Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/11/2026 01:05 AM CST

signed by Garcia also shows the "Signature of Defendant's Attorney." The signature, albeit largely illegible, attests to an "Attorney's Statement" that the form was reviewed by the attorney with Garcia and that all rights were reviewed and questions answered.

The trial court did not clearly err in concluding that the prior California convictions were counseled.

Garcia concedes that his argument concerning his sentence of 180 days' jail time was addressed in *State v. Dinslage*.[32] In *Dinslage*, we concluded that it was within the trial court's discretion to impose up to 180 days' confinement as a condition of probation. We find no error in Garcia's sentence.

VI. CONCLUSION

For the foregoing reasons, we affirm.

AFFIRMED.

---

[32] *State v. Dinslage*, 280 Neb. 659, 789 N.W.2d 29 (2010).

JESUS TAPIA-REYES, APPELLEE, V.
EXCEL CORPORATION, APPELLANT.
793 N.W.2d 319

Filed January 21, 2011. No. S-10-474.

1. **Workers' Compensation: Appeal and Error.** In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the finding of the trial judge who conducted the original hearing; the findings of fact of the trial judge will not be disturbed on appeal unless clearly wrong.
2. ____: ____. With respect to questions of law in workers' compensation cases, an appellate court is obligated to make its own determination.
3. **Workers' Compensation: Evidence: Appeal and Error.** The workers' compensation review panel may reverse or modify the findings, order, award, or judgment of the original hearing only on the grounds that the judge was clearly wrong on the evidence or the decision was contrary to law.
4. **Workers' Compensation: Appeal and Error.** Appeals from a workers' compensation trial court to a review panel are controlled by the statutory provisions found in the Nebraska Workers' Compensation Act.
5. **Workers' Compensation.** The Nebraska Workers' Compensation Act is construed liberally to carry out its spirit and beneficent purposes.

6. **Principal and Agent: Words and Phrases.** Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and the consent of the other to so act.
7. **Constitutional Law: Witnesses: Interpreters: Public Policy.** It is the public policy of this state that the constitutional rights of persons unable to communicate the English language cannot be fully protected unless interpreters are available to assist such persons.
8. **Constitutional Law: Witnesses: Interpreters.** While a word-for-word translation best ensures that the quality of the translation does not fall below the constitutionally permissible threshold, there is no constitutional right to a flawless interpretation.
9. **Rules of the Supreme Court: Interpreters: Appeal and Error.** The failure to strictly adhere to the Nebraska Code of Professional Responsibility for Interpreters does not of itself create reversible error in an appeal from judicial proceedings.
10. **Judges: Evidence: Presumptions.** It is presumed that judges disregard evidence which should not have been admitted.
11. **Trial: Witnesses: Interpreters.** Matters concerning interpreters' conduct during judicial proceedings are left to the sound discretion of the court.

Appeal from the Workers' Compensation Court. Reversed and remanded for further proceedings.

James D. Hamilton and Amanda A. Dutton, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for appellant.

Jesus Tapia-Reyes, pro se.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MCCORMACK, J.

NATURE OF CASE

Jesus Tapia-Reyes suffered a permanent injury to his back while working as a loader for Excel Corporation (Excel). After 8 years of working in a different position offered by Excel to accommodate his physical restrictions, Tapia-Reyes was fired for an alleged act of sexual harassment of a coworker. After that, he filed his workers' compensation claim, which had been tolled by Excel's voluntary medical and partial disability payments. At the hearing before a single judge of the Nebraska Workers' Compensation Court, Tapia-Reyes and the alleged victim of the harassment testified with the assistance

of an interpreter. The single judge awarded a 30-percent permanent impairment, but denied vocational rehabilitation based on its finding that Tapia-Reyes was fired for cause. Tapia-Reyes appealed to the review panel. He alleged several errors, including that the interpreter had inappropriately commented on the testimony. The review panel agreed, and reversed and remanded for a hearing before a new judge. The panel did not address Tapia-Reyes' other assignments of error. Excel appeals and asks that we affirm the award of the single judge. Excel asserts that any interpreter error was harmless, because the reason for Tapia-Reyes' discharge is irrelevant to the question of entitlement to vocational rehabilitation. Excel also argues that this alleged error and others were not properly before the review panel, because it lacked authority to consolidate separate but timely filed applications for review by Tapia-Reyes' attorney and by Tapia-Reyes, pro se. We hold that the review panel erred in reversing on the issue of the interpreter, and we reverse the order of reversal on review and remand the cause to the review panel for consideration of the remaining errors presented in Tapia-Reyes' consolidated application for review.

