



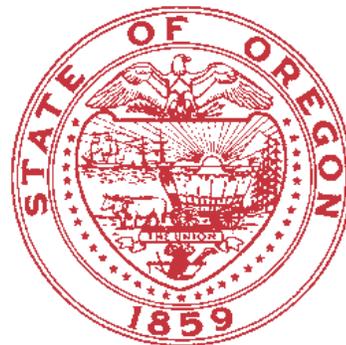
*Workers' Compensation  
Board*

**Hearings  
Division  
Statistical  
Report**

*Calendar Year 2011*

*Central Services  
Division*

*February 2013*



*Oregon Department of Consumer  
and Business Services*

# Hearings Division Statistical Report

## Calendar Year 2011

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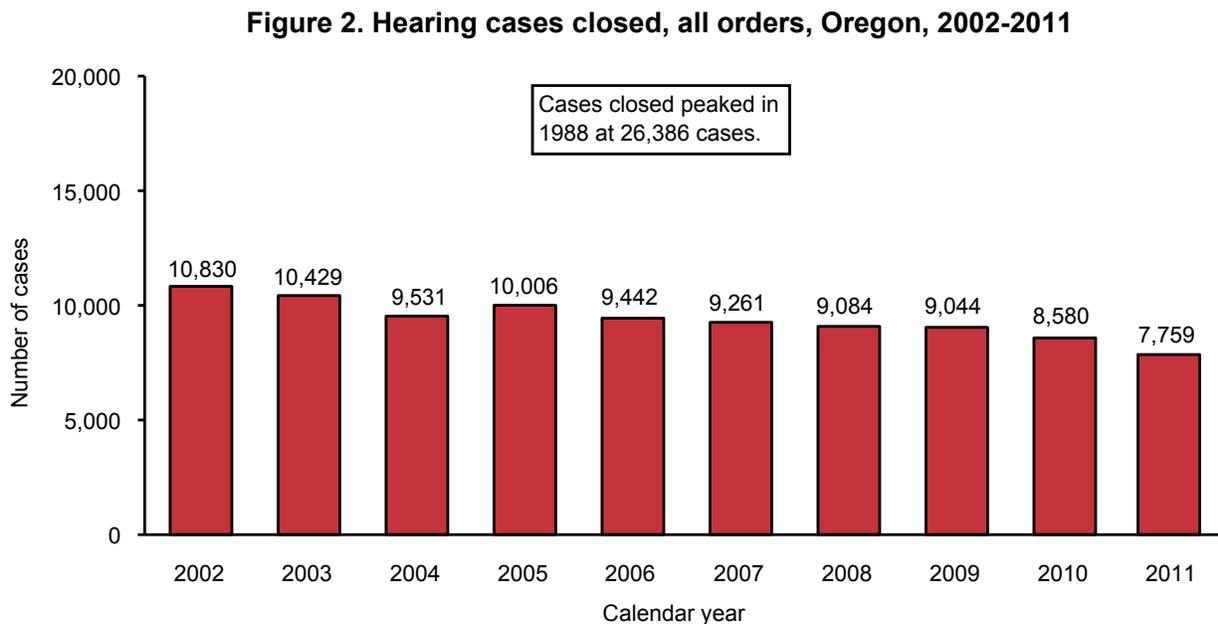
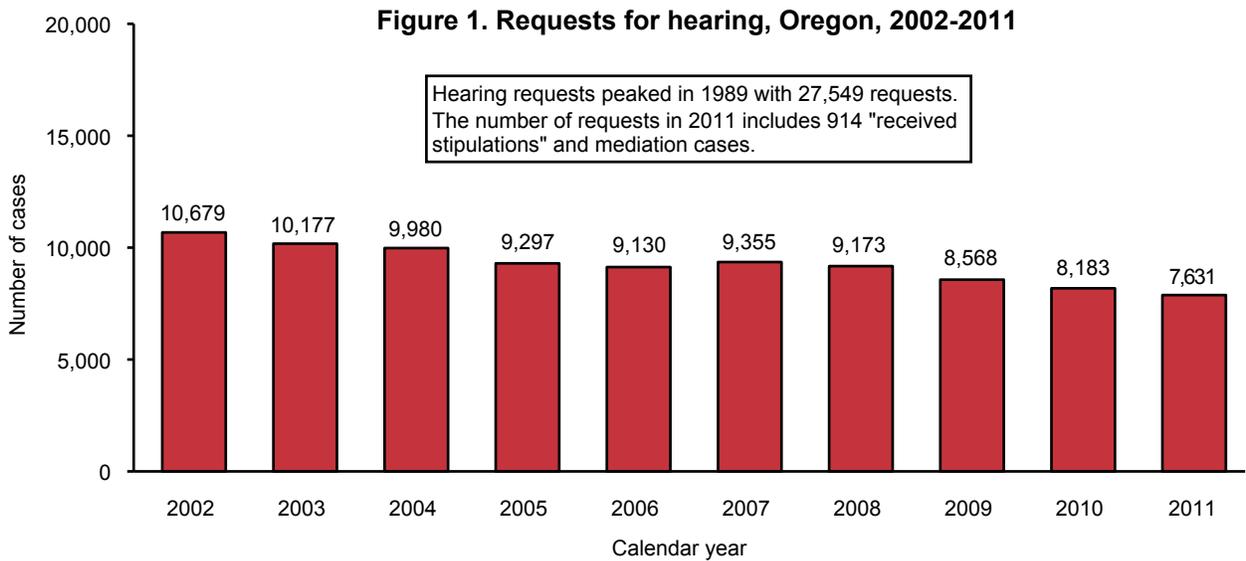
**Hearing requests, cases closed**

In 2011 the Hearings Division of the Oregon Workers' Compensation Board received 7,631 requests for hearing, 6.7 percent fewer than in 2010 (Figure 1).

The Hearings Division closed 7,759 cases in 2011, 9.6 percent fewer than the previous year (Figure 2). Some orders close more than one case, so there are fewer distinct orders than cases. In 2011, the average number

of cases per order was 1.14. Request and order counts in figures 1 and 2 include cases solely about non-complying employer status or civil penalty assessment (case types NC and CP); these case types and issues are not included in the other analyses, below.

The percentage of cases that involved a judge's decision on the merits (order types "opinion and order" and "WCD proposed and final order") was a record-low 16.4



percent (Table 1 and Figure 3). This percentage is due in part to large numbers of Board-conducted mediations, of which almost 90 percent result in settlement. The percentage of cases closed by dismissal was 27.4 percent. About 74.8 percent of these dismissals were issued because the requester withdrew the hearing request. WCD contested cases are included in the above counts

(see “Order types” in the appendix). Unless otherwise stated, counts and analyses here, except Figure 1, Figure 2, Figure 3, and Table 1, do not include the WCD contested-case orders.

The worker filed the request in 85.3 percent of the closed cases (Table 2); this percentage excludes stipulations received without a prior hearing request.

