

December 10, 2018

Workers' Compensation Board
2601 25th Street SE, Suite 150
Salem, OR 97302-1282

Re: Biennial Attorney Fee Review pursuant to ORS 656.388(4)

Dear Board Members,

I give my whole-hearted support for a bifurcation rule, which would allow attorneys to request the attorney fees after it is determined that claimant has finally prevailed. I understand the proposed rule is to be a *voluntary* process.

For some time, it has been general practice to award an attorney fee at the same time a decision on the merits is issued. This practice has clouded the actual statutory terms that also allow consideration and determination of an attorney fee after claimant prevails. Thus, a *voluntary* request for determining attorney fees after prevailing is legally supported by the statutes.

To use ORS 656.386(1) as the prime example, it provides "In all cases involving denied claims *where claimant finally prevails*" This language has been interpreted to mean that the decision where claimant prevails has become final. *Greenslitt v. City of Lake Oswego*, 305 Or 530 (1988). When the merits are appealed, the attorney fee award is interlocutory only. Basically, the case interprets "finally prevails" as meaning the time to request an attorney fee has not yet occurred until claimant finally prevails.

While I know some Board caselaw suggests the fee must be determined with the merits, the statute allows a later request after claimant finally prevails. *Greenslitt* supports both an interlocutory determination or a later determination of the attorney fee award.

Thus, the Board should implement a rule that is consistent with the attorney fee statutes.

Ultimately, the purpose of the attorney fee statutes is to ensure claimant's attorney is properly compensated for the representation. The reduction in the attorneys' ranks of those willing to represent injured workers speaks to the lack of appropriate incentive to represent injured workers, particularly at the appellate level. A fair

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process to determine attorney fees after all of the work on a case is completed and after counsel knows the client has prevailed is a necessary option to determine appropriate compensation. Often, work continues on a case with continued communication, review of the file, review of the decision and then making sure the decision is properly implemented. This time goes uncompensated regularly.

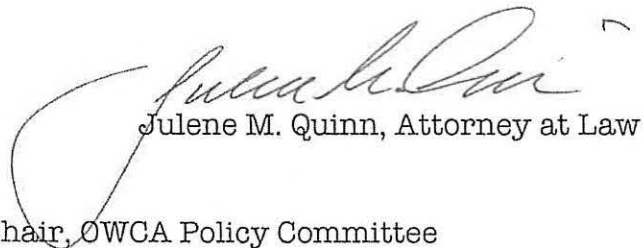
I will note that I often turn down cases, not because of the merits, but because I am overloaded. I cannot help some injured workers, because there is not enough time, and there is not enough money to hire an associate. This rule would help with the time. When one considers the underpaid rate, the unpaid additional work after a statement of service is submitted, the lost time drafting a statement when claimant does not prevail on the case, this is a significant amount of lost time and revenue. It is part of the problem of claimant's Bar being underpaid relative to our counterparts.

A bifurcation rule would assist in alleviating this part of the lost compensation.

I request the Board adopt a bifurcation rule that allows the worker to request consideration of attorney fees after the injured worker has prevailed.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Sincerely,



Julene M. Quinn, Attorney at Law

cc: Keith Semple, Chair, OWCA Policy Committee