

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0088**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On October 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 84858). Claimant filed a timely request for hearing. On November 30, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 12, 2017, at which claimant failed to appear. On December 13, 2017, ALJ Clink issued Hearing Decision 17-UI-98863, dismissing claimant's request for hearing for failure to appear. On December 28, 2017, claimant filed a request to reopen the hearing. On January 3, 2018, ALJ Kangas considered claimant's request and issued Hearing Decision 18-UI-100137, denying claimant's request to reopen. On January 23, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant submitted a written argument in which he explained the reason he failed to appear at the December 12, 2017 hearing. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information before the ALJ in accordance with the instructions that were mailed to him with the hearing decision under review. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence before the ALJ when reaching this decision. However, even if we had considered claimant's argument the outcome of this decision would have remained the same. Claimant's argument explained that he missed the hearing because although he was present at his phone in time to attend the scheduled hearing, he waited for the ALJ to call him instead of calling in to the hearing to participate as the notice of hearing instructed. Claimant's explanation did not establish good cause to reopen the hearing because it is generally considered within an individual's reasonable control to read the notice of hearing and comply with its instructions, and although claimant's failure to realize he needed to call in to the hearing was likely the result of a mistake, 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 his reasonable control, he did not establish good cause to reopen the hearing, and his request would be denied.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 18-UI-100137 is affirmed.

J. S. Cromwell and S. Alba;  
D. P. Hettle, 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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