

Writing (Virtually) Appeal-Proof Decisions

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To mount a potentially successful administrative appeal, the appellant looks for flaws in the ALJ's written decision. What are those types of errors, and how can an ALJ most easily avoid making them? This class will review appellate trends and some suggestions that an ALJ may use to lessen the potential for reversal.

- I. The Perfect Decision
 - A. Accurate
 - B. Succinct
 - C. Well-organized
 - D. Clearly stated logic
 - E. In Plain English
 - F. Citation form

- II. What Could Go Wrong?
 - A. An appeal has been filed
 - B. The appellant has challenged your version of the facts, analysis of the law, and rulings made during the hearing.
 - C. Your decision has been rejected by:
 1. The referring agency;
 2. The trial court in which all initial petitions for judicial review are filed; or
 3. An appellate court that reviews decisions about petitions for judicial review
 - D. What happened?

- III. What Constitutes an Appeal?
 - A. In some statutes, the administrative agency makes a decision, and a party has the right to an administrative hearing *as an appeal*.
 - B. In other statutes, the ALJ makes a decision and the agency may hear *appeals from the ALJ's decision*.
 - C. In still other statutes, the ALJ makes a proposal for decision, the agency makes a final administrative decision, and the losing party may seek judicial review of the agency's final decision. Although this is not technically an "*appeal*," it provides a legal forum in which a party may challenge a final administrative decision.
 - D. Finally, the appellate courts provide a forum for hearing *appeals* from trial court rulings on petitions for judicial review.

- IV. What Types of Issues Create the Potential for Appeal?
- A. Appealable issues constitute a wide range of alleged errors--from the absence of jurisdiction to the failure of substantial evidence to support the decision
- B. This paper examines the types of ALJ actions about which an appellate court has made one of two broad categories of written comments.
1. Cases in which the court noted the rulings or decision of the ALJ as containing information that was *helpful or essential* to the court in reaching its decision.
 - For example, a case in which: (1) the state agency rejects an ALJ's factual findings and substitutes its own findings; (2) the court reverses the agency's findings in favor of the ALJ's; and (3) the court explains that its adoption of the ALJ's proposal is based on the ALJ's *careful citation to the evidence* and reference to *accepted standards of law*.
 2. Cases in which the court noted the rulings or decision of the ALJ as *failing to contain information that would have been helpful or essential* to the court in reaching its decision.
 - For example, a case in which: (1) the state agency rejects an ALJ's proposal for decision that found the testimony of Witness A more credible than the testimony of Witness B; (2) the agency adopts a final administrative order explaining the basis of its rejection of the ALJ's proposal; (3) the court affirms the agency's final administrative decision; and (4) the court explains that the the ALJ's proposal *failed to provide sufficient reasoning to support the ALJ's credibility determination*.
- C. To develop an analyzable data set, this paper reviews about five years of administrative law-related appellate decisions from a single jurisdiction--Oregon.
1. Oregon Supreme Court
 - a) From December 20, 2012, through July 14, 2016, the Oregon Supreme Court issued six opinions on administrative law.
 - b) Of the six, one has some applicability to the issues in this course.
 2. Oregon Court of Appeals
 - a) From August 10, 2011, through July 27, 2016, the Oregon Court of Appeals issued 106 opinions on administrative law.
 - b) Of the 106 cases, fifteen have some applicability to the issues in this course.
- D. The types of cases selected for review in this paper
1. Agency modification of the ALJ's findings, conclusions, or sanctions
 2. Credibility of witnesses

3. Statutory interpretation
4. Applying the applicable law to the facts
5. Notice of hearing
6. Administration of the hearing

V. Agency Modification of the ALJ's Findings, Conclusions, or Sanctions

A. The court's concern

1. Under some statutes, a governmental agency has the authority to modify an ALJ's findings of fact, conclusions of law, or sanctions imposed.
2. For an agency's modifications of findings of fact to survive appellate review, the modified findings must satisfy some legal standard--substantial review in some jurisdictions and de novo review in others. (Under Oregon law, "[a]n agency conducting a contested case hearing may modify a finding of historical fact made by the [ALJ] assigned from the Office of Administrative Hearings only if the agency determines that there is *clear and convincing evidence in the record that the finding was wrong.*" An appellate court will then review the modified facts de novo and make an independent finding of the facts in dispute. ORS 183.650(3), (4).)
3. The court's fundamental concerns are: (1) comparing the ALJ's proposal for decision and the agency's modifications, which is more clearly understandable?; (2) of the two decisions, which contains a more rational basis for judicial adoption of the proposed summary of the facts?; (3) of the two decisions, which correctly applies the applicable law to the facts; and (4) are the agency's modifications capable of satisfying the applicable legal standard of review?

