

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0585

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On January 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 104304). Claimant filed a timely request for hearing. On March 16, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for March 30, 2017, at which claimant failed to appear. On March 30, 2017, ALJ S. Lee issued Hearing Decision 17-UI-79951, dismissing claimant's hearing request for failure to appear. On April 19, 2017, claimant filed a timely request to reopen. On May 2, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-82366, denying claimant's request. On May 10, 2017, claimant filed an application for review of Hearing Decision 17-UI-82366 with the Employment Appeals Board (EAB).

The form upon which claimant requested reopening instructed claimant to include with his request a statement explaining why he failed to appear at the hearing, and stated that, "Unless your statement shows good cause for failing to appear at the hearing, your request will be denied." *See* Claimant's April 19, 2017 request to reopen. Claimant requested that the March 30, 2017 hearing be reopened based on the following explanation for missing the hearing: "was unable to call due to lack of phone." *Id.* The ALJ denied claimant's request to reopen because claimant "did not provide any information why he did not have a phone" or "explain why he was unable to call in for his hearing at 8:15 am, but he was able to call the OAH later that day at 11:50 am." Hearing Decision 17-UI-82366 at 2.

With his application for review, claimant wrote, "To expand previous answer, I didn't have my phone as it was temporarily lost. I later found the phone which is when I called at 11:50 a.m." *See* Claimant's May 10, 2017 application for review. That information is not included in the hearing record, and is therefore new information. EAB may not consider a party's new information unless the party can show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing. Because claimant did not provide any explanation for not previously providing the new information in his original request to reopen, and as required under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

Even if we had considered claimant's new information, the outcome of this decision would remain the same. "Good cause" for purposes of allowing an individual's request to reopen is defined as "factors beyond an applicant's reasonable control" or "an excusable mistake." OAR 471-040-0040(2). Nothing in this record or claimant's argument suggest that temporarily losing his phone, or, perhaps, participating from another phone since his phone was temporarily lost, were not within claimant's reasonable control. It is generally considered to be within an individual's reasonable control to perform basic preparations for hearing, such as ensuring access to a phone at the time set for the hearing. In addition, although it was likely a "mistake" for claimant to temporarily lose his phone, that sort of a mistake is not considered "excusable" because it does not, for example, raise a due process issue or result from inadequate notice, reasonable reliance on another or the inability to follow directions despite substantial efforts to comply.

EAB reviewed the entire hearing record. On de novo review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 17-UI-82366 is affirmed.

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

DATE of Service: June 5, 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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