

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0257

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On January 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work with the employer without good cause (decision # 82943). Claimant filed a timely request for hearing. On February 16, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for February 27, 2018 at 8:15 a.m., at which time claimant failed to appear. On February 27, 2018, ALJ Meerdink issued Hearing Decision 18-UI-104053, dismissing claimant's request for hearing for failure to appear. On March 1, 2018, claimant filed a timely request to reopen the hearing. On March 6, 2018, ALJ Kangas considered claimant's request and issued Hearing Decision 18-UI-104561, denying claimant's request to reopen. On March 12, 2018, claimant filed an application for review of Hearing Decision 18-UI-104561 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: Claimant received notice of the February 27, 2018 8:15 a.m. hearing and planned to attend. He misread the notice of hearing and mistakenly thought the hearing was scheduled to start at 8:45 a.m., causing him to miss the hearing.

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

ORS 657.270(5) provides that any party that failed to appear at the hearing may file a request to reopen, and that the request may be allowed if, among other things, the party shows "good cause" for failing to appear. OAR 471-040-0040(2) (February 10, 2012) defines "good cause" as an excusable mistake or "factors beyond an applicant's reasonable control."

Claimant failed to appear at the February 27th hearing in this matter because he misread the notice of hearing. Misreading the notice of hearing does not amount to a factor beyond his reasonable control because it is generally considered to be within an individual's reasonable control to carefully read and make note of the timing of important matters like a hearing, or to promptly ask questions if unable to do so, or if confused about what the notice of hearing said. Additionally, although misreading the hearing

time on the notice of hearing was likely the result of a mistake on claimant's 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. For those reasons, claimant's request to reopen was properly denied by the ALJ.

DECISION: Hearing Decision 18-UI-104561 is affirmed.

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

DATE of Service: March 13, 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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