**Table 1. Hearing compensation cases closed, by order type, Oregon, 2011**

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
<b>Opinion and order</b>	1,223	15.8%	100.0%
Stipulation	1,041	13.4%	23.9%
DCS	3,307	42.7%	76.0%
Order on stipulation	3	0.0%	0.1%
<b>All stipulations</b>	<b>4,351</b>	<b>56.2%</b>	100.0%
Dismissal	223	2.9%	11.2%
Dismiss for CDA	261	3.4%	13.1%
Withdrawal	1,501	19.4%	75.6%
<b>Above dismissals</b>	<b>1,985</b>	<b>25.6%</b>	100.0%
WCD proposed & final order	49	0.6%	27.1%
WCD final order of dismissal	82	1.1%	45.3%
WCD proposed and final order of dismissal	50	0.6%	27.6%
<b>All "WCD orders"</b>	<b>181</b>	<b>2.3%</b>	100.0%
<b>Total Orders</b>	<b>7,740</b>	<b>100.0%</b>	

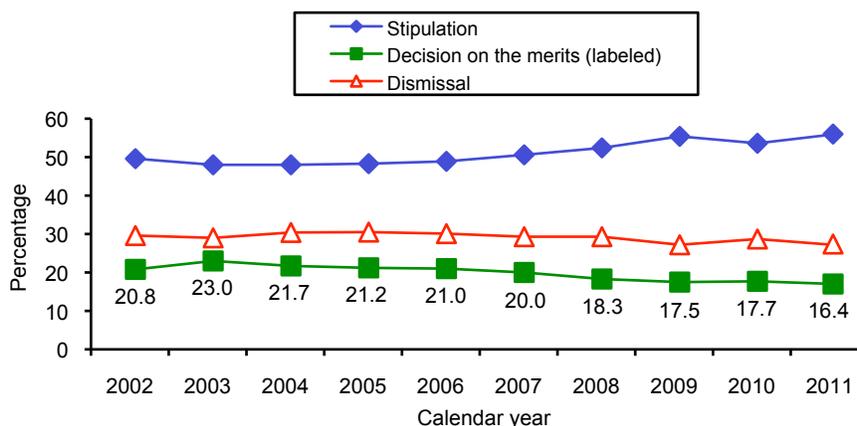
\* For example, percentage of “all stipulations” and of “all dismissals.”  
 “Total orders” differs from the Figure 2 count because some cases (e.g., noncomplying employer and civil penalty assessment) are excluded here.

**Table 2. Hearing compensation cases closed, by requester, Oregon, 2011**

Requester	Number of cases	Percentage of cases
Claimant	6,605	85.3%
Employer	26	0.3%
SAIF	40	0.5%
Private insurer	144	1.9%
Joint	879	11.4%
Other	46	0.6%
<b>All</b>	<b>7,740</b>	<b>100.0%</b>

For settlements received without a prior hearing request, the requester is considered to be “joint.” “Other” requester includes medical providers and unknown requesters. Due to rounding, the sum of percentages may not equal 100.

**Figure 3. Distribution of hearing cases closed, by order type, Oregon, 2002-2011**



Note: Includes WCD cases beginning in 2006.

**Mediations**

To help settle disputes without formal litigation, WCB administrative law judges completed 406 mediations in 2011 (Table 3). About 90 percent of mediations resulted

in a settlement. The average dollar amount for a disputed claim settlement (DCS) resulting from mediation (\$16,500) was nearly twice as large as the average value of non-mediated DCSs.

**Table 3. Workers' Compensation Board mediations, Oregon, 2002-2011**

Statistic	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Mean
Completed <sup>1</sup>	285	241	268	270	356	346	398	487	439	406	350
Result settled (%) <sup>2</sup>	86	86	84	87	88	89	90	89	91	90	88
Settled by DCS (%) <sup>3</sup>	85	88	81	82	77	79	76	80	81	82	81
Disease Claims (%) <sup>4</sup>	42	41	31	67	46	64	72	73	68	70	57
<b>Issues (%) <sup>4</sup></b>											
Claim denial	43	41	32	30	28	30	25	26	26	22	30
Partial denial	65	66	74	73	53	62	53	55	58	60	62
All compensability	95	99	97	94	81	81	79	80	83	83	87
Non-WCB	55	45	50	47	42	43	43	44	35	36	44
Request to mediation <sup>6</sup>	80	79	95	78	73	72	77	69	65	63	75
Mediation to order <sup>6</sup>	37	39	41	41	47	47	35	34	33	30	38

- Notes:  
 Percentages, except "settlement resulted," indicate share of all *settled* mediations.  
 1. Count is mediations completed in the given year, regardless of order date. Includes all WCB mediations, including those where the dispute is at board review or in the courts. Data through 2005 are based on mediation worksheets; data from 2006 are based on mediation events in the board's data system.  
 2. Excludes those cases settled after pre-mediation conference calls.  
 3. A mediation is classified as closed by disputed claim settlement (DCS) if any included case is so closed.  
 4. A mediation is so classified if any included case is about this condition or issue.  
 5. Work-hours includes travel time; values are for all *completed* mediations, regardless of outcome.  
 6. Time lags are median values, in days.

**Issues**

The 5,574 opinion & order and settlement cases closed in 2011 included 5,962 issues, or 1.07 issues per case (Table 4).

For all order types, partial denial was the most frequent issue, as it has been since 2007. Approximately 47.3 percent of cases included partial denial, tying 2010's record-high percentage. Whole-claim denial was a distant second, with 35.8 percent. The next most frequent issue was insurer penalty, at 5.8 percent of cases (the lowest percentage on record). Extent of permanent and temporary disability were issues in 2.8 and 2.0 percent of the cases, respectively; both are record-low values. Including aggravation, compensability was an issue in about 83 percent of all hearings orders that resolved issues in 2011.

Note: For issue counts and percentages, we do not consider "attorney fees" to be an issue when fees are requested for the hearings outcome.

**Table 4. Number of issues per hearing compensation case, Oregon, 2011**

Number of issues	Percentage of cases*
One	90.5%
Two	8.4%
Three	1.0%
Four	0.1%
Five	0.0%
Six	0.0%
More than one	9.5%

\*Based on total cases with issues.

