

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0298**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On January 3, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 111211). On January 4, 2018, the Department served notice of an administrative decision concluding that claimant willfully failed to report his work separation from the employer to obtain benefits and therefore was overpaid benefits, disqualified for future benefits, and subject to a monetary penalty (decision # 195553). On January 14, 2018, claimant filed timely requests for hearings on both decisions.

On January 25, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 111211 scheduled for February 8, 2018 at 9:30 a.m., and notice of a hearing on decision # 195553 scheduled for February 8, 2018 at 10:45 a.m. On February 8, 2018, ALJ M. Davis attempted to conduct the 9:30 a.m. hearing on decision # 111211, but claimant failed to appear. Claimant appeared for the 10:45 a.m. hearing on decision # 195553, and ALJ Davis conducted the hearing. On February 8, 2018, ALJ Davis issued Hearing Decision 18-UI-102879, dismissing claimant's request for hearing on decision # 111211 due to his failure to appear at the 9:30 a.m. hearing on that decision.<sup>1</sup>

On February 24, 2018, claimant filed a timely request to reopen the hearing on decision # 111211. ALJ Kangas considered claimant's request. On March 6, 2018, OAH mistakenly issued Hearing Decision 18-UI-104521, which is a copy of hearing decision 18-UI-102879 (dismissing claimant's request for hearing on decision # 111211 for failure to appear). On March 21, 2018, ALJ Kangas issued Hearing Decision 18-UI-105663, vacating Hearing Decision 18-UI-104521 and denying claimant's request to reopen the hearing on decision # 111211, leaving Hearing Decision 18-UI-102879 undisturbed. On March 26, 2018, claimant filed an application for review of Hearing Decision 18-UI-105663 with the Employment Appeals Board (EAB).

<sup>1</sup> On February 8, 2018, ALJ Davis also issued Hearing Decision 18-UI-102881, modifying decision # 195553 by concluding that claimant was overpaid benefits, but not disqualified for future benefits or subject to a monetary penalty. On February 28, 2018, Hearing Decision 18-UI-102881 became final without an application for review of that decision having been filed with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) The Department mailed the January 25, 2018 notice of the hearing on decision # 111211 to claimant's Central Point, Oregon address of record with the Department, the same address to which it mailed the January 25, 2018 notice of the hearing on decision # 195553.

(2) Claimant failed to appear at the hearing on decision # 111211 because he did not realize that a hearing on that decision had been scheduled for February 8, 2018 at 9:30 a.m. in addition to the hearing on decision # 195553 scheduled for the same date at 10:45 a.m.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen the hearing on decision # 111211 is 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 the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012).

In written argument, claimant asserted that he failed to appear at the hearing on decision # 111211 because "I was not aware of a second hearing to be held on the 8<sup>th</sup> of February," and "I never received any other paperwork pertaining to another hearing on the 8<sup>th</sup>." However, the Department mailed the January 25, 2018 notice of the hearing on decision # 111211 to claimant's Central Point, Oregon address of record with the Department, the same address to which it mailed the January 25, 2018 notice of the hearing on decision # 195553, which claimant apparently received. Documents sent through the U.S. Postal service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(10) (January 31, 2012). Claimant's bare assertion that he did not receive the notice of hearing on decision # 111211 is insufficient overcome that presumption, and claimant did not assert or show that factors or circumstances beyond his reasonable control prevented him from understanding from the Department's notices that he had two hearings scheduled for February 8, 2018. Claimant's failure to appear the 9:30 hearing on decision # 111211 instead appears to have been due to a mistake on his part, but not an "excusable" mistake because it does not, for example, raise 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.

Claimant's request to reopen the hearing on decision # 111211 therefore is denied.

**DECISION:** Hearing Decision 18-UI-105663 is affirmed.

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

**DATE of Service:** April 10, 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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