

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0619

Affirmed
Requests to Reopen Denied

PROCEDURAL HISTORY: On November 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision # 74146, concluding that claimant voluntarily left work for the employer without good cause. On November 30, 2016, the Department served notice of administrative decision # 192848, concluding that claimant willfully misrepresented his work separation from the employer as a layoff due to lack of work, and therefore was overpaid \$1,728 in benefits that he must repay, is disqualified for 12 weeks of future benefits, and assessed a \$259.20 monetary penalty. Claimant filed timely requests for hearing on both decisions. On February 15, 2017, the Office of Administrative Hearings (OAH) served notices of hearings scheduled for March 1, 2017. On February 16, 2017, OAH served notices of hearing rescheduling the hearings for March 3, 2017. On March 3, 2017, claimant failed to appear at both hearings, and ALJ Meerdink issued Hearing Decisions 17-UI-78180 and 17-UI-78199, dismissing claimant's request for hearings due to his failure to appear. On March 16, 2017, claimant filed timely requests to reopen the hearings. On April 27, 2017, OAH served notice of hearings scheduled for May 12, 2017. On May 12, 2017 ALJ Meerdink conducted a hearing, at which claimant appeared, and issued Hearing Decisions 17-UI-83347 and 17-UI-83346, denying claimant's requests to reopen the hearings. On May 20, 2017, claimant filed applications for review of Hearing Decisions 17-UI-83347 and 17-UI-83346 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions Hearing Decisions 17-UI-83347 and 17-UI-83346. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0618 and 2017-EAB-0619).

FINDINGS OF FACT: (1) The Department mailed the November 23, 2016 notice of decision # 74146 to claimant's address of record with the Department in Portland Oregon. Claimant received the notice of decision # 74146 in the mail. The Department also mailed the November 30, 2016 notice of decision # 192848 to claimant's address of record. Claimant received the notice of decision # 192848 in the mail.

(2) OAH mailed the February 15, 2017 notices of hearings to claimant at his address of record with the Department. OAH also mailed the February 16, 2017 notices of hearings rescheduling the hearings to claimant's address of record with the Department.

(3) OAH mailed the March 3, 2017 notices of Hearing Decisions 17-UI-78180 and 17-UI-78199 to claimant at his address of record with the Department. Claimant received the notices of Hearing Decisions 17-UI-78180 and 17-UI-78199 in the mail.

(4) OAH mailed the April 27, 2017 notices of hearings to claimant at his address of record with the Department. Claimant received the notices of hearings in the mail.

CONCLUSIONS AND REASONS: Claimant's requests to reopen the March 3, 2017 hearings are denied.

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).

At hearing, claimant testified that he failed to appear at the March 3, 2017 hearings because he was unaware that hearings had been scheduled, asserting that he did not remember receiving the February 15 or 16, 2017 notices of hearing, and speculating that they were not delivered to his address. Audio Record at 3:30-9:00. However, documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520 (January 31, 2012). Claimant received all other mailed documents related to these cases during the period at issue, and we find it unlikely that none of the notices of hearing mailed to him on February 15 or 16 were delivered to the correct address. Without more, claimant's assertion that he did not remember receiving the notices in the mail, and mere speculation that they were not delivered to his address, is not sufficient to rebut the presumption that he received them. Absent another explanation for failing to appear at the hearings, claimant failed to show that it arose from an excusable mistake or from factor's beyond his reasonable control.

Claimant therefore failed to establish good cause for failing to appear at the March 3, 2017 hearings. His request to reopen the hearings therefore is denied.

DECISION: Hearing Decisions 17-UI-83347 and 17-UI-83346 are affirmed.

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

DATE of Service: June 14, 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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