Table 5. Hearing cases by order type, issue, and disposition, Oregon, 2011

Issue	Disposition	Opinion and order			Stipulation		
		Counts	Percentage disposition	Percentage of cases	Counts	Percentage disposition	Percentage of cases
Permanent disability	Affirm	96	70.6%		5	26.3%	
	Decrease	12	8.8%		7	36.8%	
	Increase	28	20.6%		7	36.8%	
	<b>Total cases</b>	<b>136</b>		<b>11.1%</b>	<b>19</b>		<b>0.4%</b>
Temporary disability	Affirm	20	44.4%		1	1.4%	
	Decrease	5	11.1%		0	0.0%	
	Increase	20	44.4%		68	98.6%	
	<b>Total cases</b>	<b>45</b>		<b>3.7%</b>	<b>69</b>		<b>1.6%</b>
Claim denial	Set aside	189	44.1%		250	16.0%	
	Affirm	240	55.9%		1,314	84.0%	
	<b>Total cases</b>	<b>429</b>		<b>35.1%</b>	<b>1,564</b>		<b>35.9%</b>
Partial denial	Set aside	170	43.1%		232	10.4%	
	Affirm	224	56.9%		2,008	89.6%	
	<b>Total cases</b>	<b>394</b>		<b>32.2%</b>	<b>2,240</b>		<b>51.5%</b>
Aggravation denial	Set aside	6	20.7%		7	6.7%	
	Affirm	23	79.3%		98	93.3%	
	<b>Total cases</b>	<b>29</b>		<b>2.4%</b>	<b>105</b>		<b>2.4%</b>
Responsibility	<b>Total cases</b>	<b>34</b>		<b>2.8%</b>	<b>7</b>		<b>0.2%</b>
Premature closure	No	16	66.7%		3	100.0%	
	Yes	8	33.3%		0	0.0%	
	<b>Total cases</b>	<b>24</b>		<b>2.0%</b>	<b>3</b>		<b>0.1%</b>
Insurer penalty	No	101	61.6%		4	2.5%	
	Yes	63	38.4%		158	97.5%	
	<b>Total cases</b>	<b>164</b>		<b>13.4%</b>	<b>162</b>		<b>3.7%</b>
Attorney fee*	No	7	29.2%		0	0.0%	
	Yes	17	70.8%		111	100.0%	
	<b>Total cases</b>	<b>24</b>		<b>2.0%</b>	<b>111</b>		<b>2.6%</b>
Subjectivity	No	4	66.7%		4	100.0%	
	Yes	2	33.3%		0	0.0%	
	<b>Total cases</b>	<b>6</b>		<b>0.5%</b>	<b>4</b>		<b>0.1%</b>
Rate of time loss	Affirm	12	85.7%		1	3.0%	
	Decrease	0	0.0%		0	0.0%	
	Increase	2	14.3%		32	97.0%	
	<b>Total cases</b>	<b>14</b>		<b>1.1%</b>	<b>33</b>		<b>0.8%</b>
Other issue	No	133	71.1%		36	22.6%	
	Yes	54	28.9%		123	77.4%	
	<b>Total cases</b>	<b>187</b>		<b>15.3%</b>	<b>159</b>		<b>3.7%</b>
No issues		36		148			
<b>Total issues</b>		<b>1,486</b>		<b>4,476</b>			

"Percentage disposition" gives the breakout of how issues were resolved; for each issue, the sum of these percentages equals 100 (except for rounding). "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages exceeds 100. See the appendix for situations where no issue is recorded for a case.

\*Note: Issue counts and percentages exclude cases where fees are requested for the hearings outcome.

**Opinion and orders**

Hearings judges decided 1,486 issues in 1,223 O&O cases, an average of 1.22 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 5. The percentage of cases about permanent disability was a record-low 11.1 percent. Whole claim denial, at 35.1 percent, was the most frequent issue, as it’s been since 1989. Partial denial was the second most frequent issue in O&Os, at 32.2 percent. About 13.4 percent of O&O cases included the issue of insurer penalty.

Table 6 and Figure 4 provide information about the number of O&O cases with extent of disability (temporary, permanent, or both) at issue and the type of disability increase. In 2011 workers’ disability awards were increased in 48 cases (the sum of the last three table columns), about 27 percent of the 180 O&O disability-issue cases.

The “percentage” column of Table 5 provides data about issue disposition in O&O cases.

Figures 5 and 6 provide historical values of O&O dispositions on extent of disability. The percentage of disability cases decided in favor of workers (includes insurer appeals where the award is affirmed) for permanent and temporary disability were 34.6 percent and 44.4 percent, respectively.

The “set-aside-denial” rate was 44.1 percent for whole claim denial, and 43.1 percent for partial denial; for aggravation, it was 20.7 percent, greater than 2010’s record-low 13.0 percent. See Figure 7. The “yes” rate for insurer penalty was 38.4 percent, the lowest since 2004 (Figure 8).

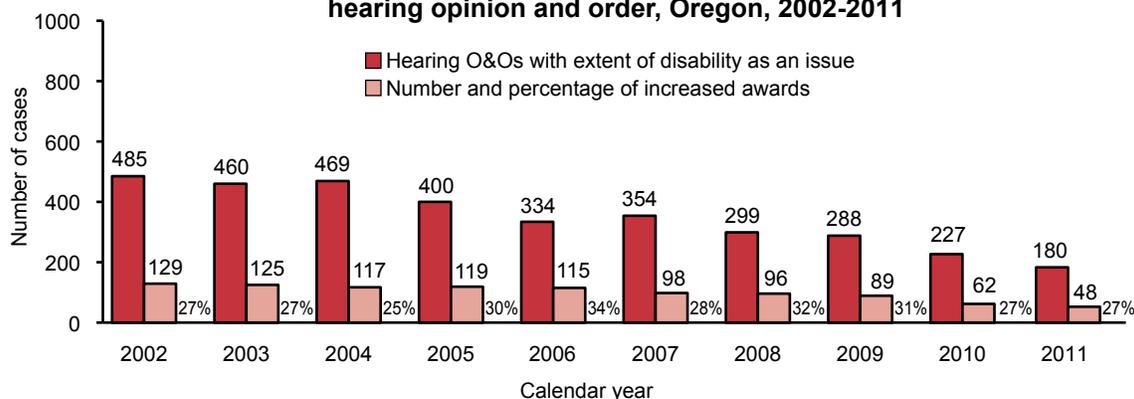
In seven cases, six insurers and one worker requested sanctions against opposing attorneys for appeals that

**Table 6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 2002-2011**

Calendar year	Extent of disability issue	PPD award	PTD award	TD increase with no PPD increase
2002	485	75	1	53
2003	460	73	1	51
2004	469	66	0	51
2005	400	65	1	53
2006	334	66	0	49
2007	354	52	0	46
2008	299	56	0	40
2009	288	53	0	36
2010	227	33	0	29
2011	180	27	1	20

“Extent of disability issue” means that either permanent disability or temporary disability (time loss), or both, were decided. PPD is permanent partial disability, PTD is permanent total disability, and TD is temporary disability.

**Figure 4. Disability issues and award increases, hearing opinion and order, Oregon, 2002-2011**



were considered frivolous, filed in bad faith, or for harassment purposes (ORS 656.390). Judges denied sanctions in six cases, and allowed a sanction of \$3,691 against an attorney representing an injured worker.

### Stipulations, disputed claim settlements

In 2011, disputing parties settled 4,476 issues in 4,351 stipulated cases, about 1.03 issues per case. Claim denial and partial denial were by far the most frequent issues (Table 5), which is typical. Unlike the issues in O&Os, partial denial was the more common issue in settlements. The percentage of compensability issues, and the percentage of dispositions that affirm the denial, are always high because most settlements are DCSs, which are about sustaining compensability denials.

