

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1479**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 28, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$3053 overpayment, \$457.95 monetary penalty, and 52 penalty weeks (decision # 194242). On June 17, 2013, decision # 194242 became final without a request for hearing having been filed. On October 15, 2015, claimant filed a late request for hearing by telephone. On October 28, 2015, ALJ Kangas issued Hearing Decision 15-UI-46717, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by November 11, 2015. On November 4, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On November 12, 2015, OAH mailed claimant a letter titled "Cancellation of Hearing Decision," and a notice of hearing scheduling a hearing on claimant's request for November 30, 2015. On November 30, 2015, ALJ Murdock conducted a hearing, and on December 2, 2015 issued Hearing Decision 15-UI-47683, re-dismissing claimant's late request for hearing on decision # 194242. On December 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant filed his request for hearing by telephone to the Department. On the request for hearing form the Department provided to OAH, the Department notified OAH that claimant required the services of an Italian language interpreter for the hearing. OAH did not schedule an interpreter to participate in the November 30, 2015 hearing. Audio recording at ~1:20. Claimant orally agreed to proceed with the hearing in English. Audio recording at ~1:35.

(2) During the hearing, claimant asked the ALJ to repeat her questions, answered questions the ALJ had directed to a different participant, and, at times, appeared not to have understood the ALJ. *See e.g.* Audio recording at ~4:08, 4:15, 8:57, ~24:00, 25:00, 30:55, 37:45, ~38:55, ~42:35, ~43:35, ~52:50. The ALJ stated at least once during the hearing that she was having trouble understanding claimant's testimony at least in part because of his accent, and repeatedly had to ask claimant to clarify his responses to her questions. *See e.g.* Audio recording at ~26:00, ~29:30, ~39:50, 54:20. Claimant stated

at least once during the hearing that he thought he was having trouble communicating about the events at issue to the ALJ, and at other times indicated he did not understand her question. *See e.g.* Audio recording at ~30:10, 31:34, 58:18-58:40. At some points during the hearing, claimant's testimony was unintelligible. Audio recording at ~57:00-57:30.

**CONCLUSIONS AND REASONS:** Hearing Decision 15-UI-48673 should be reversed, and this matter remanded.

ORS 45.273 provides that Oregon's policy is to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language, who cannot be fully protected in administrative proceedings unless qualified interpreters are available to provide assistance. ORS 657.270(4) requires that an administrative law judge in an unemployment insurance hearing give "all parties a reasonable opportunity for a fair hearing." For purposes of unemployment insurance proceedings, if a known limited English proficient person is a party, the administrative law judge "shall" appoint a certified or qualified interpreter. OAR 471-040-0007(4). If, at the time of or during the unemployment insurance hearing, it becomes apparent that an interpreter is necessary for a full and fair inquiry, the administrative law judge "shall" arrange for an interpreter and may postpone the proceeding if necessary. OAR 471-040-0007(7)(a).

Despite claimant's initial agreement to proceed with the November 30, 2015 without the assistance of an Italian language interpreter, it is apparent from the record that claimant and the ALJ were unable to communicate clearly with each other during the hearing, or establish a clear record, and the service of an Italian language interpreter was necessary for a full and fair inquiry into the circumstances surrounding claimant's late request for hearing on decision # 194242. We therefore remand this matter for a new hearing with an Italian language interpreter and a new hearing decision.

**DECISION:** Hearing Decision 15-UI-48673 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>1</sup>

Susan Rossiter and J. S. Cromwell

**DATE of Service: December 15, 2015**

**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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<sup>1</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-48673 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.