

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0295

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On November 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left her job at Civil Liberties Defense Center without good cause (decision # 134859). Claimant filed a timely request for hearing. On January 19, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing on decision # 134859 scheduled for February 2, 2017 at 8:15 a.m., at which time claimant failed to appear. On February 2, 2017, ALJ Logan issued Hearing Decision 17-UI-76051, dismissing claimant's request for hearing on decision # 134859 for failure to appear. On February 21, 2017, claimant filed a timely request to reopen the hearing. On March 2, 2017, ALJ Kangas considered claimant's request and issued Hearing Decision 17-UI-78049, denying claimant's request to reopen. On March 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review claimant submitted a written argument in which she asked for a re-evaluation of her case, arguing, in essence, that she was cleared for benefits based upon her work separation from an employer called JLG, the employer in this matter is "essentially the same company," and she "feel[s] that it is somewhat redundant to hash out this case" since the details of her work separation from the employer were the same as her separation from JLG and were "literally on record from my previous hearing." Claimant's argument did not change the outcome of our decision for the reasons that follow.

First, the information claimant provided in her written argument is new information. OAR 471-041-0090 requires that, before EAB may consider a party's new information, the party must establish that factors or circumstances beyond her reasonable control prevented her from submitting the information to the ALJ. Claimant did not make the requisite showing. Next, OAR 471-041-0080(2) requires that individuals include a statement in any written argument certifying that the individual provided a copy of the argument to the other parties to the case. Claimant's written argument included no such certification. Notably, even if claimant had met those two requirements, the information claimant provided appears to be irrelevant and immaterial to this case. The only issue before EAB at this point in time is whether claimant established good cause to reopen the hearing she missed on February 2, 2017.

Claimant did not explain why she failed to appear at the hearing or establish good cause to reopen the hearing when she initially requested reopening on February 21st, and still has not done so.

To any extent claimant's argument about the "redundancy" of any proceedings on her work separation from the employer was intended as an explanation or justification for her failure to attend the February 2, 2017 hearing, claimant has not shown good cause to reopen the hearing for several reasons. First, OAR 471-040-0040(3) requires that an individual requesting reopening set forth the reasons for missing the hearing in a written statement to OAH. Claimant failed to do so. Second, regardless claimant's opinions about whether the Department should have issued decision # 134859, it appears on this record that she was aware of that decision, knew it denied her benefits, asked for a hearing, a notice of hearing was mailed to her address of record, and she should have been prepared to attend it to contest the decision itself; the fact that she had undergone the hearing procedure with regard to her work separation from JLG suggests she was, or should have been, familiar with the hearing process and how to navigate it, and there is nothing to suggest that she had any reason to believe that decision # 134859 would be reversed or voided if she did not attend the hearing. Third, in order to have a hearing reopened, OAR 471-040-0040(2) requires that claimant establish "good cause" for doing so, and defines good cause as "an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control." Claimant's feeling that decision # 134859 was redundant did not amount to good cause under those standards, and claimant did not suggest she had any other reason for missing the February 2, 2017 hearing that would justify ordering it to be reopened.

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-78049 is affirmed.

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

DATE of Service: March 13, 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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