

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1479**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On September 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,293 overpayment that claimant was required to repay (decision # 194154). Claimant filed a timely request for hearing. On October 30, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 13, 2017, at which time claimant failed to appear. On November 13, 2017, ALJ Amesbury issued Hearing Decision 17-UI-96695, dismissing claimant's request for hearing for failure to appear. On November 17, 2017, claimant filed a request to reopen the hearing. On November 29, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 13, 2017. On December 13, 2017, ALJ Amesbury conducted a hearing, and on December 14, 2017 issued Hearing Decision 17-UI-99041, denying claimant's request to reopen. On December 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) In April 2017, claimant moved to Alaska, which is located in the Alaska Time Zone. At all relevant times, she mistakenly believed that Alaska was located in the Pacific Time Zone.

(2) The notice of hearing that scheduled the November 13, 2017 hearing stated, "This hearing has been scheduled for **November 13, 2017** and will begin at **10:45 AM Pacific Time . . .**" and that claimant was required to call to participate in the hearing at that time. *See* Notice of Hearing (emphasis in original).

(3) On November 13, 2017, claimant called in to participate in the hearing at 10:45 a.m. Alaska Time, which was 11:45 a.m. Pacific Time. She learned at that time that she was an hour late for the hearing and her request for hearing had been dismissed for failure to appear.

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

ORS 657.270(5) provides that an ALJ may reopen a hearing upon request by a party who failed to appear, providing the party shows good cause for failing to appear. OAR 471-040-0040 (February 10, 2012) defines good cause to include "an excusable mistake" or "factors beyond an applicant's reasonable control," and provides that a party's failure to understand the implications of a notice when it is received is not good cause.

When claimant received the notice of hearing scheduling the November 13<sup>th</sup> hearing, she did not understand that the scheduled time referred to a different time zone than the one in which she lived. To the extent claimant failed to appear at the November 13<sup>th</sup> hearing because she did not understand the implications of the notice of hearing, as far as what time she needed to call in to participate in it, she did not have good cause to reopen the hearing. Claimant did not show that her failure to appear was the result of factors beyond her reasonable control because it is within an individual's reasonable control to learn and know the time zone in which the individual lives, particularly after having lived in that time zone for approximately 7 months. Although claimant's failure to learn her time zone, note the time zone difference on the notice of hearing, and appear at the November 13<sup>th</sup> hearing was likely due to a mistake on her part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Because claimant's failure to appear at the hearing was not due to an excusable mistake or factors beyond her reasonable control, she did not establish good cause to reopen the hearing, and her request must be denied.

**DECISION:** Hearing Decision 17-UI-99041 is affirmed.

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

**DATE of Service:** January 30, 2018

**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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