BACKGROUND

In September 1999, Tapia-Reyes was hired by Excel to work on the "kill floor" as a loader. Prior to this, Tapia-Reyes worked several other jobs involving medium to heavy physical activity which did not require that he be proficient in English. He is 42 years old, and his education is limited to five grades of primary school. He suffers from epilepsy and, because of a seizure-related traffic incident, is currently unable to obtain a driver's license.

On April 13, 2000, Tapia-Reyes injured his lower back while working at Excel, lifting and twisting with boxes of meat product. A functional capacity examination conducted in 2002 recommended that Tapia-Reyes work under permanent work restrictions within a light to medium demand level. The compensation court appointed a vocational rehabilitation consultant who performed a loss of earning power evaluation and determined Tapia-Reyes had a 20-percent permanent loss.

Tapia-Reyes obtained a rebuttal evaluation assigning a 40- to 45-percent loss. Excel voluntarily paid Tapia-Reyes' continuing medical expenses and placed him in the liver packaging and labeling department, a job within his physical restrictions. Excel also voluntarily paid Tapia-Reyes compensation based upon the 20-percent loss of earning power found by the court-appointed consultant. Tapia-Reyes did not pursue a workers' compensation award at that time. In August 2008, Tapia-Reyes was fired for the alleged sexual harassment of a female coworker.

Workers' Compensation Court

On August 25, 2008, Tapia-Reyes, through his attorney, filed a petition before a single judge of the compensation court. The petition sought continuing reimbursement of medical bills, a determination of permanent partial disability benefits, and vocational rehabilitation.

On November 21, 2008, the single judge granted Tapia-Reyes' application for appointment of a new vocational rehabilitation consultant to redetermine Tapia-Reyes' loss of earning capacity and create a vocational rehabilitation plan. The newly appointed consultant evaluated Tapia-Reyes' loss of earning capacity at 30 percent, noting that the previous loss of earning capacity report had improperly utilized Tapia-Reyes' hourly wage rather than his average weekly wage. A new rebuttal evaluation assigned a 40- to 45-percent loss of earning capacity.

The court-appointed consultant's report also indicated that Tapia-Reyes had been actively seeking employment since August 2008 and had been unable to obtain any interviews. It was the consultant's conclusion that Tapia-Reyes lacked the English reading and writing skills needed to independently complete a job application and which would also be needed to work many jobs otherwise suitable to his physical restrictions and lack of ability to drive. The consultant set forth a 6-month plan designed to improve Tapia-Reyes' English skills. Excel objected to the plan on the grounds that Excel had continued to accommodate Tapia-Reyes and that Tapia-Reyes had lost his employment for reasons unrelated to his injury.

The hearing before the single judge was held on May 4, 2009. The principal issue at the hearing was whether Tapia-Reyes' employment was terminated for cause. Tapia-Reyes testified with the aid of an interpreter, who clarified that he was registered, but not certified. Tapia-Reyes did not object to the interpreter's qualifications.

Tapia-Reyes testified that he was fired based on Excel's belief that he had inappropriately touched a female coworker. But he denied that he had done anything wrong and explained that he had unintentionally touched his coworker during an epileptic seizure. Medical records showed a history of epileptic seizures, some of which involved inappropriate behavior. Tapia-Reyes described that in August 2008, while at work, he felt an epileptic seizure coming on. He reached over to touch his coworker who was standing next to him to tell her he was not feeling well. Just then, he had a seizure and his hand unintentionally "slid down her back." The incident was captured by a video surveillance camera. Tapia-Reyes testified that his supervisor showed him the video when he was fired but that Tapia-Reyes believed the video portrayed events in a manner consistent with a seizure. By the time of the hearing before the compensation court, the video was no longer available. Excel had destroyed it after 30 days, as was its customary practice.

