



Oregon Court of Appeals

2011 Workers' Compensation Summary

Information Management Division

Department of Consumer and Business Services

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Note: Unless otherwise indicated, data here exclude third party, board own motion, safety, and Workers' Compensation Division cases.

Appeals

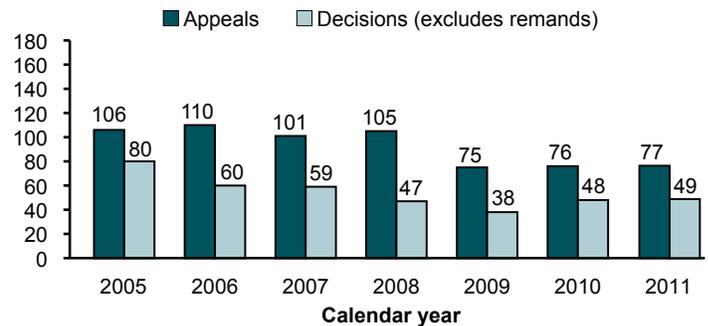
In 2011, there were 77 Workers' Compensation Board (WCB) decisions appealed to the Oregon Court of Appeals, one more than in 2010. See Figure 1. The rate at which board orders on review were appealed to the court was 17 percent. The petitioner was the worker in 49 percent of the cases with a 2011 court decision or remand, the lowest percentage on record.

Orders

Court decisions on WCB orders in 2011 (based on the date of the slip opinion) numbered 49, which is close to the average for the period 2007-2010. These court decisions were affirmations or reversals of WCB on workers' compensation cases. The count excludes:

- Court dismissals (41 cases). The reasons for court dismissal were as follows: settlement, 41 percent; petitioner motion, 27 percent; petitioner in default or want of prosecution, 20 percent; timeliness, 10 percent; and unknown reason, 2 percent.
- Court remands to the board (four cases). An order is classified as a "remand" when the court does not rule on the primary issue, nor direct a specific resolution by the board. The reasons for remanding: the board didn't have the benefit of a recent court decision (two cases), the court found that the board did not adequately explain its conclusion (one case), and board findings were not supported by substantial evidence (one case).
- WCD contested cases (three cases). The court affirmed a department order finding a worker ineligible for medical benefits pending the insurer's claim denial. The court also remanded a department order that found the insurer had properly terminated vocational services benefits, finding that the conclusion lacked substantial reasoning. Finally, the court affirmed a department order that SAIF is liable for surgery costs, despite the medical provider's failure to submit a timely recertification request.

Figure 1. Number of appeals and decisions



2011 Court of Appeals issues, frequencies, dispositions, WCB affirmation rates, and remands

Issue and disposition	Cases*	% of cases*	Rate WCB affirmed*	Remands
Extent of perm. disability	10	20.4	80%	0
Affirm	8			
Decrease	2			
Extent of temp. disability	0	0.0	n/a	0
ALL EXTENT OF DISABILITY	10	20.4	80%	0
Claim denial	10	20.4	90.0%	1
<u>WCB set aside denial</u>	3			
Court set aside denial	3			
Court affirm denial	0			
<u>WCB affirm denial</u>	7			
Court set aside denial	1			
Court affirm denial	6			
Partial denial	15	30.6	80.0%	1
<u>WCB set aside denial</u>	10			
Court set aside denial	7			
Court affirm denial	3			
<u>WCB affirm denial</u>	5			
Court set aside denial	0			
Court affirm denial	5			
Aggravation denial	1	2.0	100%	0
<u>WCB set aside denial</u>	1			
Court set aside denial	1			
Court affirm denial	0			
ALL COMPENSABILITY	26	53.1	84.6%	2
OTHER ISSUES	13	26.5	84.6%	2
ALL ISSUES	49	100.0	83.7%	4

* Remands are excluded from these counts and calculations. Dispositions for extent of disability are stated with respect to worker award levels after the WCB order; for the compensability issues, they are stated with respect to the insurer denial. Percentages may not add to totals due to rounding.

Issues

The number and relative frequency of each issue are given in the table (“cases” and “% of cases” columns). Cases without one of the specified issues are counted in the “other issues” category. The relative frequency of the compensability issues (53.1 percent) was the smallest since 1999, while the relative frequency of cases about extent of permanent or temporary disability (20.4 percent) was the highest since 2005. The most frequent **other issues** (including those in cases with a specified issue) were insurer penalty, seven cases; attorney fees, six cases; timeliness, four cases; and evidence, four cases.

Issue disposition

Court dispositions and WCB affirmation rates are given in the table. On compensability issues, the court **set aside denials** in 12 of 26 cases (46.2 percent). The board had ruled that denials should be set aside in 14 of these 26 cases (53.8 percent).

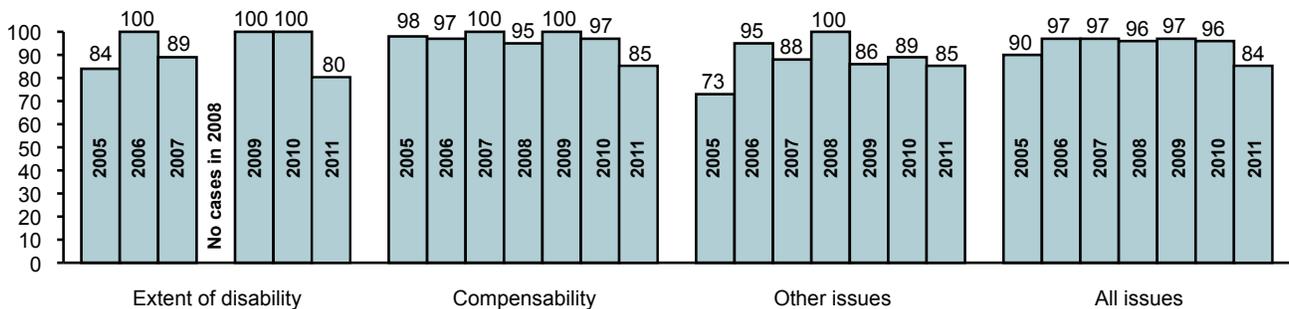
WCB affirmation rates

The court affirmed the board in 80.0 percent of extent of disability cases, 84.6 percent of compensability cases, and 84.6 percent of other-issue cases. The overall affirmation rate was 83.7 percent, compared to 2010’s 95.8 percent. See Figure 2. (These counts and percentages exclude remands; remand counts are also given in the table.)

Other data

SAIF Corporation was the **insurer** in 45.3 percent of cases (includes multiple-insurer disputes). No **permanent total disability** cases (PTD awarded at some level) were decided by the court in 2011. The median **time lag** from appeal to order was 586 days (19.3 months), 13 days longer than 2010’s then-record-high value. The median time from injury to order was 1,681 days (4.6 years). **Attorney fees** in 14 appellate judgments (issued in 2011, typically two months or more after the slip opinion) totaled \$105,500; the average fee was \$7,540. There were no cases where parties requested **attorney sanctions** against opposing counsel for an appeal that was frivolous, made in bad faith, or for harassment purposes (ORS 656.390).

Figure 2. WCB affirmation rates (percent)



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