

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0635

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On March 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91154). Claimant filed a timely request for hearing. On April 11, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 24, 2017, at which claimant failed to appear. On April 24, 2017, ALJ S. Lee issued Hearing Decision 17-UI-81667, dismissing claimant's hearing request for failure to appear. On May 4, 2017, claimant filed a timely request to reopen the hearing. On May 11, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-83101, denying claimant's request to reopen. On May 23, 2017, claimant filed an application for review of Hearing Decision 17-UI-83101 with the Employment Appeals Board (EAB).

In her written argument, claimant argued that she had good cause for quitting her job with the employer. The only issue EAB has jurisdiction to decide, however, is whether or not the April 24th hearing may be reopened. Claimant's argument did not address the issue before EAB, and therefore had no effect on the outcome of this case.

FINDINGS OF FACT: Claimant received notice of the scheduled hearing and planned to attend. Claimant also scheduled an appointment with another Employment Department office. She failed to appear at the hearing because she confused the date and time of her hearing with the date and time of the appointment she had scheduled.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's request to reopen must be 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).

Claimant failed to appear at the hearing because she confused the date of the hearing with the date of another appointment she had with a different Employment Department office. It was within claimant's reasonable control to keep track of the date and time of her hearing, and note the dates of her various appointments with sufficient detail to know which appointment was scheduled at which time. Although claimant's failure to appear at the hearing was certainly a mistake on her part, 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. Claimant failed to show that her failure to appear was the result of factors beyond her reasonable control or an excusable mistake, and her request to reopen is therefore denied.

DECISION: Hearing Decision 17-UI-83101 is affirmed.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, 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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