

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0853

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On July 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 201014) concluding that claimant had been overpaid \$142 in unemployment benefits. On July 28, 2014, decision # 201014 became final without a hearing request having been filed. On May 9, 2016, claimant filed an untimely request for hearing. On May 17, 2016, the Office of Administrative Hearings (OAH) issued Hearing Decision 16-UI-59686, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On June 6, 2016, Hearing Decision 16-UI-59686 became final without an application for review having been filed. On June 14, 2016, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

On June 15, 2016, EAB issued Appeals Board Decision 2016-EAB-0700, allowing claimant's late application for review and reversing and remanding the matter for a hearing on the reasons why claimant filed a late request for hearing. On June 22, 2016, OAH issued notice of a hearing scheduled for July 6, 2016. On June 27, 2016, OAH issued an amended notice of the July 6 hearing. On July 6, 2016, ALJ Frank issued Hearing Decision 16-UI-63185, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On July 14, 2016, ALJ Kangas issued Hearing Decision 16-UI-63739, denying claimant's request to reopen. On July 19, 2016, claimant filed an application for review of Hearing Decision 16-UI-63739 with EAB.

With her application for review, claimant submitted a letter in which she provided new information regarding the reasons why she did not appear at the July 6 hearing. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party presenting the information demonstrates that circumstances beyond the party's reasonable control prevented the party from offering the information at the hearing. Claimant provided no reasons why she did not offer the information she now wants EAB to consider to the ALJ in her request to reopen. Claimant's request to have EAB consider additional information is therefore denied.

Even if we had considered the information in the letter that accompanied claimant's application for review, it would not have changed the outcome of our decision. In her letter, claimant explained that her failure to appear at her July 6 hearing occurred because an OAH representative, who had called her to confirm her correct address, mistakenly told her the hearing was scheduled for Thursday, July 6. Claimant asserted that she then called in for the hearing on Thursday, July 7, and "found out that I was exactly 24 hours late for my hearing." OAR 471-40-0040(1) and (2) (February 10, 2012) provides that a hearing may be reopened if the party that missed the hearing demonstrates that the failure to appear was caused by an excusable mistake or factors beyond the party's reasonable control. After speaking with the OAH representative, it was well within claimant's reasonable control to check the calendar and discover the representative's mistake. Claimant could then have contacted OAH to find out the correct date of the hearing. An excusable mistake includes a mistake resulting from reasonable reliance on another's advice, e.g., a reasonable but mistaken reliance on a person to file a hearing request. See *Christopher A. Dent*, 12-AB-2744 (October 18, 2012). Claimant's reliance on the information she received from the OAH representative was not reasonable, however, because the information on which she relied was, on its face, incorrect and conflicted with the information on the hearing notice issued by OAH.¹

EAB reviewed the entire hearing record. On *de novo* review and pursuant to OAR 657.275(2), Hearing Decision 16-UI-63739 is **adopted**.

DECISION: Hearing Decision 16-UI-63739 is affirmed.

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

DATE of Service: July 22, 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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¹ We note that claimant never denied receiving the June 27 amended hearing notice, which we infer was sent to the correct mailing address claimant provided to the OAH representative who called her.