In 2011 insurers paid more than \$31.4 million to workers in 3,307 disputed claim settlement cases (Table 7 and

Figure 9), less than the amount paid in 2010 but more than any other year since 1991's then-record \$32.6 million. The average DCS amount was \$9,509 and the median amount and the most frequent amount were both \$5,000 (the same as in 2010). The DCS amount was unspecified in three cases, and the largest amount paid in a single settlement was \$581,000.

The percentage of DCS cases about partial denial, 59.9 percent, was below 2010's record-high 61.2 percent. DCSs accounted for 76.0 percent of all settlements, a record-high 42.7 percent of all closing orders, and 83.8 percent of claims denied at hearing (excludes aggravation).

DCSs accounted for claimant attorney fees of over \$5.5 million, a record-high 53.0 percent of all fees at hearing. The average DCS fee was \$1,898 (considering only non-zero out-of-proceeds fees). About 99.7 percent of DCS fees were paid out of the DCS consideration.

Figure 5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 2002-2011

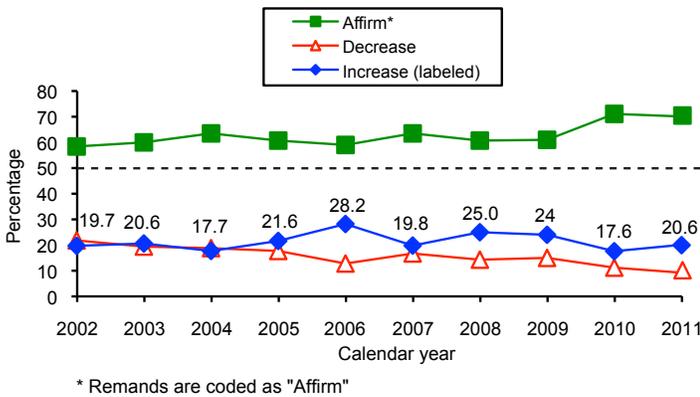


Figure 7. Set-aside-denial rates for compensability cases, hearing opinion and order, Oregon, 2002-2011

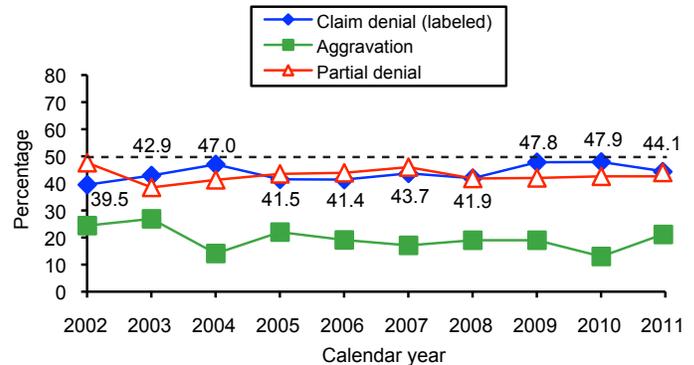


Figure 6. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 2002-2011

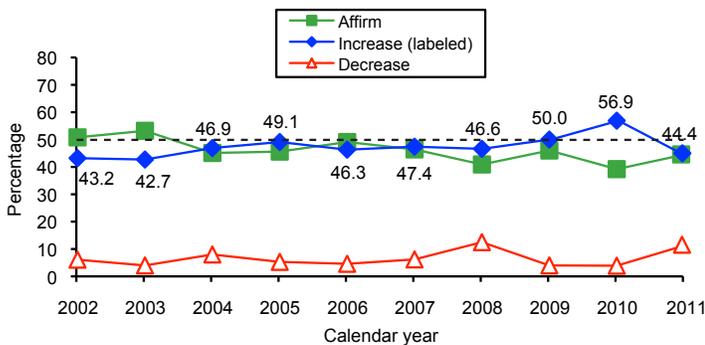
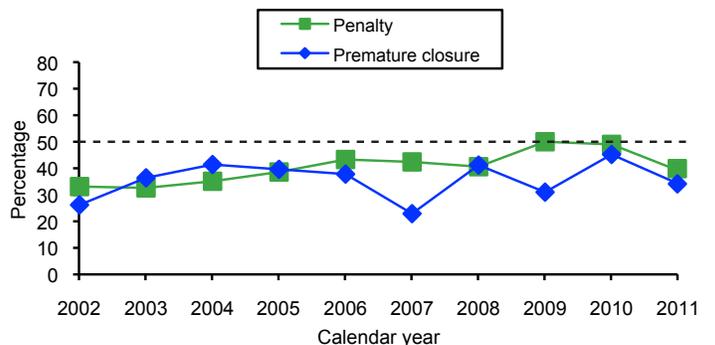


Figure 8. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 2002-2011



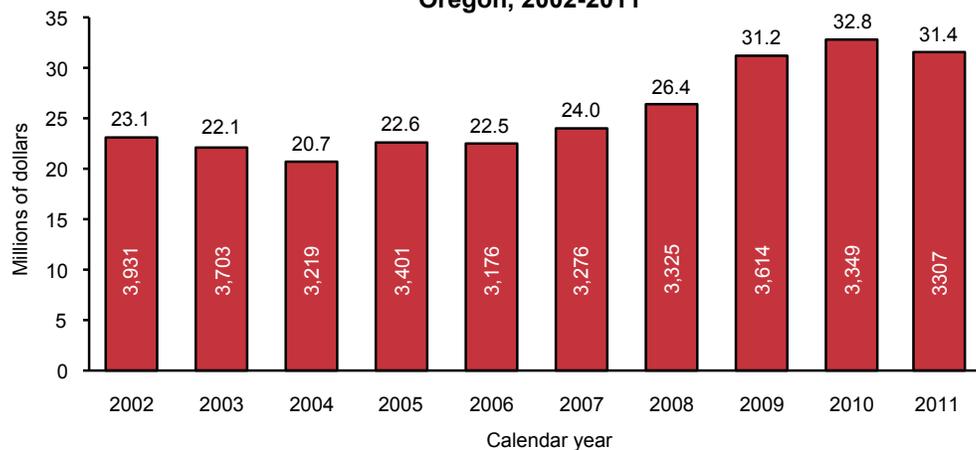
**Table 7. Hearing disputed claim settlements, by principal issue, Oregon, 2011**

Principal issue	Number of cases	Percentage of cases	Total DCS amount (\$k)	Average amount (\$)	Total fees* (\$k)
Claim denial	1,302	39.4%	11,986	9,206	2,286
Partial denial	1,981	59.9%	19,319	9,752	3,198
Aggravation denial	15	0.5%	94	6,287	18
Other issues	9	0.3%	47	5,211	6
All issues	3,307	100.0%	31,446	9,509	5,507

Only the highest-ranking issue is identified with each case. Values may not add to all-issues totals due to rounding.

\* Includes some assessed fees.

**Figure 9. Hearing disputed claim settlement amounts, Oregon, 2002-2011**



Note: Numbers within bars are case counts.

## Permanent disability

### Pre-2005 scheduled and unscheduled disability:

In 2011 there were only seven hearing cases about permanent disability where the injury date was before January 2005. Awards were increased in four cases, and affirmed in three cases. The result was a net increase in awards of almost \$50,000.

