

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0435**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct (decision # 81903). Claimant filed a timely request for hearing. On March 9, 2017, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for March 22, 2017, at 1:30 p.m. On March 22, 2017, ALJ Snyder issued Hearing Decision 17-UI-79424, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On April 10, 2017, ALJ Kangas issued Hearing Decision 17-UI-80687, denying claimant's request to reopen. On April 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSION AND REASONS:** Hearing Decision 17-UI-80687 is reversed, and this matter remanded to OAH for additional proceedings.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012).

In her request to reopen, claimant stated that she "tried calling in twice and was left on hold both times – finally called alternative number but not soon enough." In Hearing Decision 17-UI-80687, the ALJ found that a review of OAH's telephone log indicated that claimant did not call in for the hearing until 1:43 p.m.,<sup>1</sup> and did not call OAH at the alternate number provided in the notice of hearing until 1:49 p.m.<sup>2</sup> Exhibit 6. The ALJ noted that the hearing notice claimant received instructed her to call OAH at an alternate number if the ALJ had not joined the hearing within five minutes of the time the hearing was scheduled to begin. The ALJ then found that "[i]f appellant had called in at 1:30 pm for her hearing, it stands to reason she would have called the OAH prior to 1:49 pm to report an ALJ had not

<sup>1</sup> Exhibit 6.

<sup>2</sup> Exhibit 7.

joined the hearing.” Hearing Decision 17-UI-80687 at 3. The ALJ concluded that because claimant did not provide information that she was prevented from timely calling in for the hearing, she had not demonstrated good cause for missing the hearing. *Id.* We find the record in this case is insufficient to determine if claimant had good cause for failing to appear at the March 22 hearing, however, and remand this matter to OAH for a hearing to obtain additional evidence and a new decision.

Contrary to the ALJ’s finding, claimant asserted that she called in twice for her hearing on March 22. On remand, the ALJ must ask whether claimant read the notice of hearing and whether she had the notice of hearing available to or in front of her on the day of the hearing. The ALJ must also ask what time claimant made the two phone calls to connect to the hearing, what number(s) she called, what response or message she heard each time she called, and, if she was placed on hold, how long she remained on hold and whether she heard any messages or advisories while she was on hold. Finally, the ALJ must ask claimant why she waited until 1:49 p.m. to call OAH at the alternate number provided to her in the hearing notice.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop a record necessary to determine if claimant had good cause for missing the March 22 hearing, Hearing Decision 17-UI-80687 is reversed, and this matter remanded to OAH for a hearing and a new decision on claimant’s request to reopen.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-78822 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

**DECISION:** Hearing Decision 17-UI-80687 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** April 17, 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.

**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.