

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1282

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On August 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that due to erroneous earnings reports claimant was overpaid \$859 in benefits that claimant must repay (decision # 193764). Claimant filed a timely request for hearing. On September 28, 2017, the Office of Administrative Hearings (OAH) mailed the parties notice of a hearing scheduled for October 13, 2017, at 9:30 a.m.. On October 13, 2017, claimant failed to appear at the hearing, and ALJ S. Lee issued Hearing Decision 17-UI-94515, dismissing claimant's request for hearing due to claimant's failure to appear. On October 18, 2017, claimant filed a timely request to reopen the hearing. On October 25, 2017, ALJ Kangas issued Hearing Decision 17-UI-95376, denying claimant's request. On November 3, 2017, claimant filed an application for review of Hearing Decision 17-UI-95376 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant received the September 28, 2017 hearing notice mailed by OAH.

(2) Claimant failed to appear at the October 13, 2017 hearing because claimant “did not fully understand that claimant needed to call the number listed, [claimant] only focused on the date and time.” DR Exhibit 5.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant’s request to reopen should 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 claimant’s reopen request, claimant stated that claimant missed the hearing because claimant “did not fully understand that claimant needed to call the number listed, [claimant] only focused on the date and time.” Claimant did not establish that, more likely than not, it was beyond claimant’s reasonable control to carefully read the hearing notice and follow its instructions to call the telephone number listed at the date and time of the hearing. Although claimant’s failure to appear at the hearing appears to have been the result of a mistake, the mistake was not excusable within the meaning of OAR 471-040-0040 because it did 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 claimant had good cause to miss the hearing, and claimant’s request to reopen must be denied.

DECISION: Hearing Decision 17-UI-95376 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: November 8, 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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