

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0058

Affirmed
Requests to Reopen Denied

PROCEDURAL HISTORY: On April 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 142715). On May 4, 2017, decision # 142715 became final without claimant having filed a request for hearing. On September 8, 2017, the Department served notice of an administrative decision based, in part, on decision # 142715, assessing a \$518 overpayment, four penalty weeks and a \$77.70 monetary penalty (decision # 193527). On September 15, 2017, claimant filed a late request for hearing on decision # 142715 and a timely request for hearing on decision # 193527. On November 17, 2017, the Office of Administrative Hearings (OAH) served notice of hearings scheduled for December 1, 2017 at 9:30 a.m. and 10:45 a.m. On December 1, 2017, claimant failed to appear at the hearings and ALJ Monroe issued Hearings Decisions 17-UI-98063 and 17-UI-9806, dismissing claimant's requests for hearing due to her failure to appear. Claimant filed timely requests to reopen the hearings. ALJ Kangas reviewed claimant's requests and on January 3, 2018 issued Hearing Decisions 18-UI-100093 and 18-UI-100094, dismissing the requests. On January 13, 2018, claimant filed timely applications for review of Hearing Decisions 18-UI-100093 and 18-UI-100094 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 18-UI-100093 and 18-UI-100094. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0058 and 2018-EAB-0059).

EAB considered both hearing records in their entirety and claimant's written argument. However, claimant's argument included information not contained in her request to reopen the hearings, and claimant failed to establish that factors or circumstances beyond her reasonable control prevented her from including that information in her requests. EAB therefore did not consider claimant's new information when reaching this decision. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) On November 17, 2017, OAH mailed notice of the December 1, 2017 hearings to claimant at her address of record in Portland, Oregon. On November 29, 2017, claimant telephoned OAH and left a voice message stating that she wanted to postpone the hearings. That same day, OAH returned claimant's call and left a voice message stating that it needed more information as to why claimant wanted to postpone the hearings before it could make a decision to grant her request. Claimant did not contact OAH again until after the hearings because she did not check her voice messages.

(2) In claimant's requests to reopen the hearings, she indicated that she was scheduled to work from 8:30 a.m. to 9:00 p.m. on December 1, 2017 and was not able to take time off from work to participate in the hearings that morning. Claimant also noted that she was in the process of moving and requested a postponement, but that she was "not able to reach [her] representative in enough time." Exhibit 5.

CONCLUSIONS AND REASONS: Claimant's requests to reopen the December 1, 2017 hearings are 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 an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0040(2) (February 10, 2012).

Here, claimant failed to appear at the December 1, 2017 hearings because she was required to work that morning and could not take time off from work to participate. However, claimant did not indicate when she first learned she was required to work on December 1, how long after becoming aware of the scheduling conflict she waited before requesting that the hearings be postponed, or how being in the process of moving affected her ability to check her voice messages and return OAH's call to explain why she could not attend the hearings. Nor did claimant assert or show that she could not have at least called into the first hearing, explained to the ALJ why she could not participate, and requested that the ALJ postpone the hearings. Absent a showing that claimant's delay and failure to act arose from an excusable mistake or from factors beyond her reasonable control, we cannot find good cause. Claimant's requests to reopen the December 1, 2017 hearings therefore are denied.

DECISION: Hearing Decisions 18-UI-100093 and 18-UI-10009 are affirmed.

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

DATE of Service: January 26, 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. 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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