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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-0209

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On November 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 113355). Claimant filed a timely request for hearing. On December 30, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 12, 2017 at 1:30 p.m. On January 12, 2017, claimant failed to appear at the hearing, and ALJ Seideman issued Hearing Decision 17-UI-74625, dismissing claimant's request for hearing due to his failure to appear. On January 19, 2017, claimant filed a timely request to reopen the hearing. On February 15, 2017, ALJ Seideman conducted a hearing, and on February 16, 2017 issued Hearing Decision 17-UI-77059, denying claimant's request to reopen. On February 21, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-77059 with the Employment Appeals Board (EAB).

FINDING OF FACT: Claimant received the December 30, 2016 notice of hearing in the mail several days before January 12, 2017. Claimant logged the date and time of the hearing in his calendar and intended to appear at the hearing. However, claimant failed to appear at the hearing because he was busy at work on January 12, 2017 and forgot about the hearing until the following day.

CONCLUSIONS AND REASONS: Claimant failed to show good cause for failing to appear at the January 12, 2017 hearing.

A hearing may be reopened if the party that is requesting the reopening failed to appear at the hearing, files the request within 20 days after the issuance of the ALJ's hearing decision, and shows good cause for failing to appear. ORS 657.270(5); OAR 471-040-0040(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0040(2).

Here, it was within claimant's reasonable control to remember to appear at the January 12, 2017 hearing. Nor is his failure to remember an excusable mistake, as it does not raise due process issues, and was not the result of inadequate notice, reasonable reliance on another or the inability to follow directions

despite substantial efforts to comply. Claimant therefore failed to show good cause for failing to appear at the January 12, 2017, and his request to reopen the hearing is dismissed.

DECISION: Hearing Decision 17-UI-77059 is affirmed.

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

DATE of Service: February 23, 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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