On cross-examination, Tapia-Reyes was asked about a prior complaint made against him in 2004 for using inappropriate language to his coworkers. He admitted that, because of prior complaints, he was put on "final warning status." Tapia-Reyes testified that he was guilty of yelling at his coworkers when they did not keep up with their work on the line and that he recognized he did not have the authority to do so. He denied using any vulgar language other than once saying, "hurry up, huevona."

At this point, the interpreter interjected and the following exchange took place:

> THE INTERPRETER: Huevona is usually applied to men. It means you've got more in your pants than you've got in your head is what the technical expression means, but he said —

> [Attorney for Tapia-Reyes]: Excuse me, is the witness testifying to that?
>
> THE INTERPRETER: He is saying — he did say that. On one occasion I said to some, apurase, hurry up, huevona. I'm explaining huevona literally — huevona is somebody that's got more in his pants than he's got in his head. That's the technical translation for huevona. Not a good word.
>
> [Attorney for Tapia-Reyes]: I would ask that the translator's interpretation be stricken.
>
> THE COURT: All right. I will disregard the editorial comment, but he defined the word.

The coworker who Tapia-Reyes allegedly sexually harassed also testified at the hearing with the assistance of the interpreter. She described the August 2008 incident in detail. She stated that she was in her work area waiting for the livers to come for packing and that she felt Tapia-Reyes' hands from behind, going underneath her apron, and "up and down my back and my legs." She stated that she told her supervisor, but did not make a formal report of the incident right away. A few days later, Tapia-Reyes told her, "very offensively," to hurry up. At that point, she made a written complaint and Tapia-Reyes was fired. The coworker explained that Tapia-Reyes had not used foul language when he yelled at her a few days after the incident but that he did say, "I'm going to be waiting for you until you get ready." When the coworker was cross-examined about raising for the first time at the hearing the allegation that Tapia-Reyes had threatened her, the interpreter interjected:

> THE INTERPRETER: Well, my interpretation of her, I'm going to be waiting for you. I didn't say it the way she said it exactly because I said literally what she said. I'm going to be waiting for you. The implication is not I'm going to wait for you for something bad. The implication is I'm going to wait for you sexually.
>
> [Attorney for Tapia-Reyes]: Your Honor, I object to the interpretation. We're getting nuances of what should be a fairly word-for-word interpretation, and this interpreter in

> this case has several times editorialized to be generous. I have no further questions of the witness.
>
> THE COURT: I think it depends on context, just the way English words can be interpreted differently, used in context, and I have never before had any concern about [the interpreter's] services.
>
> [Attorney for Tapia-Reyes]: Okay. I'll accept the Court's clarification. And I have no further questions. Thank you very much, Your Honor.

The coworker also explained that she did not believe Tapia-Reyes had a seizure when he touched her, because, in the days following, he told her, "fucking old lady, why didn't you say do that to me again instead of what you said?"

The award was entered on July 16, 2009. The single judge concluded that Tapia-Reyes experienced a 30-percent permanent loss of earning power which entitled him to $82.37 per week for permanent partial indemnity from and after April 13, 2000, for 300 weeks. Excel was entitled to credit for indemnity paid. The court also ordered that Excel continue to pay for medical expenses in relation to the injury. The single judge denied Tapia-Reyes' request for vocational rehabilitation services. The court explained, "But for his employment misconduct, he could have continued his accommodated employment with [Excel] and is therefore not entitled to vocational rehabilitation services."

Review Panel

On July 28, 2009, Tapia-Reyes filed the following unedited, handwritten document with the compensation court:

> Id like To appeal the decition for award From Judge Brown July-16-09 Because my Atorney . . . Don't help my How I need Because Don't give me a Chance To brin my witnes and Don't give me a chance To explein to the Judge was wrong with the Company and Co Worker.

On July 30, Tapia-Reyes' attorney filed an application for review, alleging that the single judge erred in failing to award vocational rehabilitation services and in finding that Tapia-Reyes suffered only a 30-percent loss of earning power. Tapia-Reyes' attorney asked that the review panel reverse or modify

the award, because Tapia-Reyes was entitled to vocational rehabilitation services and to indemnity benefits for a 40- to 45-percent loss of earning power.

