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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JERRI BOON,

Plaintiff - Appellant,

v.

UNION PACIFIC RAILROAD
COMPANY, a foreign corporation,

Defendant - Appellee.

No. 10-35812

D.C. No. 6:09-cv-01353-AA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, Chief Judge, Presiding

Submitted March 6, 2012**

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

Jerri Boon appeals from the district court's order denying her motion for relief from judgment under Fed. R. Civ. P. 60(b)(1) in her employment action. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lemoge v. United States, 587 F.3d 1188, 1191-92 (9th Cir. 2009). We affirm.

Construing the dismissal as without prejudice, the district court did not abuse its discretion by denying Boon’s Rule 60(b)(1) motion because Boon failed to establish mistake, inadvertence, surprise, or excusable neglect. *See Allmerica Fin. Life Ins. & Annuity Co. v. Llewellyn*, 139 F.3d 664, 666 (9th Cir. 1998) (“[N]either ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under rule 60(b)(1).” (citation and internal quotation marks omitted)).

We do not consider arguments and allegations raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

Boon’s remaining contentions are unpersuasive.

AFFIRMED.