

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1112**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On July 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 135758). Claimant filed a timely request for hearing. On July 29, 2016, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for August 11, 2016. On August 11, 2016, ALJ Shoemake issued Hearing Decision 16-UI-45972, dismissing claimant's hearing request for failure to appear at the hearing. On September 3, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). In accordance with OAR 471-040-0040(6) (February 10, 2012), OAH treated the application for review as a request to reopen the hearing. On September 15, 2016, ALJ Kangas issued Hearing Decision 16-UI-67535, denying claimant's request to reopen. On September 29, 2016, claimant filed an application for review of Hearing Decision 16-UI-45972 with EAB.

In his application for review of Hearing Decision 16-UI-67535, claimant explained that he did not appear at the hearing because he "was working at my new job and did not have cell service in the woods where I was working." The reason claimant gave for his failure to appear at the hearing is new information; claimant never provided any reason for missing his hearing in his request to reopen. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information demonstrates that circumstances beyond its reasonable control prevented it from offering the information into the hearing record. Hearing Decision 16-UI-45972 advised claimant that he needed to file a request to reopen if he missed his hearing, and also advised him that the any such request must show why factors and circumstances beyond claimant's reasonable control prevented him from appearing at the hearing. Hearing Decision 16-UI-45972 at 2. Because claimant gave no explanation why he did not include his reason for missing the hearing in his August 11 request to reopen, EAB will not consider the information contained in his application for review.

Even if we had considered the information claimant presented to EAB, it would not have changed the outcome of this decision. A request to reopen will be granted if, among other things, a party shows that an excusable mistake or factors or circumstances beyond the party's reasonable control caused the party to miss a hearing. OAR 471-040-0040(1) and (2). Claimant provided no details about the problem with

his cell phone coverage, *i.e.*, when he realized he would have no cell phone coverage for the hearing and why, if he had known prior to the hearing date that he would be working in an area without cell phone coverage, he did not contact OAH and request that the hearing be postponed. Without this information, there is no basis for concluding that claimant's failure to appear at the hearing resulted from circumstances beyond his reasonable control or an excusable mistake. The explanation provided with claimant's application for review therefore did not demonstrate that claimant had good cause for missing the hearing.

EAB considered the entire record in this case with the exception of the new information included in claimant's application for review. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 16-UI-67535 is affirmed.

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

**DATE of Service: October 3, 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](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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