### Whole-body impairment and work disability:

Cases about permanent disability with injury date in 2005 or later constituted about 95 percent of all 2011 hearings permanent-disability cases. Table 8 provides data about these cases. For example, 23 opinion and order cases increased disability (shaded section of the table). Of these cases, 14 cases increased impairment, and 14 cases increased work disability (both counts include five cases with both impairment and work-disability increases). The average impairment increase was 5.9 percent. See the appendix for a brief explanation of PPD determination.

Of the 14 O&O work-disability-increase cases mentioned above, seven workers had been previously awarded impairment and were awarded work disability at hearings for the first time. Another five O&O cases reduced work disability, and one reduced work disability to zero but still allowed impairment. So in at least eight (7 + 1) cases, hearings judges and the Workers' Compensation Division made different findings of whether workers returned to regular work.

Permanent disability was decreased by stipulation in seven cases (from Table 8, 19 total cases minus 12 O&O cases). Disability was reduced to zero in four of these cases, and all four of these settlements were in conjunction with a claim disposition agreement.

### All disability cases:

In all, 155 cases involved extent of permanent disability in 2011, a record-low 2.8 percent of all hearings cases. Dispositions were as follows (includes stipulations): increase the award, 22.6 percent; decrease the award, 12.3 percent; and affirm the award, 65.2 percent. See Table 9 for case counts by order type and disposition.

**Table 8. Hearing PPD award changes, Oregon, 2011**

Increases	Opinion and order		All order types	
	Type of PPD award	Number of cases	Average change*	Number of cases
Impairment (%)	14	5.9	20	5.3
Work Disability (%)	14	14.7	16	13.4
(cases with both types)	(5)		(7)	
Total cases	23		29	

Decreases	Opinion and order		All order types	
	Type of PPD award	Number of cases	Average change*	Number of cases
Impairment (%)	11	7.9	18	8.3
Work Disability (%)	5	10.0	8	11.5
(cases with both types)	(4)		(7)	
Total cases	12		19	

Includes only PPD cases in claims with injury date in 2005 or later, where impairment or work disability, or both, are changed. "Avg. Chg." (average change, for cases with a change) awards are in units of percentages. A case may have award changes in both impairment and work disability (see counts in parentheses). Cases where an award of PTD is granted or rescinded are not included.

The net amount awarded for PPD at hearing in 2011 was \$149,000 (Figure 10). O&Os increased awards by about \$220,000 and settlements decreased awards by \$71,000. Some stipulations are a compromise between the parties; they make a smaller award change than that requested by the petitioner. Stipulated awards and net PPD paid are not perfect indications of the accuracy of awards granted at closure or department reconsideration because some stipulations reduce PPD awards to zero in conjunction with a claim disposition agreement.

There was one hearing permanent total disability grant in 2011, by opinion and order (Figure 11). There were no rescissions, so the net number of PTD awards at hearing was one.

The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past two decades or so. Four primary reasons for this change:

- Decreasing numbers and severity of injuries, and fewer accepted disabling claims
- House Bill 2900 (1987): primarily, enacting disability standards
- Senate Bill 1197 (1990): required reconsideration, medical arbiters for impairment disputes, "tighter" disability standards, and claim disposition agreements
- Senate Bill 369 (1995): limitation of evidence at hearing, prohibition of issues that were not raised at nor arose out of the reconsideration, and the limitation on disability when a worker returns to work

**Table 9. Disposition of hearing permanent disability cases, by order type, Oregon, 2011**

Order type	Dispositions			
	Increase	Decrease	Affirm	All
Opinion and order	<b>28</b> 20.6%	<b>12</b> 8.8%	<b>96</b> 70.6%	<b>136</b> 100.0%
Stipulation	<b>7</b> 36.8%	<b>7</b> 36.8%	<b>5</b> 26.3%	<b>19</b> 100.0%
All orders	<b>35</b> 22.6%	<b>19</b> 12.3%	<b>101</b> 65.2%	<b>155</b> 100.0%

Note: Table entries are number of cases (top number) and the percentage of each order type that has the given disposition (so percentages add to 100 in the horizontal, except for rounding). Includes cases with the award of permanent total disability granted or rescinded.

Figure 10. Net hearing PPD awards by order type, Oregon, 2002-2011

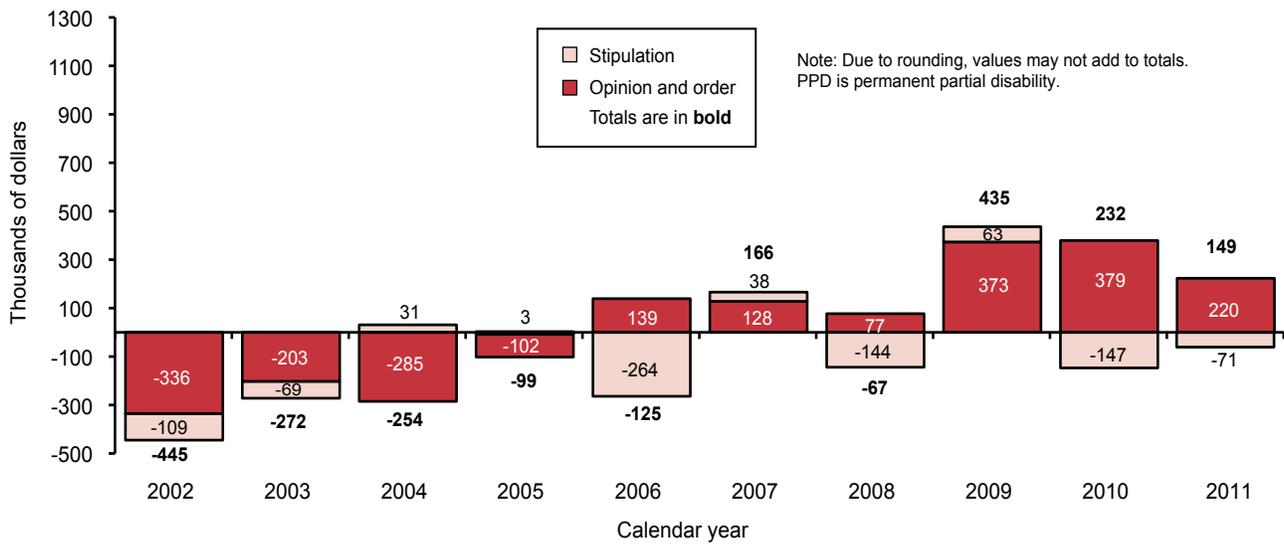
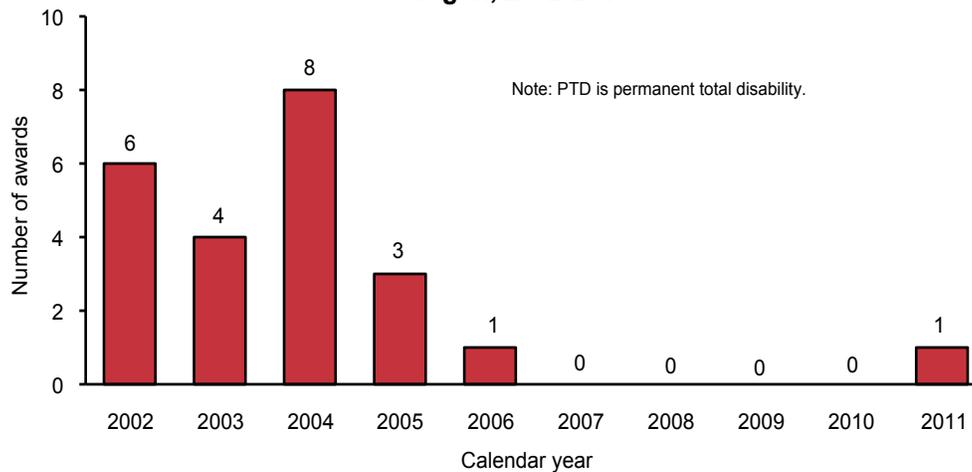


