

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0731**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On March 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 130209). Claimant filed a timely request for hearing. On March 22, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 6, 2017. On March 29, 2017, OAH mailed notice of a rescheduled hearing scheduled for April 18, 2017, at which claimant failed to appear. On April 18, 2017, ALJ R. Frank issued Hearing Decision 17-UI-81256, dismissing claimant's request for hearing for failure to appear. On May 8, 2017, claimant filed a timely request to reopen the hearing. On May 17, 2017, OAH mailed notice of a hearing scheduled for May 30, 2017. On May 30, 2017, ALJ R. Frank conducted a hearing, and on June 2, 2017 issued Hearing Decision 17-UI-84767, denying claimant's request to reopen. On June 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant stated, "There was a confusion on the first trial date. I quickly arranged a 2<sup>nd</sup> hearing. However, the subject matter was not addressed during the hearing, and the result was based solely on the scheduled confusion. If not for fact I had a diabetic emergency the cake incident would of never happened." The only issue before the ALJ during the May 30, 2017 hearing, and the only issue before EAB at this time, is whether or not claimant established that he had good cause to reopen the April 18, 2017 hearing. Because he has not, for the reasons explained below, neither the ALJ nor EAB have jurisdiction to take evidence on or address the "cake incident."

**FINDINGS OF FACT:** (1) After receiving notice of the hearing scheduled for April 6, 2017, claimant requested that the hearing be postponed. OAH allowed the request and, with claimant's agreement, postponed the hearing until April 18, 2017.

(2) Claimant failed to appear at the April 18, 2017 hearing because he noted the wrong time on his calendar.

**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).

In his reopen request, claimant stated that he missed his hearing because he "started working 14 hour days with the Oregon State Hospital [*sic*] and honestly was so tired that I forgot all about the hearing appointment for that day." Exhibit 4. He later testified at the hearing, however, that he did not forget the hearing, but that he actually remembered the hearing was scheduled for April 18<sup>th</sup>, wrote the wrong time on his calendar, and had misplaced his copy of the notice of hearing. Audio recording at ~ 12:00-14:50. Claimant did not establish that it is more likely than not beyond his reasonable control to keep track of the notice of hearing, and to make sure he wrote down the right time on his calendar. It is generally considered to be within an individual's reasonable control to keep track of his appointments and important mail, even if that individual is busy and works long shifts at work. Although claimant's failure to appear at the hearing appears to have been the result of a mistake in calendaring the appointment or keeping track of his mail, the mistake was not excusable within the meaning of OAR 471-040-0040 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 therefore has not shown that it is more likely than not that he had good cause to miss the hearing, and his request to reopen must be denied.

**DECISION:** Hearing Decision 17-UI-84767 is affirmed.

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

**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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