

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0302

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On December 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 112135). Claimant filed a timely request for hearing. On January 17, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 31, 2017 at 8:15 a.m., at which claimant failed to appear. On January 31, 2017, ALJ Logan issued Hearing Decision 17-UI-75806, dismissing claimant's request for hearing for failure to appear. On February 13, 2017, claimant filed a request to reopen that included a written statement explaining the reason claimant failed to appear. On February 23, 2017, ALJ Kangas considered claimant's request and issued Hearing Decision 17-UI-77513, denying claimant's request to reopen. On March 8, 2017, claimant filed an application for review of Hearing Decision 17-UI-77513 with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of the written argument she sent to EAB to the other parties, as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). Even if we had considered the new information in claimant's argument, the outcome of this decision would remain the same for the reasons that follow.

FINDINGS OF FACT: (1) Claimant received notice of the January 31, 2017 hearing. The notice of hearing stated, in pertinent part,

1. This hearing has been scheduled for **January 31, 2017** and will begin at **8:15 AM Pacific Time . . .**
2. At the time of the hearing, you must call 1-877-622-4041. * * *
3. * * *
4. If you requested the hearing and you do not call 1-877-622-4041 at the time set for your hearing, the hearing will be dismissed.

See Notice of Hearing (emphases in original).

(2) Claimant planned to attend the hearing but expected someone to call her to participate in it at the scheduled time of 8:15 a.m. At 8:30 a.m. when no one had called, she looked at the notice of hearing and realized for the first time that she was supposed to have placed a call to participate in the hearing.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant’s request to reopen must be denied.

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, the notice of hearing contained clear instructions emphasizing the expectation that claimant call to participating in the hearing, and stating that her hearing would be dismissed if she did not call. Claimant did not establish that any factor or circumstance beyond her reasonable control prevented her from following those instructions, or that it was beyond her reasonable control to appear at the January 31, 2017 hearing. Nor was her failure to follow the instructions provided on the notice of hearing the result of 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 31, 2017, and her request to reopen the hearing is dismissed.

DECISION: Hearing Decision 17-UI-77513 is affirmed.

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

DATE of Service: March 15, 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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