

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1377

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On September 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72000). Claimant filed a timely request for hearing. On September 27, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 11, 2017 at 8:15 a.m. On October 11, 2017, ALJ Amesbury issued Hearing Decision 17-UI-94331, dismissing claimant's request for hearing for failure to appear. On October 17, 2017, claimant filed a request to reopen the hearing. On October 31, 2017, OAH mailed notice of a hearing scheduled for November 14, 2017 at 9:30 a.m. On November 14, 2017, ALJ conducted a hearing, and on November 16, 2017 issued Hearing Decision 17-UI-96946, denying claimant's request to reopen. On November 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant received notice of the October 11, 2017 hearing and planned to attend. Although the notice stated, "At the time of hearing, you must call" a designated phone number, claimant misread the notice and thought someone would call her.

(2) On October 11, 2017, claimant waited for someone to call her. No one did. The ALJ called into the hearing conference line at 8:15 a.m. and waited until 8:26:09 a.m. for claimant to appear, then disconnected when she did not.

(3) At 8:26:29 a.m. claimant called the designated phone number and waited for approximately 14 minutes for someone to answer. No one did. Claimant disconnected and went to a 9:00 a.m. dentist appointment she had scheduled.

(4) On October 11, 2017, claimant called OAH to report that she had called in for the hearing, no one was on the line, and she could not wait because she had a dentist appointment. Claimant told the OAH employee with whom she spoke that she had called into the system at 8:25 a.m., and that she thought the ALJ was supposed to have called her. The OAH employee with whom claimant spoke told claimant that she should have called at 8:20 a.m. Later on October 11, 2017, claimant called OAH again and stated she had called in for the hearing at 8:20 a.m.

(5) At all relevant times, claimant had a “type of dyslexia.” Audio recording at ~ 21:35.

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

ORS 657.270(5) provides that parties who fail to appear at a hearing may request that the hearing be reopened, and that such a request will be allowed if, in pertinent part, the party requesting reopening shows good cause for doing so. OAR 471-040-0040(2) defines “good cause” as an excusable mistake or factors beyond the individual’s reasonable control. OAR 471-040-0040(2)(b)(B) states that good cause does not include “[n]ot understanding the implications of a decision or notice when it is received.”

It appears claimant missed the hearing primarily because she thought the ALJ was going to call her.¹ The notice of hearing OAH mailed to claimant specifically and clearly stated to her that she must call into the hearing. Claimant’s failure to understand the implications of the notice she received does not amount to good cause to reopen the hearing under the referenced rule.

Claimant’s belief that the ALJ would call her to participate in the hearing was likely due to a mistake on claimant’s part. However, the mistake is 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 direction despite substantial efforts to comply. Claimant therefore has not shown good cause to reopen the hearing, and her request to reopen must be denied.

To the extent claimant alleged she missed the hearing because her dyslexia interfered with her comprehension of the notice of hearing, claimant did not show good cause to reopen the hearing. Claimant testified at the hearing only that she had a “type of dyslexia,” and despite the ALJ’s inquiry did not or could not articulate how the type of dyslexia she had affected her ability to read or comprehend the notice of hearing. In the absence of an explanation of how claimant’s condition affected her, we cannot conclude that her failure to attend the hearing was due to a factor beyond her reasonable control.

For the reasons set forth above, claimant did not show good cause to reopen the hearing, and her request is denied.

DECISION: Hearing Decision 17-UI-96946 is affirmed.

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

DATE of Service: November 30, 2017

¹ To any extent claimant seemed to assert that her 9:00 a.m. dentist appointment was a factor in her failure to appear, the appointment did not amount to good cause to reopen the hearing. Although it affected claimant’s willingness to wait on hold when she placed the 8:26 a.m. call, the hearing was already dismissed by that time so her disconnection from the call was not a factor in her failure to appear. We also note that if claimant felt she could not attend the hearing because the hearing would overlap with her dentist appointment, absent a request to postpone the hearing or attempt to reschedule the dentist appointment, the overlapping appointments would likely not constitute good cause for missing the hearing.

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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