

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1397**

*Affirmed*  
*Late Claim Denied*

**PROCEDURAL HISTORY:** On November 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's late claim for benefits for the week of October 16, 2016 through October 22, 2016 (decision # 71826). Claimant filed a timely request for hearing. On December 2, 2016, ALJ R. Frank conducted a hearing, and on December 6, 2016 issued Hearing Decision 16-UI-72349, affirming the Department's decision. On December 13, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

In her written argument, claimant asked to have her hearing reopened, arguing that the ALJ interrupted her when she spoke, did not let her speak, and did not want to listen to her before reaching a decision. ORS 657.270(5)(c)(A) provides that only parties that failed to appear at a hearing may have the hearing reopened. Claimant's hearing may therefore not be reopened. To any extent claimant's request may be construed as a request that EAB remand the case for additional information, claimant must either show that she was denied due process or that she has relevant and material information that she was prevented from offering at the hearing due to circumstances beyond her reasonable control. *See generally* OAR 471-041-0090 (October 29, 2006).

With respect to due process, we have reviewed the audio recording of the hearing in this matter and we agree with claimant that the ALJ repeatedly interrupted her testimony. However, the ALJ has a legal obligation to "ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the case." ORS 657.270(3). The ALJ is also required to "conduct and control the hearing" and is obligated to exclude "[i]rrelevant, immaterial, or unduly repetitious evidence" from the record. OAR 471-040-0025(5). On our review of the record, it appears that the ALJ's interruptions were for the purpose of explaining the legal issue to claimant or asking her how the information claimant was attempting to provide was relevant to the legal issue, to ask her to clarify what she meant or what the significance was of the information she was providing, or to ask her to provide further details about relevant information she brought forth. *See e.g.* Audio recording at ~ 10:15, 11:00-12:00. The ALJ's interruptions, although disruptive to claimant, therefore appear appropriate to his legal obligation, noted above, and satisfied due process considerations with respect to this matter.

With respect to whether claimant was prevented by the ALJ's interruptions from presenting additional relevant and material information, the record shows she was not. The only issue over which we, and the ALJ, have jurisdiction is whether claimant successfully filed a claim for unemployment insurance benefits for the week of October 16, 2016 through October 22, 2016 by October 29, 2016. There is no real evidentiary dispute that, although she tried to file her claim for that week prior to October 29<sup>th</sup>, and might have been unaware that her final attempt was successful, she did not, ultimately, successfully file a claim for that week. While claimant was willing to provide additional information about the history of her claim beginning months prior, a previous appeal process she had to go through, her non-receipt of benefits, her lack of knowledge that her second attempt to file a timely claim for the had been unsuccessful, or that it was unfair that the Department did not provide her with notice that her attempts to claim the weeks at issue were unsuccessful in time for her to rectify the matter, that information cannot affect the outcome of this case or claimant's eligibility for benefits for the week at issue, because, as the ALJ noted in Hearing Decision 16-UI-72349, there is "no 'good cause' provision" under which an individual who had good reasons for not making a timely claim for weekly benefits would be eligible to receive them anyway. It is also noteworthy, with respect to claimant's ability to provide additional evidence, that when the ALJ finished questioning claimant and asked if she had any additional information, claimant replied, "that's it," indicating that she did not have further testimony, and did not provide EAB with any examples of relevant information she thought the ALJ unfairly prevented her from providing during the hearing. *See e.g.* Audio recording at ~ 13:40; Claimant's Written Argument. For those reasons, claimant's request to provide additional evidence must be 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-72349 is affirmed.

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

**DATE of Service:** January 11, 2017

**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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