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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0148

Affirmed ~ Confirmada
Request to Reopen Denied ~ Petición de Reabrir Negada

PROCEDURAL HISTORY: On December 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from November 13, 2016 to November 19, 2016 (decision # 103240). Claimant filed a timely request for hearing. On December 28, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 11, 2017, at which claimant did not appear. On January 11, 2017, ALJ Seideman issued Hearing Decision 17-UI-74473, dismissing claimant's request for hearing for failure to appear. On January 23, 2017, claimant filed a request to reopen the January 11, 2017 hearing. On January 24, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-75331, denying claimant's request to reopen. On February 6, 2017, claimant filed an application for review of Hearing Decision 17-UI-75331 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. The notice of hearing, which claimant stated her daughter read to her from English, stated "At the time of hearing, you must call . . ." and stated in Spanish, "A la hora fijada para la audiencia, usted debe llamar . . ." Given those unambiguous instructions, provided in both English and Spanish, we must conclude that it was within claimant's reasonable control to read and follow the instructions to call, and her decision to wait for someone to call her, although a mistake, was not excusable. Therefore, and for the reasons explained in Hearing Decision 17-UI-75331, claimant's mistaken belief that the ALJ would call her to participate in the January 11, 2017 hearing did not amount to good cause to reopen the hearing.

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 17-UI-75331 is affirmed.
Decisión de la Audiencia 17-UI-75331 queda confirmada.

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

DATE of Service: <u>February 9, 2017</u>

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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en **courts.oregon.gov**. En este sitio web, hay información disponible en español.*

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