

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0406

Hearing Decision 17-UI-76714 - Affirmed
Request To Reopen Denied
Hearing Decision 17-UI-74571 - Affirmed
Disqualification

PROCEDURAL HISTORY: On December 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 74645). The employer filed a timely request for hearing. On December 27, 2016, the Office of Administrative Hearings mailed a notice to the parties scheduling a hearing for January 9, 2017. On January 9, 2017, ALJ Shoemake conducted a hearing at which claimant failed to appear, and on January 12, 2017 issued Hearing Decision 17-UI-74571, reversing the Department's decision and concluding claimant voluntarily left work without good cause. On January 17, 2017, claimant filed a request to reopen the hearing to allow him to present evidence on his behalf. On February 13, 2017, ALJ Shoemake conducted a hearing and on February 14, 2017 issued Hearing Decision 17-UI-76914, denying claimant's request to reopen the hearing and leaving Hearing Decision 17-UI-74571 undisturbed. On March 1, 2017, claimant filed an application for review of Hearing Decision 17-UI-76914 with the Employment Appeals Board (EAB). EAB reviews the merits of Hearing Decision 17-UI-74571 pursuant to OAR 471-040-0040(6) (February 10, 2012).

Claimant submitted a written argument which presented information not offered into evidence during the hearing. Claimant did not provide a copy of his argument to the other parties as required by OAR 471-041-0080 (October 29, 2006). Claimant also did not explain why he did not present this new information at the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider claimant's written argument or the new information it contained when reaching this decision.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-74571 and 17-UI-76714. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0268 and 2017-EAB-0406).

FINDINGS OF FACT: (1) Total Quality Logistics, LLC employed claimant as a logistics account executive from March 30, 2015 until August 22, 2016.

(2) On August 22, 2016, claimant told his manager that he was resigning to pursue another job opportunity. Claimant did not express to the manager that he wanted to work for any period after August 22, 2016 and the manager believed he and claimant were on the “same page” that August 22, 2016 would be claimant’s final day. After claimant left the workplace on August 22, 2016, he did not return thereafter.

(3) Sometime after August 22, 2016, claimant filed a claim for and was paid benefits. Sometime after December 5, 2016, claimant received decision # 74645 in the mail at this address of record, which concluded that he was allowed benefits based on the August 22, 2016 work separation. The language of decision # 74645 stated that a hearing could be requested if a party disagreed with the decision. Sometime after December 5, 2016, the employer requested a hearing on the merits of decision #74645.

(4) In approximately mid-December 2016, claimant was notified that the rental in which he resided in North Portland, which was his address of record with the Department, was going to be sold and he needed to move by mid-January 2017. Shortly after, claimant decided he was going to move in with his girlfriend at her apartment in Happy Valley, Oregon. Claimant began staying in his girlfriend’s apartment four or five nights each week and the remainder of the time at his residence in North Portland. However, claimant did not file an address change with the Department or the United States Postal Service (USPS). Claimant continued to receive mail at his address in North Portland after mid-December 2016. Claimant did not regularly check the mail that was delivered to the North Portland address because he did not think he would receive any mail.

(5) On December 27, 2016, OAH mailed a notice to claimant at what was still listed as claimant’s address of record in North Portland informing him that a hearing was scheduled for January 9, 2017 on his claim for unemployment benefits. A snowstorm might have occurred between December 27, 2016 and January 9, 2017 that could have impeded claimant in visiting the residence in North Portland.

(6) Sometime around approximately January 16, 2017, claimant visited the residence in North Portland and discovered that the December 27, 2016 notice of hearing had been delivered. Since he had missed the January 9, 2017 hearing, claimant called OAH to determine what he could do. That day, claimant changed his address of record with the Department and put in a change of address with USPS. On January 17, 2017, claimant filed a request to reopen the hearing. Around approximately January 20, 2017, claimant completely vacated the North Portland residence and began living exclusively with his girlfriend in Happy Valley.