Excel moved to dismiss the July 30, 2009, application for review on the ground that because Tapia-Reyes apparently no longer wished for his attorney to represent him, it was unfair to force Excel to respond to two appeals instead of one. Tapia-Reyes' attorney responded with a motion to consolidate the two applications for review. On September 4, Tapia-Reyes' attorney filed an application to withdraw, noting that Tapia-Reyes had filed a complaint against him before the Counsel for Discipline of the Nebraska Supreme Court and that Tapia-Reyes had otherwise indicated by his pro se filing that he no longer wished for counsel to represent him.

While counsel's motion to withdraw was pending, the review panel overruled Excel's motion to dismiss. The review panel noted that at the time the applications were filed, Tapia-Reyes' attorney had not been discharged. The review panel noted further that Tapia-Reyes had indicated he wished the application for review filed by his attorney of record to apply and help define the basis for his appeal. The review panel found no real prejudice to Excel and granted Tapia-Reyes' motion to consolidate the applications.

Tapia-Reyes' attorney had also moved to amend the application for review to include allegations relating to the interpreter's qualifications and conduct at the May 4, 2009, hearing. Counsel explained that one of the aspects of this challenge, that the interpreter had failed to file an affidavit as required by Workers' Comp. Ct. R. of Proc. 5 (2009), was only recently discovered. The review panel granted the motion to amend, over Excel's objection. After these matters were settled, the review panel granted counsel's motion to withdraw.

The review panel summarized the consolidated and amended application for review as alleging the following assignments of error: (1) The single judge erred in concluding that Tapia-Reyes was not entitled to vocational rehabilitation services; (2) the single judge erred in concluding that Tapia-Reyes had suffered only a 30-percent loss of earning power; (3) the interpreter used at the trial herein was not certified by the State of

Nebraska, and he gave explanations and elaborations in his interpretation of certain trial testimony that may have affected the outcome of the proceedings; and (4) the acts and omissions of Tapia-Reyes' attorney prejudiced the presentation of Tapia-Reyes' case, to his detriment.

The review panel reversed on the third assignment of error and concluded that it was unnecessary to reach any of the remaining assignments of error. While the review panel rejected Tapia-Reyes' argument that the interpreter's lack of certification or affidavit was in itself reversible error, it did conclude that the interpreter's commentary was inappropriate and prejudicial. The panel found that the interpreter added to and explained that which was stated by a witness, in violation of Canon 1 of the Nebraska Code of Professional Responsibility for Interpreters.[1] The panel remanded the case for a new hearing before a different judge, explaining that it knew of no other satisfactory remedial measure that would satisfy the policy of this state concerning non-English-speaking litigants as established by the Nebraska Legislature.[2] Excel appeals the review panel's decision. Tapia-Reyes does not cross-appeal.

ASSIGNMENTS OF ERROR

Excel asserts that the review panel erred in (1) overruling its motion to dismiss the July 30, 2009, application for review filed by Tapia-Reyes' former counsel; (2) consolidating the July 28 application for review filed by Tapia-Reyes and the July 30 application for review filed by his former counsel; (3) granting the motion to amend the application for review; (4) finding the interpreter added to and explained that which was stated by the witnesses; (5) finding it was unable to state that the actions of the interpreter were harmless; (6) remanding the matter for a new trial rather than a less extreme remedy; (7) ordering that on remand, the case should be assigned to a different judge so as to avoid any appearance of possible bias or prejudice by the trier of fact; and (8) failing to affirm the decision of the single judge in all respects.

---

[1] See Neb. Ct. R. § 6-701 et seq., appendix 1.

[2] See Neb. Rev. Stat. § 25-2401 et seq. (Reissue 2008).

