

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0713

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On April 11, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 115410). On April 29, 2018, the employer filed a timely request for hearing. On May 9, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 21, 2018, at which the employer failed to appear. On May 21, 2018, ALJ Murdock issued Order No. 18-UI-109796, dismissing the employer's request for hearing for failure to appear. On May 30, 2018, the employer filed a timely request to reopen. On June 8, 2018, OAH mailed notice of a hearing scheduled for June 22, 2018. On June 22, 2018, ALJ Snyder conducted a hearing, and on June 29, 2018 issued Order No. 18-UI-112380, denying the employer's request to reopen. On July 16, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The employer's owner filed the April 29th request for hearing. At the time, he intended to take care of matters related to claimant's unemployment insurance claim. He wrote on the notice of hearing that he was not available for a hearing in the next 60 days on Tuesdays between 8:00 a.m. and 2:00 p.m.

(2) The owner subsequently decided to have his registered agent handle the hearing. When the notice of hearing OAH mailed the employer arrived, the notice was set aside for the registered agent.

(3) The registered agent did not receive or read the notice of hearing between its arrival and May 19, 2018. On May 19, 2018, the registered agent had to leave the state because of an emergency. She was not in Oregon on May 21st at the time of the hearing, and returned the night of May 21, 2018.

(4) On May 26, 2018, five days after the hearing, the registered agent opened the envelope containing the notice of hearing and first realized that she had missed the hearing.

CONCLUSIONS AND REASONS: We agree with the ALJ that the employer's request to reopen the May 21st hearing should be denied.

ORS 657.270(5) provides that a party's request to reopen a hearing may be allowed if the party failed to appear at the hearing, filed the request to reopen within 20 days after the issuance of the ALJ's written decision, and shows good cause for failing to appear. OAR 471-040-0040(2) defines "good cause" as "an excusable mistake or . . . factors beyond an applicant's reasonable control." OAR 471-040-0040(2)(b)(B) provides that good cause does not include "[n]ot understanding the implications of a . . . notice when it is received."

The record does not show that appearing at the hearing was caused by factors beyond the employer's reasonable control. The evidence suggests that the employer's business received notice of the May 21st hearing in the ordinary course of the mail, but rather than immediately open the envelope or read and respond to the notice, the person who received the notice set it aside for the registered agent to attend to it later. It is more likely than not that the notice of hearing was received at the employer's business prior to the registered agent's emergency out of state trip on May 19th, given that it was mailed 10 days earlier, and the evidence the employer presented at the hearing does not suggest that it was beyond the reasonable control of someone at the employer's business to have promptly attended to the notice and either requested that the hearing be postponed so the registered agent could attend, or arranged for someone else to attend the hearing on the employer's behalf.

Although the employer's failure to attend to the notice of hearing when it arrived and resultant failure to attend the hearing were likely the result of a mistake on the employer'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. Because the employer's failure to attend the hearing was not caused by factors or circumstances beyond its reasonable control or an excusable mistake, the employer has not established that it is entitled to have the May 21st hearing reopened. The request to reopen is, therefore, denied.

DECISION: Order No. 18-UI-112380 is affirmed.

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

DATE of Service: July 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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