Figure 11. PTD awards granted at hearing, Oregon, 2002-2011



### Time lags

For all hearing orders in 2011 (Table 10), the median time from injury to hearing request was 343 days (11.3 months), and the median request-to-order time was 127 days (4.2 months). The request-to-order time lag for a withdrawal or settlement overstates a dispute’s duration because the hearing may be canceled well before the closing order is issued.

For opinion and order cases (Figure 12), the median time from hearing request to order was 227 days (7.5 months),

three days less than in 2010. For O&O cases without a postponement, the median request-to-order time was 151 days (5.0 months). The percentage of O&Os with at least one postponement was 46.4 percent, the highest percentage on record.

O&O request-to-order time lags include time that the record was kept open, after the hearing concluded. The median hearing-to-close time lag was 39 days, while the most frequent value was zero (cases closed on the hearing day). The median close-to-order time lag was 28 days, and the most frequent time was 30 days.

For 2011 O&Os, 98.3 percent were timely (issued within 30 days of record closure, or on the next work day if the 30th day was not a work day).

### Claimant attorney fees

Claimants were represented by counsel in at least 91.8 percent of O&O cases and 88.9 percent of all cases with a 2011 hearings closing order (excluding WCD contested cases).

Claimant attorney fees totaling almost \$10.4 million were approved for payment out of worker compensation awards, from disputed claim settlement proceeds, or

assessed against insurers in 2011 hearing orders (Table 11). The average fee of \$2,496 was about 2.2 percent smaller than in 2010 (Figure 13). Total fees were 10.5 percent less than for 2010 (Figure 14). Data here exclude fees in WCD cases.

About 54.2 percent of the fees were paid out of compensation or DCS consideration, the highest since 1991.

Note: the Hearings Division does not approve defense attorney fees; see the appendix for information on how they are reported.

**Table 10. Median hearing time lags, by order type, Oregon, 2011**

Lag period (dates)	Opinion and order	Received stipulation	Other stipulation	Dismissal, withdrawal	All orders
Injury - request	365	551	268	382	343
Injury - order	659	558	472	547	539
Request - order	227	7	144	95	127
Request - hearing	98				
Hearing - closed	39				
Closed - order	28				

Units are calendar days. Hearing and closed dates apply to opinion and order cases only. Time-lag segments do not add to totals because figures are medians, not means. "Received stipulation" refers to settlements received without a prior hearing request; "Other stipulation" includes all other settlements.

