

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0587

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On September 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 83102). On September 11, 2015, the Department served notice of an administrative decision (# 194040) that assessed a \$1,920 overpayment, a \$288 monetary penalty and 18 penalty weeks based on decision # 83102. On September 23, 2016, claimant filed requests for hearing on these decisions; in each hearing request, claimant indicated that he wanted an interpreter in the Somali language. On October 7, 2015, the Office of Administrative Hearings issued notice of hearings scheduled for October 21, 2015. On October 22, 2015, ALJ Frank issued the following hearing decisions, dismissing claimant's hearing requests for claimant's failure to appear at the October 21 hearings: Hearing Decision 16-UI-46334 dismissed claimant's request for hearing on decision # 194040, and Hearing Decision 15-UI-46335 dismissed claimant's request for hearing on decision # 83102. On November 12, 2015, both hearing decisions became final without applications for review or requests to reopen having been filed.

On January 6, 2015, claimant filed untimely requests to reopen both hearing decisions. On January 20, 2016, ALJ Kangas issued the following hearing decisions, dismissing claimant's requests concluding that, dismissing claimant's requests to reopen as untimely: Hearing Decision 16-UI-51360 dismissed claimant's request to reopen the hearing on decision # 194040, and Hearing Decision 16-UI-51361 dismissed claimant's request to reopen the hearing on decision # 83102. On January 25, 2016, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB). On January 28, 2016, EAB issued the following two decisions: 2016-EAB-0087, which reversed and remanded Hearing Decision 16-UI-51360, and 2016-EAB-0088, which reversed and remanded Hearing Decision 16-UI-51361.

On February 17, 2016, ALJ Frank conducted hearings, and on February 25, 2016, issued the following two hearing decisions: Hearing Decision 16-UI-53783 dismissed claimant's request to reopen the hearing on decision # 194040 and Hearing Decision 16-UI-53784 dismissed claimant's request to reopen the hearing on decision # 83102. On March 16, 2016, both hearing decisions became final

without applications for review having been filed with EAB. On April 4, 2016, claimant filed untimely applications for review of Hearing Decisions 16-UI-53783 and 16-UI-53784 with EAB.

On April 8, 2016, EAB issued the following Appeals Board Decisions: 2015-EAB-0393 allowed claimant's late application for review and reversed and remanded Hearing Decision 16-UI-53784, and 2015-EAB-0394 allowed claimant's late application for review and reversed and remanded Hearing Decision 16-UI-43783. Both hearing decisions were reversed and remanded so that the hearings could be conducted with an interpreter in the Somali language.

On May 2, 2016, ALJ Frank conducted hearings, and on May 5, 2016, issued the following decisions: Hearing Decision 16-UI-59051 dismissed claimant's motion to reopen the hearing on decision # 194040, the overpayment decision, and Hearing Decision 16-UI-59052 dismissed claimant's motion to reopen the hearing on decision # 83102, the voluntary quit decision. On May 17, 2016, claimant filed applications for review of both hearing decisions with the Employment Appeals Board.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-59051 and 16-UI-59052. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0587 and 2016-EAB-0588).

FINDINGS OF FACT: (1) On September 14, 2014, claimant notified the Department that he had changed his address to: 685 SE 182nd Ave, Portland, Oregon.

(2) On September 10 and 11, 2016, the Department mailed decisions # 83102 and # 194040 to claimant at the 685 182nd Ave. address. When claimant requested hearings on these decisions, he indicated this address as his address of record. Claimant was somewhat confused by the decisions, because he did not understand why the Department was requiring that he repay it for benefits he had received at the same time it was telling him he could request a hearing.

(3) Sometime during August, September or October 2015, claimant left the 685 SE 182nd address and moved to 240 SE 188th, unit 180, Portland, Oregon. Claimant did not notify the Department of his change of address because he was not working and he was unsure whether this would be his permanent address. Claimant had friends living at the 685 182nd address, but did not regularly check for mail and his friends did not always notify him about mail he may have received.

(4) On October 7, 2015, OAH mailed notice of hearings scheduled for October 21, 2016 to claimant at the 685 182nd Ave address. Claimant did not receive these hearing notices and did not appear at the October 21 hearings.

(5) On October 22, 2015, OAH mailed Hearing Decision 16-UI-46334 and 15-UI-46335, which dismissed claimant's hearing requests for hearing for failure to appear at the hearings, to claimant at the 685 182nd address. Claimant did not receive these hearing decisions.

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

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 October 21 hearings occurred because claimant failed to notify OAH or the Department of an address at which he could reliably receive mail. The record shows that claimant was able to receive mail at 685 182nd Portland Oregon in early September 2015, since he received the administrative decisions mailed on September 10 and 11, 2016 at this address. Sometime after these decisions were mailed, he either changed his address or was no longer able to reliably receive his mail at the 685 182nd address. It was well within claimant's reasonable control to either notify OAH or the Department of any change of address, or to regularly check with his friends about mail he may have received at the 685 182nd address.

To the extent that claimant's failure to participate in the hearings may have resulted from his confusion about the decisions, it was within his reasonable control to end this confusion. Each of the decisions claimant received included a statement instructing claimant to contact the Department if he did not understand the decision, and providing him a telephone number to call for information. Decision # 194040 also informed claimant that he was entitled to a free oral interpretation of the decision.

Nor do we find that claimant's failure to participate in the hearings was the result of an excusable mistake. There is no evidence in the record to demonstrate that claimant's failure to notify the Department or OAH about his new address raised a due process issue, resulted from inadequate notice, or was caused by reasonable reliance on another or by the inability to follow directions despite substantial efforts to comply. *Christopher Dent*, 12-AB-2744 (October 18, 2012).

Claimant failed to demonstrate good cause for failing to appear at the October 21 hearings. His requests to reopen are therefore denied.

DECISION: Hearing Decisions 16-UI-59051 and 16-UI-59051 are affirmed.

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

DATE of Service: June 7, 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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