B. The cases

1. *Weldon v. Board of Licensed Professional Counselors and Therapists*, 266 Or. App. 52 (2014), 337 P.3d 911 (2014), rev. den., 356 Or. 690 (2015). Weldon, a licensed professional counselor, treated a 10-year-old child. The child's parents terminated the therapy and complained to the board about Weldon's treatment methods. The board's staff sought sanctions for professional misconduct.

After the hearing, the ALJ issued a 26-page proposed order with 50 separately numbered findings of fact. The ALJ found that Weldon and her expert had testified credibly. The proposal for decision rejected all of the board's allegations, concluding that Weldon had not violated Oregon law or the board's ethical rules.

The board reversed on all points, made contrary findings about the credibility of the witnesses, deleted or changed 15 of the ALJ's proposed findings, and adopted 37 new findings. The board asserted that the ALJ had failed "to fully and adequately set forth the material evidence in the record."

On appeal, the court of appeals rejected all but one of Weldon's points. The court's action was based solely on Weldon's attorney's failure to follow the court's appellate standards to trigger de novo review. The only point on which the court of appeals concurred with Weldon was its rejection of one of the board's 37 additional findings of fact. On that finding, the court held that "even disregarding [Weldon's] hearing testimony as the board did, we conclude that the preponderance of the evidence establishes the facts to be as the ALJ found them."

2. *Gambee v. Oregon Medical Board*, 261 Or. App. 169 (2014)
Board staff alleged that Gambee had engaged in inappropriate treatment of five patients. An ALJ conducted a hearing on the merits and found staff's expert witness testimony more credible than Gambee's. The ALJ concluded that "the Board met its burden to show . . . that [Gambee's] treatment posed a greater risk of harm to his patients than the standard or recognized treatment, contrary to the provisions of [the statute]." The ALJ recommended suspension of Gambee's medical license.

The board adopted the ALJ's proposed order but revoked Gambee's license. The court of appeals opinion quoted extensively from the proposed order adopted by the board. The court found that substantial evidence supported the board's decision on all issues but one. For that one, the court referred the matter to the board for appropriate sanctions.

3. *Oregon Occupational Safety & Health Division v. Moore Excavation, Inc.*, 257 Or. App. 567 (2013)
The division appealed an ALJ's order that vacated the division's citation for Moore's failure to tag and withdraw from service a damaged portable ladder. The court reviewed the matter for substantial evidence and upheld the ALJ's decision. In its written opinion, the court adopted the ALJ's conclusions on two points: the standard of proof that the division was required to meet, and whether the division had met the standard. The

court acknowledged that the case was one of first impression, and the court quoted the ALJ's language in the proposal for decision in detail. The court ended its decision as follows: "[W]e conclude that the ALJ neither erred in imposing [the required] standard nor in applying it."

4. *D.T. v. Dept. of Human Services*, ___ Or. App. ____ (2011) [Office of Administrative Hearings 20100200 (2011)]

The court of appeals reversed and remanded a final administrative decision issued by the ALJ on behalf of the department. DT, a patient in the Oregon State Hospital, challenged the hospital staff's decision to forcibly medicate him with psychotropic drugs. On one factor, whether the hospital had considered all less intrusive procedures, the ALJ relied on the testimony of the department's expert witness. The court rejected that witness's testimony and reached a conclusion opposite to that of the ALJ's. The court concluded that the record reflected "no evidence that the hospital considered the less intrusive alternative of treating [DT] in a more secure and structured environment without psychotropic medication." The court reversed the ALJ's conclusion based on a failure to support the conclusion by substantial evidence in the record. The court remanded the order for further action.

