

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1436

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On September 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 113054). The employer filed a timely request for hearing. On October 18, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 1, 2017. On November 1, 2017, ALJ Wyatt conducted a hearing at which claimant failed to appear, and on November 8, 2017 issued Hearing Decision 17-UI-96472, concluding claimant voluntarily left work without good cause. On November 22, 2017, claimant filed a timely request to reopen the hearing. On December 1, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-97990, denying claimant's request to reopen. On December 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: Claimant planned to attend the November 1st hearing. He became confused about documents he had received regarding another case with OAH and was busy with a new job, forgot or lost track of when the hearing was scheduled, and missed the hearing. He did not realize he had missed the hearing until the following day.

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

ORS 657.270(5) allows an ALJ to reopen a hearing upon a party's request if, among other things, the party shows good cause for failing to appear at the hearing. OAR 471-040-0040(2) defines "good cause" as an excusable mistake or factors beyond an applicant's reasonable control.

It appears in this case that claimant did not attend the November 1st hearing because he got too busy or was too confused about his cases to keep track of the date and time of the hearing for this case. Absent a basis for concluding otherwise, however, it is generally considered to be within an individual's reasonable control to keep track of important dates such as the hearing date in this case. Although it was likely a mistake that caused claimant's failure to attend the November 1st hearing, such as not keeping

track of the hearing date or forgetting to attend it because he was busy with work, the mistake is not excusable 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 direction despite substantial efforts to comply. Claimant therefore has not shown good cause to reopen the hearing, and his request to reopen must be denied.

DECISION: Hearing Decision 17-UI-97990 is affirmed.

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

DATE of Service: December 20, 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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