

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0361**

*Affirmed*  
*(Confirmada)*  
*Request to Reopen Denied*  
*(Petición de Reabrir Negada)*

**PROCEDURAL HISTORY:** On December 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # #83113). Claimant filed a timely request for hearing. On January 19, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 2, 2017. On February 2, 2017, ALJ S. Lee issued Hearing Decision 17-UI-76034, dismissing claimant's hearing request for failure to appear at the hearing. On February 7, 2017, claimant filed a timely request to reopen. On March 7, 2017, ALJ S. Lee conducted a hearing, and on March 9, 2017, issued Hearing Decision 17-UI-78596, denying claimant's request to reopen. On March 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On January 20, 2017, claimant learned that his father in Mexico had suffered a heart attack.

(2) On January 22, 2017, claimant left his home in Oregon and traveled to Mexico to care for his father. Claimant had received the notice of the February 2 hearing prior to his departure. Claimant did not know how long he would be staying in Mexico, and he took the paperwork to Mexico with him. Claimant thought he would "deal with it" when he returned to Oregon. Audio recording at 16:07.

(3) On February 3, 2017, claimant returned to his home in Oregon.

**CONCLUSION 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).

Claimant did not appear for his February 2 hearing because he had traveled to Mexico to care for his father, who had suffered from a heart attack. While his father's condition and his need to care for him were circumstances beyond claimant's reasonable control, he had alternatives to missing the hearing. Although claimant was uncertain how long he would be staying in Mexico, he could have contacted the OAH prior to his departure, advised the office of his situation, and asked for a postponement. In addition, although claimant indicated that he was unable to call in for the hearing for Mexico because his phone only "sometimes" worked in Mexico,<sup>1</sup> he could have attempted to find a more reliable phone connection that would have allowed him to call in for the hearing. Finally, even if claimant was unable to request a postponement prior to his departure and could not obtain reliable phone service in Mexico, he could have sent a letter from Mexico to OAH to request a postponement of the hearing.<sup>2</sup> Because claimant pursued none of these alternatives, he failed to show good cause for failing to appear at the February 2, 2017, hearing and his request to reopen is denied.

**DECISION:** Hearing Decision 17-UI-78596 is affirmed. *Decisión de la Audiencia 17-UI-78596 queda confirmada.*

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

**DATE of Service:** March 30, 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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<sup>1</sup> Audio recording at 15:31.

<sup>2</sup> We take official notice of the fact that DHL offers service, including an express service, for sending packages from Mexico to the United States. See [www.dhl.com.mx/es.html](http://www.dhl.com.mx/es.html). Any party that objects to our taking notice of this fact must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, the noticed fact will remain part of the record.