C. The lessons from the cases

1. *Weldon* reflects an ALJ's detailed work on a complex case involving the protection of children's rights. Most of the potential lessons to be drawn from the case are for advocates rather than for ALJs: learn the requirements for preserving error and for challenging findings of fact. On the single surviving issue, the court recognized the quality of the ALJ's careful work in finding that the ALJ's version of the disputed facts was "as the ALJ found them."
2. *Gambee* is a case in which the ALJ was persuaded by the agency's arguments about everything except the proper sanction. Sanctions are often difficult for ALJs and courts to manage as legal issues. Where an agency has adopted a sanction matrix (showing the types of violations that result in specific types of sanctions), the task may be somewhat easier. This case is one in which the ALJ and the agency reached different conclusions from which the court had to choose.
3. *Moore Excavation* holds particular interest because the agency delegated to the ALJ the authority to make the final administrative decision. When the ALJ exercised that authority, the agency disagreed with the ALJ's

decision and filed an appeal—so that the the agency, and not the licensee, was the appellant. Since the court reviewed the matter on a substantial evidence standard, the agency was in the unusual position of having to show that the evidence on which the ALJ relied did *not* support the final administrative decision. The court’s rejection of the agency’s appeal is reflected in the court’s statement that the ALJ’s work was without error. The lesson here is that an ALJ should try to ensure that the decision clearly and accurately reflects the admitted evidence on which the ALJ relied.

4. In *D.T.*, the court reviewed the record on substantial evidence and concluded that the record reflected “no evidence” supporting the ALJ’s proposal. The court’s conclusion was not simply that the ALJ reached the wrong outcome but that the ALJ’s factual conclusions were unsupported. This is a harsh lesson.

VI. Credibility of Witnesses

[The determination of the credibility of witnesses is a subset of an ALJ’s findings of fact. However, this matter is treated as a separate topic because of the number of appellate cases on this discrete issue.]

A. The court’s concern

1. The courts have historically deferred to the trier of fact--whether jury or judge--in determining the credibility of witness testimony.
2. To overcome that deference, a party must provide evidence and a compelling explanation to assist an appellate court to reach a contrary conclusion.

B. Cases

1. *Kroetch v. Employment Dept.*, 267 Or. App. 444 (2014)

In an unemployment compensation case, the ALJ denied the employer’s motion for a continuance. The ALJ held a hearing on the motion and concluded that the testimony of the employer’s only witness in support of the motion was not credible. The agency concluded the opposite, holding that the employer had met its burden to establish good cause for filing a late hearing request. The agency disregarded the ALJ’s express determination that the witness was not credible, without explaining its basis for reaching a contrary conclusion. The court reversed and remanded, holding:

In this case, [after] the ALJ made an explicit credibility determination regarding the source of evidence—[the witness’s] testimony EAB did not explain why it relied

on [the witness's] testimony after the ALJ had expressly found her not to be credible. *Where, as here, the particular evidence is the lynchpin—and perhaps the sole source of support—of a party's position, an explanation is even more crucial.* Without it, we cannot tell whether EAB's decision to reverse—based upon its acceptance of [the witness's] testimony—is supported by substantial reason. And without [the witness's] testimony, the board's factual findings on Barnett's mistaken belief and the department's misleading information are not supported by substantial evidence.

2. *Talbott v. Teacher Standards and Practices Comm.*, 260 Or. App. 355 (2013)

Staff alleged that Talbott had violated the commission's rules. The ALJ held a hearing on the merits and issued a proposal for decision that Talbot had not violated any rules. The commission rejected the ALJ's proposed order. Instead, the commission found that Talbott had engaged in four instances of gross neglect of duty. Talbott sought judicial review. On a de novo review of the competing versions of the facts, the Oregon court of appeals rejected the commission's modification of the ALJ's findings. The court reversed and remanded the matter to the commission for further action.

In reaching its decision, the court reviewed in detail the ALJ's findings and legal analysis, including the ALJ's conclusions about the credibility of three witnesses. For the testimony of the first and second witness, the court concurred with the ALJ's version of the facts. For the third witness, the court declined to adopt the commission's argument that it was merely rejecting the ALJ's reasoning and not simply the ALJ's version of the facts. The court reviewed the ALJ's findings, including two alternative findings, to conclude that the commission could not reject the ALJ's reasoning without rejecting the ALJ's findings of historical fact.

3. *Weldon v. Board of Licensed Professional Counselors and Therapists*, 266 Or. App. 52 (2014)

Weldon is reviewed in a previous section. However, the facts in *Weldon* also included the board's rejection of the ALJ's findings on the credibility of witnesses and the board's substitution of its own findings on the issue.

