

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0333**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On December 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 65223). The employer filed a timely request for hearing. On January 3, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 17, 2017 at 8:15 a.m. Pacific Time. On January 17, 2017, the employer failed to appear at the hearing, and ALJ Wyatt issued Hearing Decision 17-UI-74812, dismissing the employer's request for hearing due to its failure to appear. On February 2, 2017, the employer filed a timely request to reopen the hearing. On March 8, 2017, ALJ M. Davis conducted a hearing at which claimant failed to appear, and issued Hearing Decision 17-UI-78418, denying the employer's request for a reopening. On March 17, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employers' written argument. In its argument, as in its request for a reopening, the employer asserted that it failed to appear at the January 17, 2017 hearing because its representative scheduled to participate in the hearing "became involved in a relocation project during the time of the hearing and was unable to participate." However, the record supports that ALJ's findings that the employer's representative's participating in the relocation project did not conflict with the hearing, and he failed to appear at the hearing because he "lost track of the time" despite having entered the hearing information in his calendar.<sup>1</sup> We also agree with the ALJ's determination that the record therefore fails to show it was beyond the representative's control to appear at the hearing, or that his failure to do so arose from an excusable mistake<sup>2</sup> given that 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. We therefore agree with the ALJ's ultimate conclusion that the employer did not establish good cause for failing to appear at the hearing, and that its request for a reopening should be dismissed.

<sup>1</sup> Audio Record at 9:15-10:52; Hearing Decision 17-UI-78418 at 1-3.

<sup>2</sup> Hearing Decision 17-UI-78418 at 3.

On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 17-UI-78418 is affirmed.

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

**DATE of Service:** April 12, 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](http://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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