

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0455

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On January 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 160438). The employer filed a timely request for hearing. On March 6, 2017, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for March 20, 2017. On March 20, 2017, ALJ Murdock conducted a hearing at which claimant failed to appear, and on March 21, 2017 issued Hearing Decision 17-UI-79234, concluding that claimant voluntarily left work without good cause. On March 24, 2017, claimant filed a timely request to reopen. On March 30, 2017, ALJ Kangas issued Hearing Decision 17-UI-79980, denying claimant's request to reopen. On April 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant 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). We therefore did not consider the argument when reaching this decision. Even if we had considered claimant's argument, it would not have changed the outcome of this decision, since claimant's argument essentially repeated the arguments made in her request to reopen.

FINDINGS OF FACT: (1) Claimant received notice of the March 20 hearing, which stated that “[a]t the time of hearing, you must call 1-877-622-4041,” and provided claimant with an access code to enter after she called this number. The notice warned claimant that if she did not call 1-877-622-4041 on the date and at the time set for her hearing, her hearing request would be dismissed. DR Exhibit 3 (emphasis in the original).

(2) Claimant mistakenly believed that someone would call at the time the hearing was scheduled to begin on March 20, 2016, and did not call in for the hearing.

CONCLUSION AND REASONS: Claimant's request to reopen the March 20, 2017 hearing is denied.

A party who failed to appear at the hearing 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).

Here, claimant mistakenly concluded that she would be contacted by someone at the time the hearing was scheduled to begin on March 20, and did not call in for the hearing as the hearing notice had instructed her to do. It was well within claimant’s reasonable control to carefully read the hearing notice and understand what she needed to do to participate in the hearing. Nor was claimant’s mistake “excusable”; the record does not demonstrate that claimant’s misunderstanding of the hearing notice raises a due process issue, or that it resulted from inadequate notice, reasonable reliance on another, or by the inability to follow directions despite substantial efforts to comply. EAB Decision 12-EAB-2744 (October 18, 2012).

Claimant failed to demonstrate good cause for failing to appear at the March 20 hearing. Her request to reopen is therefore denied.

DECISION: Hearing Decision 17-UI-79980 is affirmed.

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

DATE of Service: April 27, 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.

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