STANDARD OF REVIEW

[1] In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the finding of the trial judge who conducted the original hearing; the findings of fact of the trial judge will not be disturbed on appeal unless clearly wrong.[3]

[2] With respect to questions of law in workers' compensation cases, an appellate court is obligated to make its own determination.[4]

[3] The workers' compensation review panel may reverse or modify the findings, order, award, or judgment of the original hearing only on the grounds that the judge was clearly wrong on the evidence or the decision was contrary to law.[5]

ANALYSIS

Applications for Review

[4] We first address Excel's assignments of error relating to the facts that the review panel allowed Tapia-Reyes' attorney to file an application for review and a motion to amend and granted the attorney's motion to consolidate all assigned errors. Appeals from a workers' compensation trial court to a review panel are controlled by the statutory provisions found in the Nebraska Workers' Compensation Act.[6] Under Neb. Rev. Stat. § 48-170 (Reissue 2004), every order and award of a single judge of the compensation court shall be binding unless an application for review has been filed within 14 days after the date of entry of the order or award. Neb. Rev. Stat. § 48-179 (Reissue 2004) provides that the application must be specific as to each finding of fact and conclusion of law urged as error and the reason therefor. The party or parties appealing for

---

[3] *Worline v. ABB/Alstom Power Int. CE Servs.*, 272 Neb. 797, 725 N.W.2d 148 (2006). See, also, *Guico v. Excel Corp.*, 260 Neb. 712, 619 N.W.2d 470 (2000).

[4] *Ortiz v. Cement Products*, 270 Neb. 787, 708 N.W.2d 610 (2005).

[5] *Scott v. Pepsi Cola Co.*, 249 Neb. 60, 541 N.W.2d 49 (1995).

[6] *Miller v. Regional West Med. Ctr.*, 278 Neb. 676, 772 N.W.2d 872 (2009).

review shall be bound by the allegations of error contained in the application.[7]

Excel argues that because §§ 48-170 and 48-179 refer in the singular to "the" or "an" application for review, the Nebraska Workers' Compensation Act does not authorize the filing of multiple applications. In this case, ultimately, there was only one consolidated application for review. Excel asserts, however, that because there was no authority for the multiple filings in the first place, Tapia-Reyes' attorney's application, which was second in time, should have been treated as a nullity. Excel argues that the review panel thus lacked authority to consolidate the alleged errors.

Under the facts of this case, we do not view the act as prohibiting the review panel's decision to consolidate the assigned errors. Both Tapia-Reyes' pro se application for review and that of his attorney were filed within the 14-day statutory period. As the review panel noted, there was no harm to Excel, because it was timely made aware of the alleged errors. Neb. Rev. Stat. § 48-162.03(1) (Reissue 2004) provides that the compensation court or any judge thereof may rule upon any motion by any party to a suit or proceeding, "including, but not limited to, motions for summary judgment or other motions for judgment on the pleadings but not including motions for new trial or motions for reconsideration." Tapia-Reyes' motion, being neither a motion for new trial nor a motion for reconsideration, appears to be permissible under the broad language of § 48-162.03(1).

[5] Furthermore, the act is construed liberally to carry out its spirit and beneficent purposes.[8] In order to justly carry out the spirit of the act, other provisions of the act generally state that "[t]he Nebraska Workers' Compensation Court shall not be bound by the usual common-law or statutory rules of evidence or by any technical or formal rules of procedure, other than as

---

[7] § 48-179.

[8] *Powell v. Estate Gardeners*, 275 Neb. 287, 745 N.W.2d 917 (2008).

herein provided . . . .”[9] We conclude it would be contrary to the spirit and beneficent purposes of the act to forever bar an applicant from supplementing alleged errors mistakenly omitted from “the” application for review. This is especially true when the application is corrected within the 14-day statutory period for the filing.

Excel also argues that because Tapia-Reyes apparently wished to proceed pro se, his attorney lacked the authority, under agency principles, to file the application, motion to consolidate, and motion to amend. Excel argues that at the very least, the review panel should have conducted an inquiry into whether the attorney was really acting as Tapia-Reyes' agent.

[6] Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and the consent of the other to so act.[10] When Tapia-Reyes hired his attorney, they established such an agency relationship.[11] While Tapia-Reyes later expressed dissatisfaction with his attorney's representation, the attorney was not immediately discharged. The attorney's motion to withdraw was still pending when the attorney made the filings here in issue. Furthermore, Tapia-Reyes had confirmed his attorney's agency by indicating to the review panel that he wished the attorney's application for review to apply and help define the basis for his appeal. We find no merit to Excel's argument that the attorney's filings must be treated as nullities or that the review panel erred in considering them because of a lack of agency. We affirm the review panel's decision allowing Tapia-Reyes to amend and consolidate the alleged errors in the applications for review.