CONCLUSIONS AND REASONS: Claimant’s request to reopen the January 9, 2016 hearing is not allowed. Claimant voluntarily left work without good cause on August 2, 2016 and is disqualified from benefits based on that work separation.

Request to Reopen. If a party failed to appear at the hearing, that party may have the hearing reopened if the party filed a written request to reopen within 20 days of the mailing of the hearing decision and the party had good cause for failing to appear at the hearing. 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 the requesting party's reasonable control. OAR 471-040-0040(2). "Good cause" does not include failing to receive documents due to not notifying the Department or OAH of an updated address while the party is claiming benefits or knows, or reasonably should know, of a pending appeal. OAR 471-041-0040(2)(b)(A).

Claimant applied for benefits sometime after August 22, 2016, received the administrative decision allowing his claim for benefits at his address in North Portland shortly after it was issued on December 5, 2016 and claimed and was paid benefits thereafter. Given these circumstances and the language in the administrative decision alluding to the possibility that the employer might request a hearing if it disagreed with the decision, claimant was on notice, and reasonably should have expected, that he might receive additional correspondence about his claim at the address in North Portland until he changed his address with the Department. Claimant admitted he did not check the mail he received at the North Portland address with any regularity between the December 27, 2016 date the notice of hearing was mailed to him and the January 9, 2017 date that the hearing on his unemployment insurance claim was scheduled and held. Audio of February 3, 2017 Hearing at ~13:11, ~13:48, ~14:33. During this period of 13 days, claimant was unable to specify or approximate the dates when he had checked the mail that had been delivered to him at the North Portland address or if he had done so at all. Audio of February 3, 2017 Hearing at ~13:11. Claimant was unable to state or estimate when the notice informing him of the January 9, 2017 hearing was delivered to the North Portland address and if it had or had not been delivered in sufficient time for him to have attended the hearing if he had regularly checked the mail delivered to that address. Audio of February 3, 2017 Hearing at ~13:48. While claimant alluded to the occurrence of a snowstorm between December 27, 2016 and January 9, 2017, he presented no evidence that, had he been checking his on a regular basis, the storm would have prevented him from receiving the notice of hearing in time to have attended the hearing. Audio at February 3, 2017 Hearing at ~10:55. Claimant did not present sufficient facts to establish that factors or circumstances beyond his reasonable control prevented him from receiving the notice scheduling the January 9, 2017 hearing in adequate time for him to have attended the hearing and that, for that reason, he had good cause for not appearing at the hearing. Since claimant knew or reasonably should have been aware that he could receive correspondence about his claim at the North Portland address, and that not appropriately responding to such correspondence could have an important impact on his claim, claimant's failure to take any steps, let alone reasonable steps, to ensure that he was aware if such mail was received at the North Portland address did not constitute an excusable mistake. On this record, there was an insufficient showing to allow claimant's request to reopen the January 9, 2017 hearing.

Work Separation. Based on the employer's testimony at hearing, it appears that claimant voluntarily left work on August 22, 2017 to accept another job. Audio of January 9, 2017 at ~10:10. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when [she/he] did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). If a claimant leaves work to accept an offer of other work good cause exists only if that offer is definite, the work is to begin in the shortest reasonable time, the offered work is expected to continue and the pay for the work offered meets certain conditions. OAR 471-030-0038(5)(a).

At hearing, the employer did not offer any evidence surrounding claimant's leaving work other than that claimant was quitting to take another job that he had been offered. Audio at January 9, 2017 Hearing at ~10:10. The employer did not know and could not provide testimony about any of the details of the job claimant had been offered. Audio at January 9, 2017 Hearing at ~11:40. Absent such evidence, it cannot be concluded that the work claimant was offered met the standards set out in OAR 471-030-0038(5)(a) and that claimant had good cause for leaving work to accept that offer of new work. Because there was insufficient evidence to establish that claimant had good cause for leaving work, he is disqualified from benefits.

DECISION: Hearing Decisions 17-UI-74571 and 17-UI-76714 are affirmed.

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

DATE of Service: April 7, 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.

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.