

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 026135-94**

Lucrenia Rego  
ACT Manufacturing  
Eastern Casualty Insurance

Employee  
Employer  
Insurer

**REVIEWING BOARD DECISION**

(Judges Carroll, Maze-Rothstein and Levine)

**APPEARANCES**

Norris E. Coleman, Esq., for the employee on brief  
Mark Wester, Esq., for the employee at hearing  
Kerri Ann Bidgood, Esq., for the insurer on brief  
Martin J. Long, Esq., for the insurer at hearing

**CARROLL, J.** The employee challenges on appeal a decision denying her claim for workers' compensation benefits attributable to an alleged series of falls at work on February 22, 1994. The employee argues that the interpreter whom she provided to translate at hearing from her native language, Portuguese, failed to provide adequate and accurate translation, thereby denying the employee her due process right to a fair hearing. Because the employee made no objection at hearing – or in any way drew the administrative judge's attention to the issue of the interpreter's competence or the adequacy of her translation – we deem the issue waived for argument on appeal. Pierre v. Tad Power Temp, 11 Mass. Workers' Comp. Rep. 46, 48 (1997). See Commonwealth v. Festa, 369 Mass. 419, 428 (1976).

At hearing, the employee claimed that she had fallen three times while on her way to entering the building of her employer on February 22, 1994. The employee also claimed that she told her supervisors about the incidents immediately upon entering the building. The judge did not credit the employee's account of what had happened to her. (Dec. 4.) The judge therefore denied and dismissed the employee's claim. (Dec. 8.)

The employee testified by way of a Portuguese interpreter, whom the employee hired and provided. (See affidavit of employee attached to Employee Brief).<sup>1</sup> The judge inquired into the interpreter's qualifications and ability to communicate with the employee. (Tr. 3-5.) See 452 Code Mass. Regs. 1.11(4). The employee contends on appeal that the translation provided to her by the interpreter was inaccurate and inadequate. However, the record indicates that at no time in the proceeding did the employee bring the question of the adequacy of the interpreter's translation services to the judge's attention.

The reviewing board is constrained by the standard of review set out in G.L. c. 152, §11C, which allows us to reverse a decision only upon determining that the decision is beyond the scope of the judge's authority, arbitrary or capricious, or contrary to law, or to recommit the case for further findings of fact when appropriate. We see no basis for reversal or recommitment in this case.

The reviewing board has addressed this issue before. In Pierre, *supra*, at 48, we stated:

The employee at no point prior to the rendering of a decision raised any complaint about the interpretation procedures. He raised the issue for the first time only after he received an adverse decision. His objection at the reviewing board stage of proceedings is both untimely and unpersuasive.

Failure to raise the interpretation issue below renders the matter settled. See Torres v. Pine Street Inn, 9 Mass. Workers' Comp. Rep. 359, 360 (1995) (issues not raised and addressed at hearing will not be addressed on appeal). Objections to the manner of interpretation must be raised at the time the problems arise so that they may be timely corrected. See Maquiel v. Westford Regency Inn and Conference Ctr., 10 Mass. Workers' Comp. Rep. 204, 207 (1996) (translation issue waived when offer of interpretation rejected). The record is devoid of any objection, written or verbal, by the employee to the interpretation procedures utilized at the hearing. We will not entertain such an objection when it is raised for the first time on appeal.

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<sup>1</sup> See Petition of Dept. of Pub. Welfare to Dispense with Consent, 8 Mass. App. Ct. 872 (1979) (concession of factual point against interest, at argument, relied upon).

In Quintero v. Alberti Construction, 10 Mass. Workers' Comp. Rep. 391 (1996), we also addressed the issue of competent interpretation:

Where interpretation is required, the judge has the authority to determine that it is done properly. See Commonwealth v. Salim, 399 Mass. 227, 238 (1987) (qualifications of an interpreter in a criminal trial). The constitutional courts have ruled that the proper time to dispute the qualifications of an interpreter is prior to, or contemporaneous with, the translation. If the issue is not then raised, it may be considered waived.

Quintero, supra at 394-395.

As the employee failed at hearing to preserve the translation issue for appellate review and because the judge's decision is not beyond the scope of his authority, arbitrary or capricious, or contrary to law, it is affirmed. G.L. c.152, § 11C.

So ordered.

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Martine Carroll  
Administrative Law Judge

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Susan Maze-Rothstein  
Administrative Law Judge

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Frederick E. Levine  
Administrative Law Judge

Filed: March 22, 1999