---

[9] Neb. Rev. Stat. § 48-168(1) (Cum. Supp. 2010). See, also, *Olivotto v. DeMarco Bros. Co.*, 273 Neb. 672, 732 N.W.2d 354 (2007); *Veatch v. American Tool*, 267 Neb. 711, 676 N.W.2d 730 (2004).

[10] *Deutsche Bank Nat. Trust Co. v. Siegel*, 279 Neb. 174, 777 N.W.2d 259 (2010).

[11] See, *Young v. Midwest Fam. Mut. Ins. Co.*, 276 Neb. 206, 753 N.W.2d 778 (2008); *Luethke v. Suhr*, 264 Neb. 505, 650 N.W.2d 220 (2002).

INTERPRETER

[7] We next address Excel's argument that the review panel erred in reversing the decision of the single judge because of the interpreter's improper explanations of testimony. Section 25-2401 provides generally that it is the public policy of this state that the constitutional rights of persons unable to communicate the English language cannot be fully protected unless interpreters are available to assist such persons. This policy applies in "any legal proceeding."[12] The requirement that an interpreter provide an accurate translation implicates a defendant's due process right to a fair trial as guaranteed by the Fifth Amendment,[13] the ultimate question being whether the translator's performance has rendered the trial fundamentally unfair.[14]

[8] It has been said that while a word-for-word translation best ensures that the quality of the translation does not fall below the constitutionally permissible threshold, there is no constitutional right to a "flawless" interpretation.[15] "[C]ourtroom interpretation is a demanding and inexact art, and . . . the languages involved may not have precise equivalents for particular words or concepts."[16] Minor or isolated inaccuracies, omissions, interruptions, or other defects in translation are inevitable and do not warrant relief where the translation is on the whole reasonably timely, complete, and accurate, and the defects do not render the proceeding fundamentally unfair.[17]

---

[12] § 25-2402(3).

[13] See, generally, Annot., 32 A.L.R.5th 149 (1995). See, also, e.g., *Zacarias-Velasquez v. Mukasey*, 509 F.3d 429 (8th Cir. 2007); *U.S. v. Si*, 333 F.3d 1041 (9th Cir. 2003); *Amadou v. I.N.S.*, 226 F.3d 724 (6th Cir. 2000); *U.S. v. Gomez*, 908 F.2d 809 (11th Cir. 1990).

[14] See 32 A.L.R.5th, *supra* note 13. See, also, *U.S. v. Edouard*, 485 F.3d 1324 (11th Cir. 2007); *U.S. v. Huang*, 960 F.2d 1128 (2d Cir. 1992).

[15] *U.S. v. Gomez, supra* note 13, 908 F.2d at 811. See, also, *Thongvanh v. State*, 494 N.W.2d 679 (Iowa 1993).

[16] 32 A.L.R.5th, *supra* note 13, § 72 at 470 (and cases cited therein). See, also, *Prokop v. State*, 148 Neb. 582, 28 N.W.2d 200 (1947), *abrogated on other grounds, Reavis v. Slominski*, 250 Neb. 711, 551 N.W.2d 528 (1996).

[17] 32 A.L.R.5th, *supra* note 13.

In §§ 25-2401 to 25-2407, the Legislature sets forth the procedure for the appointment of interpreters, which is "to avoid injustice and to assist such persons in their own defense."[18] The Code of Professional Responsibility for Interpreters is incorporated into § 25-2407, insofar as it states that any person who serves as an interpreter for persons unable to communicate the English language in court proceedings or probation services shall meet the standards adopted by the Supreme Court. Section 25-2407 explains that the Supreme Court standards "shall require that interpreters demonstrate the ability to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary special vocabulary."

