41504 and 15-UI-41516 having been filed with the Employment Appeals Board (EAB).

On November 12, 2015, the Department served notice of an administrative decision, based in part on decision # 72137, assessing a \$2,196 overpayment, 20 penalty weeks and a \$439.20 monetary penalty (decision # 193824). Claimant filed a timely request for hearing on decision # 193824. On February 16, 2016, the Office of Administrative Hearings issued notice of a hearing scheduled for March 1, 2016. On March 1, 2016, ALJ Frank issued Hearing Decision 16-UI-54093, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On April 26, 2016, ALJ Frank conducted a hearing, and on April 29, 2016, issued Hearing Decision 16-UI-58530, denying claimant's request to reopen. On May 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's attorney failed to certify that he provided a copy of claimant's written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the April 26, 2016 hearing as required under OAR 471-041-0090(2)(b) (October 29, 2006).

Nor is claimant's new information relevant and material to EAB's determination of whether claimant established good cause to reopen the April 26, 2016 as required under OAR 471-041-0090(2)(b). More specifically, claimant's written argument states that "[w]hat Ms. Rosen [claimant] tried to express and still remains a critical issue is that at the time of the first hearing Ms. Rosen was struggling with emotional and mental health issues which are outlined in the letter enclosed from Dr. Angie Dahm." The enclosed letter is signed by "Angie Dahm FNP-C" states that Ms. Dahm began treating claimant in February 2016; it provides description of claimant's mental and emotional condition in November 2015. It is unclear what is the "first hearing" to which claimant's attorney is referring. If claimant's attorney is referring to the July 15, 2015 hearing on decision # 72137, we note that dismissal of claimant's request for hearing on decision # 72137 for failure to appear became final on August 4, 2015 without an application for review having been filed. Decision # 72137 is therefore not before us. If claimant's attorney is referring to the March 1, 2016 hearing on decision # 193824, information about claimant's mental and emotional condition in November 2015 is not relevant or material to claimant's mental state during the period at issue in this case, mid-February through March 1, 2016.

In sum, claimant failed to establish that her new information is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing, as required under OAR 471-041-0090(2). EAB therefore did not consider claimant's new information when reaching this decision.

FINDINGS OF FACT: (1) On February 15, 2016, claimant's grandmother died. Claimant, who had been caring for her grandmother before she died, was very upset by the death. During the two weeks after her grandmother died, claimant stayed at her mother's home to handle various matters related to her grandmother's death. Claimant did not check her mail during this two week period, and did not make arrangements to have her mail forwarded to her grandmother's address.

(2) Claimant did not receive notice of the March 1, 2016 hearing in time to participate in the hearing.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant failed to demonstrate good cause for reopening her hearing.

An ALJ may reopen a hearing at which the party who requested the hearing failed to appear if: the party requesting the hearing requests reopening within 20 days of the date the decision dismissing the hearing request is mailed, and the party demonstrates good cause for reopening. OAR 471-040-0040(1) (February 10, 2012). Good cause exists if the party's failure to appear resulted from an excusable mistake or factors beyond the party's reasonable control. OAR 471-040-0040(2).

Here, claimant's failure to appear at the March 1 hearing occurred because claimant was staying at her mother's home at the time notice of the hearing was mailed to her, and had neglected either to check her mail or have her mail forwarded to her mother's house. At the hearing, claimant testified that she was

aware that she was waiting for a hearing on the November 2015 administrative decision (Audio Recording at 18:15), and also expressed a strong desire to voice her disagreement with that decision (Audio Recording at 15:34). Given these circumstances, it was well within claimant's reasonable control to make arrangements to monitor her mail during the time she spent at her mother's home in February 2016. Nor can claimant's failure to check her mail be considered an excusable mistake. Claimant therefore failed to demonstrate good cause for missing the March 1, 2016 hearing, and her request to reopen is denied.

DECISION: Hearing Decision 16-UI-58530 is affirmed.

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

DATE of Service: May 20, 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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