

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0956

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On June 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73457). On June 7, 2016, claimant filed a timely request for hearing. On June 15, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 29, 2016. On June 29, 2016, ALJ R. Frank dismissed claimant's request for hearing for failure to appear at the June 29th hearing. On July 11, 2016, claimant filed a request to reopen the hearing. On July 27, 2016, ALJ R. Frank conducted a hearing, and on July 29, 2016 issued Hearing Decision 16-UI-64712, denying claimant's request to reopen. On August 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, the outcome of this decision would have remained the same. As the ALJ explained in Hearing Decision 16-UI-64712, claimant made contradictory claims about the reasons he missed the hearing. He told OAH staff that he missed the hearing because he was waiting for the ALJ to call him, he told OAH staff that he missed the hearing because he did not have the hearing paperwork when he tried to participate, and he indicated at the hearing and in his written argument that he was ill from the negative side-effects of a new medication. When asked to explain the inconsistency in the various statements he made about his reasons for missing the hearing, claimant admitted he "may have" told OAH staff "something that wasn't perfectly true" because he "didn't think it would matter," was hoping to persuade the person to put him through to the hearing anyway, and because when speaking with bureaucrats "sometimes I feel like . . . I have to try different ways or something like that. I certainly didn't think . . . you would review or you know would be any kind of issue at all . . . so felt, uh, perfectly okay to either perhaps bend the truth at that point or um you know see if there was some way to get through uh or something like that . . ." Audio recording at ~19:10-22:40. Given the inconsistencies and claimant's admitted dishonesty with regard to the reasons he missed the hearing, we do not have reason to believe that claimant missed the hearing because of sudden illness related to the medication he took as opposed to the other reasons claimant provided. In the absence of a credible

explanation as to why claimant missed the hearing, we have no reason to conclude that claimant had good cause for doing so, and his request to reopen is denied.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-64712 is affirmed.

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

DATE of Service: September 8, 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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