The Nebraska Code of Professional Responsibility for Interpreters was enacted with the recognition that "[i]t is essential that the resulting communication barrier be removed, as far as possible, so that [persons with limited English proficiency or a speech or hearing impairment] are placed in the same position as similarly situated persons for whom there is no such barrier."[19] Canon 1 of the code states: "Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and *without explanation*."[20]

Canon 1 follows verbatim the same canon of the Model Code of Professional Responsibility for Interpreters in the Judiciary.[21] While the Nebraska Code of Professional Responsibility for Interpreters has no commentary, the commentary to Canon 1 of the model code explains that "[v]erbatim, 'word for word,' or literal oral interpretations are not appropriate when they distort the meaning of the source language . . . ."[22] On the other hand, "every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. This

---

[18] § 25-2401.

[19] § 6-701 et seq., *supra* note 1, preamble.

[20] § 6-701 et seq., *supra* note 1 (emphasis supplied).

[21] William E. Hewitt, Nat. Ctr. for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts 197 (1995).

[22] Hewitt, *supra* note 21 at 200. See, also, 65 Am. Jur. *Trials* 1, § 49 (1997).

includes apparent misstatements."[23] The commentary further explains:

> Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. . . .
>
> . . . .
>
> The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding.[24]

In the first instance of alleged interpreter error and misconduct at Tapia-Reyes' hearing before the single judge, the interpreter was clearly attempting to provide an explanation of the word "huevona," which did not appear to have a direct equivalent in the English language. To the extent that the interpreter's explanation involved any unnecessary editorializing, the single judge specifically stated that he would disregard the editorial comment. The single judge correctly found that the interpreter was simply trying to define the word "huevona" to the best of the interpreter's ability.

It is less clear that the other alleged error of interpretation, that of the phrase "I'm going to be waiting for you until you get ready," similarly necessitated explanation by virtue of there being no direct English equivalent. The interpreter appeared to be trying to clarify a misunderstanding. But this is not the same as a duty to correct an error of interpretation. And it was not a "misunderstanding that only the interpreter can clarify."[25] The misunderstanding could have been clarified through continued examination of the witness by counsel with continued literal interpretation by the interpreter.

But, when Tapia-Reyes' attorney objected to the interpreter's explanation of what the phrase "I'm going to be waiting for

---

[23] Hewitt, *supra* note 21 at 200 (emphasis omitted).

[24] *Id.* at 200-01.

[25] See *id.* at 201.

you until you get ready" implied, the single judge understood that the interpreter was only placing the phrase in context. While this may have been an unnecessary "explanation," prohibited by Canon 1 of the Nebraska Code of Professional Responsibility for Interpreters, there was no allegation that the explanation was false.

[9-11] The failure to strictly adhere to the Nebraska Code of Professional Responsibility for Interpreters does not of itself create reversible error in an appeal from judicial proceedings. We conclude that any missteps by the interpreter were minor and did not deny Tapia-Reyes his constitutional or statutory rights. It is presumed that judges disregard evidence which should not have been admitted.[26] And matters concerning interpreters' conduct during judicial proceedings are left to the sound discretion of the court.[27] While we can imagine circumstances in which a judge is unaware at trial of the errors in interpretation and cannot respond to the error, such was not the case here. The single judge was well advised by Tapia-Reyes' attorney of the interpretation errors in issue, and it appears from the record that the single judge properly disregarded inappropriate additions made to the testimony. We therefore agree with Excel that it was error for the review panel to reverse for a new trial because of the quality of the interpretation.

CONCLUSION

Although we find merit to Excel's fourth and fifth assignments of error, we cannot, as Excel urges, simply affirm the decision of the single judge. Not only was the single judge's decision based almost entirely on a theory of law which Excel now claims was in error, but the review panel has not had the opportunity to review most of the assignments of error Tapia-Reyes presented to it. Those assignments, accordingly, have not been fully briefed to this court. We reverse the order of reversal

---

[26] *State v. Sandoval*, 280 Neb. 309, 788 N.W.2d 172 (2010). See, also, *Gibson v. City of Lincoln*, 221 Neb. 304, 376 N.W.2d 785 (1985) (applying this standard to find harmless error in workers' compensation case).

[27] See, *State v. Topete*, 221 Neb. 771, 380 N.W.2d 635 (1986); *Prokop v. State, supra* note 16.

on review and remand the cause to the review panel for further proceedings in accordance with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

WRIGHT, J., not participating.