

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0721**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On April 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to and available for work from March 26, 2017 to April 2, 2017 (decision # 104049). Claimant filed a timely request for hearing. On April 28, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 12, 2017, at which claimant failed to appear. On May 12, 2017, ALJ Meerdink issued Hearing Decision 17-UI-83333, dismissing claimant's hearing request for failure to appear. On May 22, 2017, claimant filed a request to reopen the May 12, 2017 hearing. On May 26, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-84320, denying claimant's request to reopen. On June 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Claimant's request to reopen is 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).

In his request to reopen, claimant stated that he missed the May 12<sup>th</sup> hearing because his daughter's 21<sup>st</sup> birthday was May 12<sup>th</sup> and she was graduating college that day, and "the only thing she had ask[ed]" was to have her family present. DR Exhibit 5. Claimant wrote, "the honest truth I just forgot about it because of everything going on in a short wind [*sic*] of time . . ." *Id.*

In his written argument, claimant again stated that although he marked the hearing on his calendar, May 12<sup>th</sup> was his daughter's birthday and she was graduating, and family was visiting from out of town. However, he also argued that he forgot to mention that he also forgot about the hearing because he fractured his foot in an accident on May 11<sup>th</sup> and had to visit the emergency room on May 12<sup>th</sup>, which "was the main resin [*sic*] why I missed the [hearing] appointment." Claimant said that he did not

mention those circumstances earlier because he thought the accident had been on another date, and only remembered that those events had occurred on May 11<sup>th</sup> and May 12<sup>th</sup> when he received a letter from the hospital asking him to sign some documents. In support, claimant submitted a couple of documents from the hospital, including one stating that he had received service on May 11, 2017, and another document upon which printed dates of 5/29/2017 have clearly been manually altered to make it appear as though the dates said 5/11/2017.

The information in claimant's written argument is new information because he did not provide the information in his original request to reopen. New information is only admissible before EAB if claimant shows that factors or circumstances beyond his reasonable control prevented him from offering the information to the ALJ. OAR 471-041-0090 (October 29, 2006). Claimant's new information is not admissible. He wrote that he previously forgot to submit the information, but it is not plausible that an individual with a fractured foot who had family in from out of town to celebrate his daughter's 21<sup>st</sup> birthday and college graduation would forget that he had a fractured foot that was so painful around the time of those events that he had to seek emergency medical attention for it, and was ordered by his doctor to stay off his foot during those events. He therefore did not establish that factors or circumstances beyond his reasonable control prevented him from mentioning the fractured foot in his original request to reopen.

Even if claimant had shown that EAB should consider his new information, it would not change the outcome of this decision because the new information claimant submitted was not reliable. Although the letter claimant submitted listed his date of service as May 11<sup>th</sup>, the other form showed obvious signs of tampering, with someone having handwritten May 11<sup>th</sup> over the dates that were originally printed on the form. It is unknown who altered the printed dates, or why they were altered, but regardless why or how it happened, the fact that the dates on the form have been manually altered means that the form is not reliable evidence that the forms pertain to medical treatment obtained on May 11<sup>th</sup>. We also note that nothing on the form supports claimant's argument as to the reason he sought medical attention, whatever date that might have occurred. For those reasons, the information claimant submitted is not reliable, and is not admissible before EAB.

Having excluded claimant's new information, the record evidence suggests it is more likely than not that claimant did not appear at the May 12<sup>th</sup> hearing because he forgot about it in favor of other activities related to his family, daughter's birthday and graduation ceremony. It was within claimant's reasonable control to keep track of his hearing date, and request that it be rescheduled if he was unable to attend due to his other obligations.<sup>1</sup> Claimant has not shown that an excusable mistake or factors beyond his control caused him to miss the hearing, and he has therefore not shown that the hearing should be reopened. Claimant's request to reopen is, therefore, denied.

**DECISION:** Hearing Decision 17-UI-84320 is affirmed.

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

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<sup>1</sup> To any extent a medical situation might have contributed to claimant's forgetfulness, we would still find that it was within claimant's reasonable control to take steps to either remember the hearing or ask that it be rescheduled.

**DATE of Service: July 10, 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.

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