

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0395**

*Reversed*  
*Request to Reopen Granted*

**PROCEDURAL HISTORY:** On November 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with the employer without good cause (decision # 111755). Claimant filed a timely request for hearing. On December 14, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 28, 2016 at 8:15 a.m. On December 28, 2016, claimant failed to appear at the hearing, and ALJ M. Davis issued Hearing Decision 16-UI-73711, dismissing claimant's request for hearing due to her failure to appear. On January 10, 2017, claimant filed a timely request to reopen the hearing. On March 17, 2017, ALJ Lohr conducted a hearing and issued Hearing Decision 17-UI-79155, denying claimant's request. On March 31, 2016, claimant filed a timely application for review of Hearing Decision 17-UI-79155 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument with her application for review, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Claimant received the December 14, 2016 notice of the December 28, 2016 hearing on or about December 16, 2016, and planned to attend. On December 25, 2016, claimant became ill with symptoms of fever, chills, cough, chest congestion, and the loss of her voice. Claimant did not know her symptoms, including the loss of her voice, would continue through December 28, 2016, and still planned to attend the hearing.

(2) On December 28, 2016, however, claimant's symptoms persisted, and claimant was not able to speak well enough to participate in the hearing or effectively request a postponement. Although claimant lived

with her mother, her mother was 88 years old and hard of hearing, and therefore lacked the ability to call in to the hearing and request a postponement on claimant's behalf. Claimant therefore failed to appear at the December 28, 2016 hearing.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant showed good cause for failing to appear at the December 28, 2016 hearing, and her request to reopen the hearing therefore is granted.

ORS 657.270(5) and OAR 471-040-0040(1) (February 10, 2012) provide, in relevant parts, that a party's request to reopen a hearing may be granted if the party shows good cause for failing to appear at the hearing. "Good cause" exists when an action, delay, or failure to act arises from factors beyond an applicant's reasonable control. OAR 471-040-0040(2). In Hearing Decision 17-UI-79155, the ALJ concluded that claimant failed to show good cause for failing to appear at the December 28, 2016 hearing because it was "reasonably foreseeable that claimant could miss her hearing if her illness continued beyond December 25, 2016," she had "adequate time prior to the hearing to contact OAH and request a postponement due to illness," her testimony that she "could not speak at all" was "not convincing," and she gave "no reasonable excuse for why her mother could not have made the call on claimant's behalf."<sup>1</sup> We disagree.

First of all, the record fails to show claimant knew or should have known prior to the morning of December 28, 2016 that her illness, including the loss of her voice, would continue to such an extent that that she would be unable to participate in the 8:15 a.m. hearing. Nor does the record show that OAH would have granted a request for a postponement made on December 26 or 27, 2016 based on mere speculation that claimant would be unable to participate due to her illness. Although the record fails to show claimant lost her voice entirely during the entire course of her illness, her testimony was convincing that on the morning of December 28, 2016, she was not able speak well enough to participate in the hearing or effectively request a postponement. Audio Record at 13:30-18:45. Also convincing was claimant's reasonable explanation that her mother was 88 years old and hard of hearing, and therefore lacked the ability to call in to the hearing and request a postponement on claimant's behalf. Audio Record at 14:00. Claimant's testimony showed that factors beyond her reasonable control prevented her from appearing at the hearing.

We therefore disagree with the ALJ and conclude that claimant showed good cause for failing to appear at the December 28, 2016 hearing. Her request to reopen the hearing is granted.

**DECISION:** Hearing Decision 17-UI-79155 is set aside, as outlined above.

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

**DATE of Service:** April 6, 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

---

<sup>1</sup> Hearing Decision 17-UI-79155 at 3.

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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.