**Figure 12. Median time lags, hearing request to order, opinion and order cases, Oregon, 2002-2011**

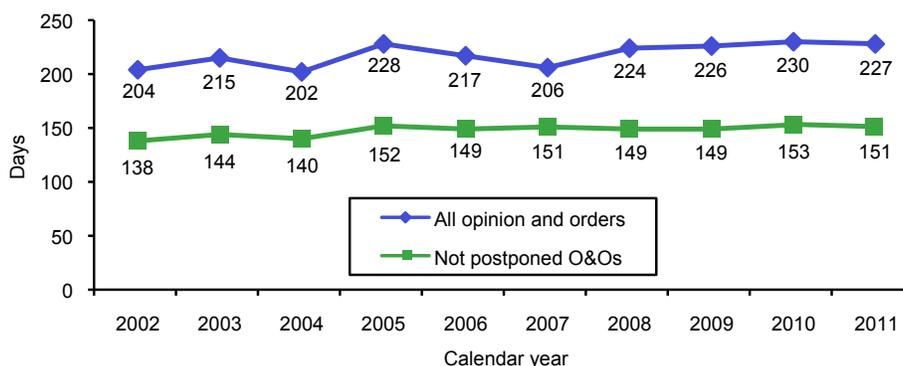


Figure 13. Average claimant attorney fees by type, Oregon, 2002-2011

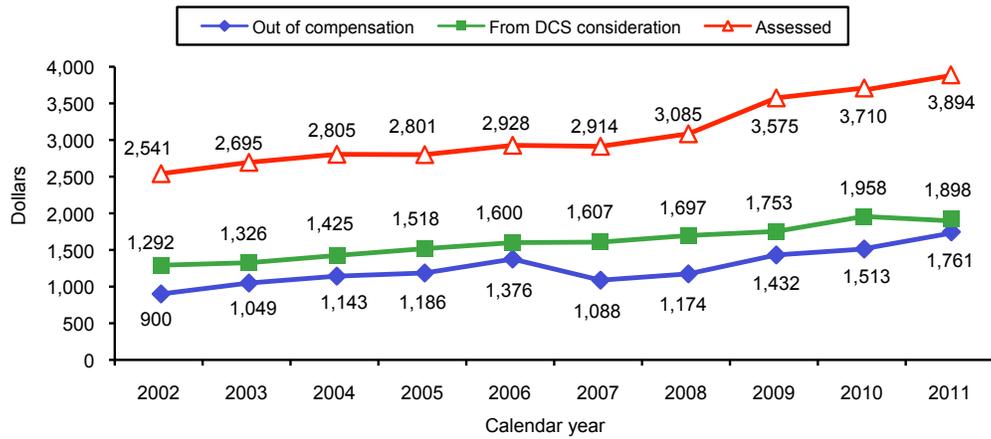


Figure 14. Total hearing claimant attorney fees, Oregon, 2002-2011

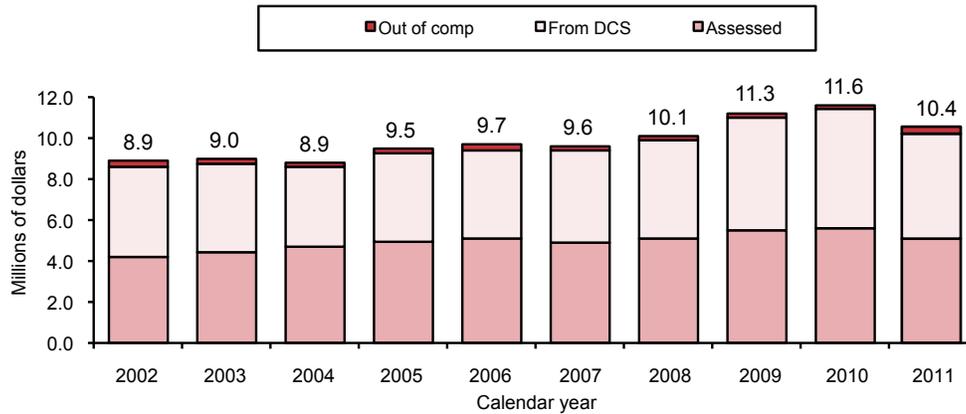


Table 11. Claimant attorney fees, by order and fee type, Oregon, 2011

Fee type	Order type				Percentage of all fees
	Opinion and order	Stipulation	Dismissal	All types	
<b>Out of compensation:</b>					
Total (\$)	97,000	38,000	2,000	137,000	1.3%
Average (\$)	2,164	1,193	2,000	1,761	
Cases	45	32	1	78	
<b>DCS consideration:</b>					
Total (\$)		5,490,000		5,490,000	52.9%
Average (\$)		1,898		1,898	
Cases		2,893		2,893	
<b>Assessed:</b>					
Total (\$)	2,609,000	2,146,000		4,755,000	45.8%
Average (\$)	5,942	2,745		3,894	
Cases	439	782		1,221	
<b>All types:</b>					
Total (\$)	2,706,000	7,674,000	2,000	10,382,000	100.0%
Average (\$)	5,746	2,081	2,000	2,496	
Cases	471	3,688	1	4,160	

DCS fees are those from DCS consideration, only. Fees may not add to totals due to rounding. Cases may not add to all-types cases because some cases have more than one fee type. Occasionally DCSs include assessed fees; they are included here as assessed fees. Attorney fees allowed in claim disposition agreements approved by judges are not included here.

# Appendix

## Background and context

The Hearings Division of the Oregon Workers' Compensation Board provides a forum for impartial dispute resolution in the Oregon workers' compensation system. Administrative law judges carry out this hearings function. Parties who are dissatisfied with a decision of an insurer or the Workers' Compensation Division of the Department of Consumer and Business Services may request a hearing. ORS 656.283.

This report covers cases for which hearing orders were written during the subject calendar year, regardless of the date the hearing was requested or held. The basic unit of data is the case, not the written order. Some orders close more than one case.

Excluded from this report are (1) safety cases, per Oregon Revised Statutes Chapter 654; (2) inmate injury fund cases; and (3) cases not dealing with workers' compensation claims, such as those about noncomplying employer status or civil penalty assessment [exception: these cases are included in hearing request and order counts].

Data for this report were collected by the Workers' Compensation Board staff from various source documents, but primarily from the hearing order itself. Data were written to data sheets and then entered into the board's data system. Computer edits were performed in order to identify and correct data that were inconsistent or otherwise questionable.

Generally, 1978 is the first year with detailed statistical records. Unless otherwise indicated, record-high or record-low values are for the period beginning with 1978.

## Terminology

For other terminology, see the Workers' Compensation Division's list of terms and abbreviations: <http://wcd.oregon.gov/communications/publications/terms.html>. Other terms are defined in the law and WCB rules.

**Administrative law judge (ALJ)** – a WCB Hearings Division judge. Formerly called “referees,” ALJs conduct hearings, decide cases, write opinion and orders, dismiss hearing requests, approve settlements, and conduct mediations.

**Attorney fees** – fees paid to attorneys representing injured workers. Attorney fees may be awarded for these outcomes: getting a denial overturned, obtaining an increase in compensation, and preventing a decrease in compensation.

Comments about attorney fees:

- Most fees are determined at hearing for attorney efforts and results on issues raised at hearing. Other fees are determined by hearings judges for attorney efforts and results achieved outside of hearings. They include cases in which attorney fees were an issue in the hearing request.
- Attorney fees that are recorded for hearings cases are not necessarily the actual amounts paid. For example, if the duration of time loss is increased and the ending date is not specified, the fees recorded are the maximum allowable (\$1,500). In other cases, the fees may be reversed (reduced or eliminated) when the judge's decision in favor of the claimant is reversed or modified by the board or courts, or when the amount of the fee is successfully challenged.
- Sometimes, fee amounts cannot be determined from the order. In most such cases, the fee is based, at least in part, on penalties against the insurer.

Types of attorney fees:

- Out of compensation – fees that are taken out of an increase in compensation.
- Out of DCS consideration – fees in disputed claim settlements usually come from the DCS proceeds.
- Assessed – fees assessed against the insurer. This type of fee is most frequently awarded when the attorney is instrumental in getting an insurer denial reversed. Penalty-related fees are considered to be this type of fee.

Defense attorney fees are not approved by the Hearings Division. They are reported separately, at <http://www4.cbs.state.or.us/ex/imd/external/reports/index.cfm?fuseaction=dir&ItemID=1999>.

**Restrictions on attorney fees –**

During the year covered by this report, Oregon law or WCB rules placed these restrictions on claimant attorney fees at hearings (stated amounts could be exceeded only in extraordinary circumstances):

- Out of compensation – 25 percent of the increase; to a maximum of \$1,500 for time loss, \$4,600 for permanent partial disability, and \$12,500 for permanent total disability.
- Out of DCS consideration – 25 percent of the first \$17,500; 10 percent of proceeds above that threshold.
- Assessed – Effective 7/01/2011, allowable fees were changed as follows (annual adjustment required by HB3345): penalty-related fees, from \$3,070 to \$3,157; responsibility-issue fees, from \$2,559 to \$2,631 (values are rounded). Otherwise, there were no restrictions on assessed fees.

**Case** – a dispute. A case is established and assigned a case number at the time of the hearing request. A case may have several contested issues.

**Favorable-to-worker rate** – the percentage of dispositions in favor of the worker. For the issues of temporary disability and permanent disability, this rate reflects award increases plus affirmations of the prior order when the insurer or employer requested the hearing.

**Hearing** – a proceeding similar to a civil trial where matters are decided by the judge and there is no jury. The parties to a dispute and their representatives provide evidence and argument, and the hearing is normally followed by the ALJ writing an opinion and order.

**Insurer class** – SAIF, private insurance carrier, or self-insured employer. Some cases with an “unknown” insurer are appeals of department nonsubjectivity determinations (disputes about whether the worker or the employer is subject to the workers’ compensation law). Class may be unknown when a claim is processed by a third-party administrator (TPA).

**Issue** – the subject(s) of a dispute. Only issues that are resolved (decided by the judge or settled by the parties) are recorded with a disposition.