C. Lessons from the cases

1. Although many cases include substantially uncontested facts, many involve contradictory testimony on essential issues. Did the physician timely report the child's injuries to the agency? Is the engineer or the client telling the truth? Did the licensee file the renewal application form before or after 5:00 p.m.? These are the types of factual conflicts that may arise in administrative cases. The ALJ is the arbiter not only of the facts but also of the credibility of each of the witnesses.
2. When the ALJ recognizes that one or more issues will be based on the ALJ's determination of the more credible witness, the ALJ should include in the decision a discussion of the credibility of each contested witness, including the factors on which the ALJ is relying to make that determination and the particular evidence that has led the ALJ to a decision.
3. In *Kroetch*, the ALJ "expressly found" a witness not to be credible. Despite the ALJ's express finding, the agency "did not explain why it relied on [the witness's] testimony." The court criticized the agency for its lack of an explanation about its action. The agency's error was fatal to its position in court. The court explained that the standard for reversal, "substantial reason," cannot be met in the absence of a convincing explanation. The agency's failure to explain was its error; the ALJ's explanation was the written decision's strength.
4. In *Talbott*, the ALJ's decision provided the court with a detailed explanation of the ALJ's reasons for finding the three witnesses' testimony to be credible. The court supported that decision and rejected the agency's modifications. This is the target to reach.
5. In *Weldon*, the petitioner's procedural errors undercut the potential precedential value of the case on the issue of credibility. However, on the sole appellate point preserved by the petitioner, the court agreed with the ALJ that the preponderance of the evidence supported the ALJ's conclusion about the credibility of a witness. The ALJ's summary of that evidence assisted the court in reaching its decision.

VII. Statutory Interpretation

A. The court's concern

1. The common law reflects the courts' efforts to make sense of statutes and contracts that often are lacking essential terms, are internally inconsistent, or are poorly drafted.

2. In many jurisdictions, the same or similar rules of statutory construction apply to interpretation of agency rules
3. An effective ALJ will bring to the bench a ready grasp of the jurisdiction's rules of construction.

B. Cases

1. *Casey v. City of Portland*, 277 Or. App. 574 (2016)
In 2002, Casey injured his shoulder while working for the city. The city denied his worker's compensation claim. The denial letter included two apparently conflicting statements about Casey's right to reconsideration if he was later diagnosed with a condition related to the original injury. In 2010, the city denied Casey's second claim because it was related to the first claim. An ALJ held an administrative hearing on the denial. The ALJ agreed with the city's contention that because the 2002 denial became final by operation of law, the 2010 claim was barred by claim preclusion. The ALJ issued an order upholding the city's denial. The Workers Compensation Board adopted the ALJ's order in its entirety. Casey filed a judicial appeal.

The Oregon Court of Appeals held that claim preclusion did not create a legal bar to the 2010 claim. The court reversed and remanded the agency's order, holding that the board had erred in adopting the ALJ's interpretation of the law.

The court remanded the matter to the board for further action, noting that Casey had advanced an interpretation that relied on basic principles of construction. In contrast, the city offered an interpretation that did not, instead arguing for an interpretation that adopted one meaning and rejecting another.

2. *Oregon Occupational Safety & Health Division v. CBI Services, Inc.*, 356 Or. 577 (2014)
A division inspector issued CBI a citation and a notice of penalty for two workplace safety violations. CBI requested an administrative hearing before an ALJ. At the conclusion of the hearing, the ALJ vacated one citation and affirmed the second. The parties appealed, and the Oregon Court of Appeals reversed and remanded.

The Oregon Supreme Court heard the subsequent appeal, affirmed the Court of Appeals decision on other grounds, and remanded the matter to

the division for further action. The Supreme Court’s decision began with a review of the underlying law. The court interpreted the statutory language, including the terms “could not know” and “reasonable diligence.” The court concluded that the ALJ had failed to give “any explanation supporting a determination as to employer’s reasonable diligence.” The court further explained that “there must be some sort of explanation that enables a reviewing court to evaluate whether a decision comports with the authority granted under the law.”

3. *Leung v. Employment Dept.*, 266 Or. App. 795 (2014)

Leung spoke Cantonese and limited English. He was receiving extended employment insurance benefits. The agency notified him that his benefits had been granted improvidently. The agency demanded repayment. Leung filed a late request for an administrative hearing. The ALJ scheduled the hearing, and then scheduled a second hearing to consider Leung’s request for an interpreter. The ALJ held that Leung had not shown good cause for the interpreter request. Leung appealed the decision to the agency, and the agency affirmed. On appeal, the Oregon Court of Appeals held that: (1) Leung satisfied the legal requirement as a person with limited English proficiency and (2) the agency had failed to communicate orally or in writing with Leung in his native Cantonese. The court reversed and remanded on the grounds that the agency had failed to follow its own policies and on the court’s interpretation of the “ordinary meanings” of the words in the governing statute.

