

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0767

Reversed
Request to Reopen Allowed

PROCEDURAL HISTORY: On June 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 94140). Claimant filed a timely request for hearing. On June 13, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for June 27, 2018. On June 27, 2018, claimant failed to appear at the hearing and ALJ Amesbury issued Order No. 18-UI-112203, dismissing claimant's request for hearing due to his failure to appear. On July 3, 2018, claimant filed a timely request to reopen the hearing. On July 30, 2018, ALJ Amesbury conduct a hearing on claimant's request to reopen the hearing, and on August 1, 2018 issued Order No. 18-UI-114162, denying claimant's request to reopen the hearing. On August 6, 2018, claimant filed a timely application for review of Order No. 18-UI-114162 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was relevant and based on the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) On or before June 23, 2018, claimant's minor daughter was experiencing severe abdominal pain and her doctor in Bend, Oregon, was unable to diagnose the cause of the pain. On or about June 23, 2017, claimant learned that his daughter needed to have an emergency medical procedure in Portland, Oregon on June 26, 2018.

(2) During the time between when claimant learned of his daughter's medical procedure and the June 27 hearing date, claimant did not contact the OAH to request a postponement or inquire as to his options regarding the hearing. During this period claimant was focused on his daughter's health issues and making travel arrangements from Bend to Portland.

(3) On June 26, 2018, claimant accompanied his daughter to Randall's Children's Hospital in Portland for an emergency colonoscopy or sigmoidoscopy. Claimant and his daughter stayed in Portland the evening of June 26 to await the test results and meet with his daughter's specialist on June 27. At the time of the hearing on June 27, 2018, claimant was in the hospital lobby with his daughter, waiting to receive the test results and to meet with her specialist.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that the claimant's request to reopen the June 27 hearing should be allowed, and claimant is entitled to a hearing on the merits of decision # 94140.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request that the hearing be opened, and that the request may be granted if the party filed the request within 20 days of the ALJ's decision and shows good cause for failing to appear. "Good cause" is defined, in pertinent part, as "an excusable mistake" or "factors beyond an applicant's reasonable control." OAR 471-040-0040(2) (February 10, 2012).

The ALJ concluded that claimant did not have good cause for failing to appear at the June 27, 2018, because it was within his reasonable control to reschedule the hearing and to call into the hearing from the hospital lobby. In reaching that conclusion, the ALJ reasoned that claimant had ample time to reschedule the hearing between June 23, when he learned that his daughter needed to have an emergency medical procedure and June 27. The ALJ also reasoned that claimant made a "conscious decision not to call in at the time of the hearing, not because of an ongoing emergency, but because he thought it would be inappropriate to call from a hospital lobby." Order No. 18-UI-114162 at 4. The ALJ's suggestion that no medical emergency existed at the time of the hearing infers that the medical test in it of itself resolved claimant's daughter's medical emergency. Without the test results, however, there was no way to know what the nature of the health issues were and whether it was an emergency or not. The emergency was therefore ongoing at the time of the hearing.

To any extent that it was within claimant's reasonable control to either request a postponement or attend the hearing, his failure to do either was an excusable mistake. It is reasonable and understandable that an individual in claimant's situation would have been preoccupied with his daughter's health issues from the time he learned that she needed an emergency medical procedure up until the time he received the test results. Likewise, it is reasonable and understandable that claimant did not call at the time of the hearing from the hospital lobby while he waited to meet with his daughter's doctor and receive the test results. To any extent claimant was aware at the time that he was missing the hearing, the mental stress that claimant was likely experiencing at the time, while waiting in a hospital lobby with an ill child waiting to hear results of the child's emergency testing procedures, amounted to an intensely stressful and distracting environment, and claimant's failure to request a postponement or call in to a scheduled hearing under those circumstances was no more than an excusable mistake.

DECISION: Order No. 18-UI-114162 is set aside, as outlined above.

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

DATE of Service: August 24, 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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