

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1249**

*Reversed*  
*Request to Reopen Allowed*

**PROCEDURAL HISTORY:** On September 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 85644). Claimant filed a timely request for hearing. On September 28, 2016, the Office of Administrative Hearings (OAH) served notice of a telephone hearing scheduled for October 11, 2016 at 8:15 a.m. On October 11, 2016, ALJ Murdock issued Hearing Decision 16-UI-68929, dismissing claimant's hearing request for failure to appear at the hearing. On October 15, 2016, claimant filed a request to reopen the hearing. On October 20, 2016, ALJ Kangas issued Hearing Decision 16-UI-69633, denying claimant's request to reopen. On November 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On October 11, 2016, at 8:15 a.m., claimant followed the instructions on the hearing notice she had received to call in for her scheduled hearing. Claimant had difficulties connecting to the hearing, however.

(2) Also on October 11, 2016, a prospective employer called claimant at 8:20 a.m. regarding a job interview for position for which claimant had applied. When the call ended at 8:30 a.m., claimant called in for her hearing, but was unable to connect to the ALJ. Claimant called OAH and a representative explained to claimant how she could request reopening.

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that claimant demonstrated good cause for reopening.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012).

Claimant did not participate in the hearing scheduled for October 11, 2016 at 8:15 a.m. because, while she was attempting to call into the hearing, she received a call from a prospective employer about a job for which she had applied. By the time claimant was finished with the call at 8:30 a.m., she was unable to connect to the hearing, because the ALJ had already decided to dismiss claimant's hearing request for failure to appear.<sup>1</sup> The ALJ concluded that claimant's failure to appear for the hearing did not result from factors beyond claimant's reasonable control because claimant "did not provide any information she was unable to call the prospective employer back after the hearing." Hearing Decision 16-UI-69633 at 3. We disagree.

Claimant chose to talk with a prospective employer about a job opportunity rather than appear at the scheduled telephone hearing because she did not want to "jeopardize the possibility of future employment with that company." Claimant Request to Reopen at 3. Claimant's choice was that of a person who, consistent with the purpose and policy of Employment Department law, chose to do what "an ordinary and reasonable person would do to return to work at the earliest opportunity." ORS 657.155(1)(c). If claimant made a mistake in speaking to the employer rather than continuing her attempts to appear for her hearing, her mistake was an excusable because it resulted from her desire to find work as soon as possible. Because claimant's failure to appear at the October 11 hearing was caused by an excusable mistake, she has demonstrated good cause for reopening. Hearing Decision 16-UI-69633 is reversed, and this matter remanded for a hearing and hearing decision on the merits of claimant's hearing request.

**NOTE:** The failure of any party to appear at the hearing ordered by this decision will not reinstate Hearing Decision 16-UI-69633 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

**DECISION:** Hearing Decision 16-UI-69633 is set aside, as outlined above.

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

**DATE of Service: November 15, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

---

<sup>1</sup> In Hearing Decision 16-UI-68929, the ALJ stated that she checked the "telephone line attendance system 10 minutes after the scheduled hearing and confirmed that claimant was not present." Hearing Decision 16-UI-68929 at 1.