C. Lessons from the cases

1. In *Casey* and *Leung*, the court demonstrated its reliance on an ALJ’s knowledge and use of the rules of construction--with respect to contract documents, administrative rules, and statutes.
2. *Leung* also demonstrates the manner in which a court may review an ALJ’s decision not to find good cause on an issue that affects a party’s fundamental right to participate in the administrative hearing process.
3. *CBI Services* demonstrates the necessity of the ALJ’s explaining how he or she determined essential but undefined terms of law or contract.

VIII. Applying the Law to the Facts

A. The court’s concern

1. Administrative agencies are creations of law with authority delegated solely by statute or constitution.

2. An ALJ exercising authority under law must enforce the law as written.
- B. The cases

1. *Zach v. Chartis Claims, Inc.*, 279 Or. App. 557 (2016)

Chartis notified Zach that Chartis was terminating Zach's vocational assistance benefits. Zach's lawyer asked for a telephone hearing before a Workers' Compensation Division Employment Services Team (EST) hearing officer. Chartis moved to dismiss because Zach missed a filing deadline. Zach's lawyer explained that he had failed to inform Zach about the deadline. The EST hearing officer ruled that Zach's failure to meet the filing deadline was reasonable under the circumstances. The hearing officer ruled against Chartis's termination of Zach's eligibility. Chartis requested an administrative hearing before an ALJ.

The ALJ held a hearing and upheld the EST order. The ALJ ruled that the EST finding that Zach had acted reasonably was "within the range of legally-permissible discretionary choices." Chartis sought reconsideration of the ALJ's order from the director of the Department of Consumer and Business Services. The director's order reversed the ALJ's order, concluding that Chartis had properly terminated Zach's eligibility.

The Oregon Court of Appeal upheld the director's order, concluding: (1) the director had not exceeded his statutory authority; (2) the director based his ruling on an administrative rule that interpreted the statute; and (3) the director's interpretation of the rule was plausible.

2. *Twist Architecture & Design, Inc. v. Board of Architect Examiners*, 276 Or. App. 557 (2016)

The agency staff brought an administrative complaint against Twist, an architectural firm, and its two design professionals for the unlicensed practice of architecture in Oregon. Staff sought a \$10,000 civil penalty against each.

The ALJ's proposal for decision concluded that the petitioners had violated Oregon licensing laws by referring on its website to: (1) the design professionals as "Licensed in the State of Oregon (Pending)" and (2) their work on feasibility studies for Oregon projects. However, the ALJ found that the petitioners did *not* violate Oregon law by creating the feasibility studies or by using images of the feasibility studies on the

website. The ALJ proposed a \$5,000 civil penalty against one of the design professionals.

The board rejected much of the ALJ's proposal. The board's final administrative order found violations for all of the petitioners' acts. The board imposed \$10,000 civil penalties against each.

The Oregon Court of Appeals reversed and remanded, holding that the board erred in concluding that the preparation of the feasibility studies constituted the "practice of architecture." The court also concluded that the board's determination lacked "substantial reason" in concluding that: (1) Twist violated the law by using its logo on the feasibility studies and (2) the two design professionals violated the law by using the phrase "Licensed in the State of Oregon (Pending)." However, the court concluded that the board did not err when it modified the ALJ's findings of fact or conclusions of law that Twist violated the law by showing Oregon architectural projects on its website. The court relied on a de novo review of some of the facts in the case to affirm the board's amended findings.

3. *Sawyer v. Real Estate Agency*, 268 Or. App. 42 (2014)

A real estate agent allegedly failed to account for earnest money in a transaction. The agency sought to discipline the agent. The agent's license expired while the case was underway. The ALJ issued a proposed order concluding that petitioner had committed all of the violations alleged by the agency. But the ALJ also concluded that the agency had no "power to revoke a license [that] does not exist." Instead, the ALJ proposed, the only discipline available was a formal reprimand. The agency concluded that it did have the power to revoke the license, and issued an order to that effect. The court upheld the agency's decision, ruling that the law provided precisely the relief that the agency proposed.

