



Oregon

Tina Kotek, Governor

Workers' Compensation Board

2601 25th St SE Ste 150

Salem, OR 97302-1280

503-378-3308

1-877-311-8061

www.wcb.oregon.gov

December 11, 2023

ALJ Darren Otto
Portland Hearings Division
16760 SW Upper Boones Ferry Rd Ste 220
Portland OR 97224

Barb Anderson
Ombudsman for Injured Workers
PO Box 14480
Salem OR 97309-0405

Derrick Louie
Attorney at Law
Bennett Hartman Morris & Kaplan
210 SW Morrison St Ste 500
Portland OR 97304-3149

Allison Lesh
Attorney at Law
SAIF Corporation
400 High St SE
Salem OR 97312

Sydney Montanaro
Attorney at Law
Thomas Coon Newton & Frost
820 SW 2nd Ave. Ste 200
Portland OR 97204-3087

Amy Osenar
Attorney at Law
Reinisch Wilson PC
10260 SW Greenburg Rd #1250
Portland OR 97223

RE: Advisory Committee – Denial Appeal Language

Advisory Committee Members:

Thank you for agreeing to participate on the Board's advisory committee to consider the rule concept to simplify the mandatory denial appeal language in OAR 438-005-0055.

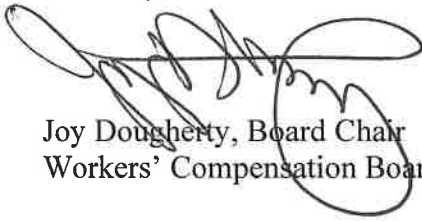
The procedural background regarding this concept is summarized below. The SAIF Corporation and the OTLA brought the proposed rule concept to the Board with proposed language for amendments to OAR 438-005-0055. The proposed rule language was drafted by the OSB Workers' Compensation Section's Access to Justice subcommittee with the approval of the OSB Executive Committee. After considering public comment, the Members decided to defer further action pending a report from an advisory committee. Enclosed with this letter are copies of SAIF and the OTLA's letters to the Board proposing the rule concept, including the proposed rule language.

The advisory committee is requested to complete its review and issue a report by March 15, 2024. The committee's report should include the committee's consensus (or majority and minority opinions) regarding the proposed rule concept, including any recommended rule modifications. Although not required to do so, the committee may also propose rule language. Please include the anticipated financial impact of any proposed rule modifications. Thereafter, the Members intend to return this matter to their meeting agenda for discussion of any necessary rulemaking actions.



Administrative Law Judge Darren Otto will be the facilitator for this committee. It is anticipated that one or more meetings will be held. The committee meetings will be noticed pursuant to the public meetings law. Niki Nelson, Judicial Assistant, is assisting me in coordinating the committee's meetings and will be contacting you to schedule the meetings. Should you have any questions, please contact Niki at 971-673-0924 or via email at Niki.J.NELSON@wcb.oregon.gov. Thank you again for your willingness to contribute to this important project.

Sincerely,

A handwritten signature in black ink, appearing to read "Joy Dougherty", with a large, stylized flourish extending to the left.

Joy Dougherty, Board Chair
Workers' Compensation Board

JD:kg

Enclosures
Cc: Board Members

July 20, 2023

JENNY OGAWA, ACTING BOARD CHAIR
WORKERS' COMPENSATION BOARD
2601 25TH ST. SE, STE. 150
SALEM, OR 97302

Re: Request for Proposed Rulemaking regarding denial language

Dear Acting Board Chair Ogawa and Board Members:

SAIF Corporation and the Oregon Trial Lawyers Association jointly request the Workers' Compensation Board utilize its rulemaking process to consider simplifying and improving the readability of the board's required denial language in OAR 438-005-0055. Both parties participated in an advisory committee meeting with the Workers' Compensation Division regarding simplification of workers' compensation correspondence. During the course of that meeting, the denial language contained in the board's rules was noted as an area that could be improved. The parties see this work as a timely opportunity to request a review and simplification of the denial language required by the board's rules.

In addition, the Access to Justice Committee and Executive Committee of the Workers' Compensation section of the Oregon State Bar drafted potential language to simplify the required denial language and improve its readability. A copy is attached.

The parties appreciate the board's consideration of this topic when planning its next quarterly meeting and look forward to offering our ideas for ways to improve the denial language.

Sincerely,

Elaine Schooler
SAIF Corporation
elasch@saif.com

Jovanna Patrick
Hollander Lebenbaum & Patrick
jovanna@hollanderlaw.com

Keith Semple
Johnson Johnson Lucas et al
ksemple@justicelawyers.com

400 High Street SE
Salem, OR 97312
P: 800.285.8525
F: 503.373.8020

IF YOU DISAGREE with this DENIAL, you must file an APPEAL WITHIN 60 DAYS of the DENIAL DATE by doing one of the following:

- (1) MAILING a letter to the Workers' Compensation Board, 2601 25th Street SE, Suite 150, Salem, Oregon 97302-1280;
- (2) Sending an E-MAIL to: request.wcb@oregon.gov;
- (3) Sending a FAX to: 503-373-1600; or
- (4) PHYSICAL DELIVERY of a letter to a Workers' Compensation Board Office (in Salem, Portland, Eugene, or Medford).

Your letter, email, fax, or physical delivery must state that you want a hearing, your address, the date of the denial and the date of your accident if you know the date. If the Workers' Compensation Board receives your appeal more than 60 days after the date of this letter, you may have to prove you sent the appeal within 60 days.

IF YOU DO NOT APPEAL WITHIN 60 DAYS of this denial, YOU WILL LOSE ANY RIGHT you may have to compensation. The only exception is if you can show good cause for delay beyond the 60 days. After 180 days, all of your rights will be lost. If your claim qualifies, you may receive an expedited hearing within 30 days.

By law, your appeal cannot affect your employment.

You may request an examination by a physician selected by the Workers' Compensation Division at no cost to you if: (1) you timely request a hearing on a denial of compensability, (2) the denial is based on one or more medical reports of insurer or self-insured employer requested medical examinations, and (3) your attending physician does not agree with or did not comment on the report(s).

You may be REPRESENTED BY AN ATTORNEY of your choice at NO COST TO YOU for attorney fees.

If you have questions you may contact:

- (1) The Workers' Compensation Division toll free AT 1-800-452-0288,
<https://wcd.oregon.gov>.
- (2) The Ombudsman for Injured Workers toll free AT 1-800-927-1271,
<https://www.oregon.gov/dcbs/OIW>.

August 9, 2023

JENNY OGAWA, ACTING BOARD CHAIR
WORKERS' COMPENSATION BOARD
2601 25TH ST. SE, STE. 150
SALEM, OR 97302

Re: Request for proposed concept regarding denial language

Dear Acting Board Chair Ogawa and Board Members:

SAIF Corporation received a request for clarification regarding the parties July 20, 2023 request for proposed rulemaking regarding mandatory denial language. Please consider the parties July 20, 2023 letter a proposed concept for the board's consideration.

Thank you for your time and attention to this matter. Please notify the parties if additional information is needed.

Sincerely,

Elaine Schooler
SAIF Corporation
elasch@saif.com

Jovanna Patrick
Hollander Lebenbaum & Patrick
jovanna@hollanderlaw.com

Keith Semple
Johnson Johnson Lucas et al
ksemple@justicelawyers.com

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F: 503.373.8020