These issues are recorded:

1. Extent of permanent disability – the amount of permanent partial disability or whether the worker is permanently and totally disabled. ORS 656.206 and 656.214.
2. Extent of temporary disability – eligibility for, or duration of, temporary disability (often called “time loss”), including interim compensation awarded pending an insurer decision to accept or deny a claim. ORS 656.210 and 656.212.
3. Claim denial – denial of a new claim, denial of the whole claim for reasons of work-relatedness (“course and scope”); this issue excludes denial because the worker failed to cooperate (ORS 656.262(14)), the worker or employer is not subject to workers’ compensation law (ORS 656.027), another insurer is responsible (ORS 656.307), the insurer didn’t provide coverage on the date of injury, and the claim was not timely. Flare-up of a pre-existing condition due to work activities is considered to be this issue.
4. Partial denial – denial of part of a claim, denial of a new condition in an accepted claim. This issue includes consequential conditions, flare-up of a pre-existing condition due to a compensable injury, scope of acceptance disputes in accordance with ORS 656.262(6)(d), current condition disputes, new medical condition claims, and disputes about whether there’s a causal relationship between medical services and a compensable injury.
5. Aggravation – worsening of the compensable condition since the most recent award. It raises the question of whether the claim should be reopened. ORS 656.273.
6. Responsibility – which insurer should accept a claim and pay benefits. This issue, even though raised, is not recorded in a DCS (it’s really the compensability denial that is sustained). Also, it isn’t coded when the claim is found not compensable (the responsibility issue is not reached). ORS 656.307.
7. Premature closure – whether the claim was closed before the worker was medically stationary. ORS 656.268.
8. Penalties – “additional amounts” paid by the insurer to the worker and/or worker’s attorney, usually for unreasonable claims processing conduct. ORS 656.262(11) and (12), 656.268(5), and 656.291(2).

9. Attorney fee – whether claimant’s attorney should be awarded fees, and how much, for efforts or results achieved outside of hearings. This issue is not recorded when fees are requested for the hearing outcome. ORS 656.262(11), 656.291(2), 656.307(5), 656.308(2), 656.382, 656.386, and 656.388.
10. Subjectivity – whether the worker or employer is subject to Oregon workers’ compensation law. ORS 656.027. This issue was first coded in 2000; previously, it was coded as “other” issue.
11. Temporary disability rate – the rate at which time loss should be paid. Usually, this issue involves what wage should be used in the computation of TD rate. (Note: if the question is whether temporary total disability or temporary partial disability should be paid, the issue is coded as “extent of temporary disability,” not this issue.) This issue was first coded in 2004.
12. Other issue – any issue not specified above.

No issue is recorded for a case when (1) all raised issues are “reserved” or “preserved” to be resolved later, (2) the hearing request is dismissed in an order captioned as an opinion and order, (3) all issues are withdrawn at hearing in an order not captioned as a dismissal, and (4) the numbers of cases exceeds the number of distinct denials.

**Mediation** – a process in which the Workers’ Compensation Board provides (without cost) facilities and a mediator (a specially trained administrative law judge) to settle disputes without formal litigation. Mediations are held only when parties agree to mediate.

**Mediation case** – a case created for a mediation, if necessary, to record the results of the mediation. This most frequently happens when a mediation is scheduled and there is no prior active hearing request.

**Order types:**

1. Dismissal – an order by an ALJ dismissing the hearing request; there generally is no hearing. Dismissals are written when (1) the hearing requester withdraws the request; (2) the judge rules to dismiss for untimely filing, lack of jurisdiction, or other legal basis; (3) the Workers’ Compensation Board approves a claim disposition agreement that disposes of all contested issues; and (4) a judge determines that there is not substantial evidence to support a responsibility finding against a particular insurer, per ORS 656.308(2)(c).

2. Disputed claim settlement – resolution of a compensability dispute wherein the parties agree to leave a claim or medical condition denied, in exchange for some consideration (usually cash paid to the worker). ORS 656.289(4). DCSs are a type of stipulation. DCSs affirm a compensability denial, but sometimes include other issues. The DCS amount is sometimes unspecified; usually this happens when the insurer is to pay medical bills and the amount is not mentioned in the order.
3. Opinion and order – an order of the administrative law judge that records a decision on the merits and the rationale for it. Usually, an opinion and order is written when a hearing is conducted, but a judge may decide the case on the written record alone.
4. Order on stipulation – an order written by a judge, based on an agreement of the parties. In this report, we don’t distinguish between orders on stipulation and other stipulations.
5. Stipulation – an order written to record, approve, and make enforceable an agreement of the parties. In its broadest use, it includes disputed claim settlements. In almost all uses, it includes “orders on stipulation.”
6. WCD/Proposed and final order – An ALJ’s decision on the merits of the case, usually about medical or vocational services. Appeal of this order is to WCD (not board review), and the subsequent review level is the Court of Appeals.
7. WCD/Final order of dismissal – A dismissal, usually due to withdrawal by the petitioner. In most WCB reports, these are treated as withdrawals.
8. WCD/Proposed and final order of dismissal – A dismissal, usually due to a settlement. In most WCB reports, these are treated as dismissals.

**Permanent disability:**

**Permanent total disability (PTD)** – the loss of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation. ORS 656.206.

**Permanent partial disability (PPD)**, ORS 656.214:

1. Impairment (injuries in 2005 or later) – the impairment for all body parts is combined into whole-body impairment, measured in percent (1-100). It is paid at the state average weekly wage. For example, for injuries between July 1, 2008, and June 30, 2009 (typical of cases at hearing in 2011), \$790.38 is paid for each percentage of impairment.
2. Work disability (injuries in or after 2005) – awarded if a worker cannot return to regular work at the job held at injury. It combines impairment with a value based on age, education, and adaptability factors; it is given in percent, and exceeds impairment because the factors are all positive. Each percentage is paid at 1.5 times the worker’s average weekly wage (but the wage used is not less than 50 percent, nor more than 133 percent, of the state average weekly wage).
3. Scheduled disability (injuries before 2005) – awarded for loss of use or function of arms, legs, extremities, eye sight, or hearing. It’s measured in degrees (maximum degrees depends on the body part), and the amount paid for each degree depends on the injury date.
4. Unscheduled disability (injuries before 2005) – awarded based on loss of earning capacity, for body parts other than scheduled parts, above. It’s measured in degrees (maximum of 320 degrees), and paid at a rate that depends on the injury date and the number of degrees awarded.

**Received stipulation** – a settlement received without a prior hearing request. Such orders are classified as “joint” requests. The order type may be stipulation or disputed claim settlement.

**Responsibility dispute** – a dispute about which insurer is responsible for a claim. In a “pure responsibility dispute,” no insurer denies compensability, and the department publishes a “307 paying agent order” to designate an insurer to pay benefits until responsibility is determined. Responsibility disputes involve multiple cases, one from each of the worker’s hearing requests contesting an insurer’s denial. ORS 656.307 and 656.308.

**Sanction** – a payment to an opposing party that a judge may order against an attorney for an appeal that is frivolous, filed in bad faith, or for the purpose of harassment. ORS 656.390. Data are not automatically collected about attorney sanctions.

**Time lag, request to order** – the time from the original hearing request to the closing order. It includes the time from the request to the scheduled time of the hearing, the time from the hearing to record closure (i.e., it includes time that the record is kept open after the hearing was concluded), and the time required for the ALJ to write the order. Postponements greatly extend this time.





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