4. *Isayeva v. Employment Dept.*, 266 Or. App. 806 (2014)

The ALJ awarded Isayeva workers' compensation benefits after finding that she had been discharged for reasons other than for misconduct. The agency reversed the ALJ's finding, and Isayeva appealed. After concluding that the agency order lacked any substantial reason, the court reversed and remanded.

- C. The lessons from the cases
1. *Twist* is a good example of an ALJ's efforts to explain how the law applies to types of facts that are not clearly expressed in the statute. Professional licensing agencies have a strong stake in protecting the public. But oftentimes their statutes and rules are written so broadly that the ALJ and the courts struggle in finding the proper balance between the licensee's rights and the public's safety. This is one of those cases, and the ALJ's care in dissecting the issues is apparent from the appellate decision's text.
 2. *Sawyer* is another professional licensing decision and addresses another of the often apparently unanswered questions in licensing law: what authority does the law grant to an agency to discipline a previously licensed licensee? The ALJ answered the question one way, and the court reached an opposite conclusion. This is an issue on which the ALJ may properly order the parties to provide briefing, including cases drawn from other licensing boards.
 3. In *Isayeva*, the court overruled the agency's revision of the ALJ's findings and conclusions of law because the agency's final order failed to include "substantial reason" for its action. The ALJ did nothing to prompt the court's action--beyond writing a competent decision about which the court felt comfortable in reinstating.

IX. Notice of Hearing

- A. The court's concern
1. Have the parties been given adequate opportunity to understand and prepare for this proceeding?
 2. If that notice requirement is not clearly expressed in a statute or rule, what are the elements of legally sufficient notice, and have they been satisfied?
- B. The cases
- *Murphy v. Oregon Medical Board*, 270 Or. App. 621 (2015)
The ALJ found that the board failed to establish the existence of a recognized standard within the medical profession prohibiting the consumption of alcohol while on call. The board accepted the ALJ's findings but made additional findings to conclude that: (1) petitioner's consumption of alcohol while on cardiac call was a violation of Oregon law; (2) physicians on call are expected to comply with hospital drug-free policies as a recognized community ethical standard; and (3) anesthesiologists are expected not to consume any alcohol while on cardiac call at a hospital. The agency characterized the third finding as "another recognized community ethical standard." The court of appeals

reversed the decision (without remand) on the grounds of insufficient notice about the ethical elements of the complaint. The ALJ had overruled a challenge to the sufficiency of the notice.

C. The lessons from the cases

1. Be particularly cautious on issues involving notice.
2. If possible, hold a prehearing conference that addresses any challenges to notice.
3. If the issue of notice is raised, order the agency representative to provide you with a copy of the relevant statute and the most current agency rules on notice.
4. If the statute or rule is unclear, order briefing on the issue.

X. Administration of the Hearing

A. The court's concern

1. What is the ALJ's obligation to assist the parties?
2. An ALJ's obligation is a legal juggling act: treating the parties evenhandedly while recognizing the unique and separate rights and duties of each.
3. However, in some jurisdictions, an ALJ's duty to assist the parties may extend beyond merely providing an oral summary of the hearing sequence

B. Case

- *Entrepreneurs Foundation v. Employment Dept.*, 267 Or. App. 425 (2014)

An employee sought worker's compensation benefits, and the ALJ conducted a hearing. At the hearing, the ALJ outlined the issues that were to be presented. The ALJ issued a decision in favor of the employee, and the employer appealed. One of the points on appeal raised by the employer was that the ALJ had a statutory duty "to develop the issues" in the case. The employer cited the text of an Oregon statute:

[w]hen the claimant or the employer is unrepresented at the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the unrepresented claimant or the employer must either prove or disprove. The administrative law judge shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the case.

The court rejected the appeal and held that the appellant had failed to preserve the issue for appeal. However, the court went further and explained what duties the ALJ had and didn't have under the statute in the hearing.

C. Lessons from the case

1. For some jurisdictions and under some statutes, an ALJ is prohibited from assisting any litigant on any legal matter, other than providing a brief explanation about the procedures that will be used in the hearing.
2. In other jurisdictions (apparently including Oregon) and under some statutes, the ALJ may have particular obligations to unrepresented parties.
3. An ALJ should be familiar with those obligations before convening a hearing, and the ALJ should be prepared to cite the source of those obligations if the matter becomes the source of objections by an opposing party.