

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0038**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On August 31, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant had not demonstrated that she had the aptitude to complete the Training Unemployment Insurance (TUI) program (decision # 160838). Claimant filed a timely request for hearing. On September 29, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 13, 2016. On October 13, 2016, ALJ M. Davis conducted a hearing and issued Hearing Decision 16-UI-69162, concluding claimant was not eligible to receive TUI benefits. On November 2, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On November 11, 2016, EAB issued Appeals Board Decision 2016-EAB-1227, reversing the hearing decision and remanding the matter to OAH for additional evidence. On December 1, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 15, 2016. On December 16, 2016, OAH mailed notice that the hearing was continued to January 3, 2017. On January 3, 2017, ALJ M. Davis conducted a hearing, at which claimant failed to appear, and issued Hearing Decision 17-UI-73997, again affirming decision # 160838. On January 10, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-73997 with EAB.

With her application for review, claimant submitted a written argument in which she requested that the hearing be reopened because she did not receive notice of the January 3, 2017 hearing. Claimant's request is construed as a request to submit additional evidence to EAB under OAR 471-041-0090, which allows EAB to consider such evidence only if "[f]actors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing." See OAR 471-041-0090(2)(b) (October 29, 2006). In support of her request, claimant stated that she attended the December 15<sup>th</sup> hearing, and upon learning that it was going to be rescheduled, stated that "she would be out of town from December 22 and would not return until late in the evening on January 1 or January 2. The court stated that a new hearing would not be scheduled prior to December 22." Claimant further argued that she had requested the U.S. Postal Service hold her mail from December 22<sup>nd</sup> to January 3<sup>rd</sup>, and did not receive her mail until late afternoon on January 3<sup>rd</sup>, after the hearing had already taken place.

It appears, based on claimant's attendance at two prior hearings in this matter, that claimant knew that OAH mailed notices of hearing out approximately two weeks prior to the date of the hearing. It was, therefore, reasonably foreseeable that OAH would, again, mail notice of the continued hearing to her a couple of weeks prior to the date of the hearing, which she knew would not be scheduled for before December 22<sup>nd</sup> and requested that it not be held until after January 1<sup>st</sup> or 2<sup>nd</sup>. It also appears, on our review of claimant's argument and the record, that she knew she could make scheduling requests known to OAH, in fact made her scheduling needs known to OAH, and that OAH scheduled the hearing around her preferences, avoiding the period of time in which claimant said she would be out of town and unavailable for the hearing.

Given all those circumstances, and given that claimant's written argument and its attachment show that claimant knew she was having her mail held until January 3<sup>rd</sup>, it appears more likely than not that it was within claimant's reasonable control to make any additional scheduling needs known to OAH, including that she would not be available for any hearing until after January 3<sup>rd</sup> when the U.S. Postal Service delivered her held mail to her. Because it was within claimant's reasonable control to provide OAH with the information necessary to ensure that she had time to receive a mailed notice of the continued hearing and failed to do so, we also conclude that attending the hearing and providing information during it were, likewise, within claimant's reasonable control. Claimant's request to submit additional information to EAB on review is, therefore, denied.

EAB reviewed the entire hearing record, including the evidence developed at the October 13, 2016 and January 3, 2017 hearings. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 17-UI-73997 is affirmed.

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

**DATE of Service:** January 17, 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. 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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