

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0891

Affirmed
Requests to Reopen Denied

PROCEDURAL HISTORY: On March 8, 2017, the Oregon Employment Department (the Department) served notice of the following two administrative decisions: decision # 64333 concluded that claimant failed to actively search for work from December 25, 2016 through January 14, 2017 and decision # 64453 concluded that claimant failed to actively search for work from January 15 through January 21, 2017. Claimant filed timely requests for hearing. On June 12, 2017, the Office of Administrative Hearings (OAH) served notice of a consolidated hearing scheduled for June 27, 2017. On June 27, 2017, ALJ Triana issued the following hearing decisions which dismissed claimant's hearing requests for failure to appear at the hearing: Hearing Decision 17-UI-86687 dismissed claimant's hearing request on decision # 64333, and Hearing Decision 17-UI-86685 dismissed claimant's hearing request on decision # 64453. Claimant filed timely requests to reopen the hearings. On July 20, 2017, ALJ Kangas issued the following hearing decisions which denied claimant's requests to reopen for failure to show good cause: Hearing Decision 17-88528 (decision # 64333) and Hearing Decision 17-UI-88526 (decision # 64453). On July 24, 2017, claimant filed applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-88528 and 17-UI-88526. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0890 and 2016-EAB-0891).

Claimant provided new information in his written argument that was not part of the record in this case. Under OAR 471-041-0090(2) (October 29, 2006), EAB may consider new information if the information is relevant and material to EAB's determination and if the party presenting the information demonstrates that circumstances beyond the party's reasonable control prevented the party from presenting the information to the ALJ. Claimant offered no reason why he did not present the information he wants EAB to consider to the ALJ in his motion to reopen. Claimant's request to present new information is therefore denied.

Even if we had considered the information in claimant's written argument, it would not have changed the outcome of this decision. Claimant asserted that he did not appear at the hearing because he "was

unsuccessful in getting through to the Judge.” Without further details about claimant’s difficulty in attempting to appear at the hearing, we have no basis for concluding that claimant’s failure to appear at the hearing resulted from circumstances beyond his reasonable control or an excusable mistake as required by OAR 41-0040-041(1) (February 10, 2012).¹

EAB reviewed the entire records in these cases. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 17-UI-88528 and 17-UI-88526 are affirmed.

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

DATE of Service: August 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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¹ Also in his written argument, claimant presented information to explain why he did not actively search for work from December 25, 2016 through January 21, 2017. Because this information was not relevant or material to the only issue before EAB—whether claimant demonstrated good cause for reopening his hearings—it cannot be considered by EAB under OAR 471-041-0040(2).