

CLAIM DISPOSITION AGREEMENTS: PROCESSING TIPS

Some proposed Claim Disposition Agreements (CDAs) neglect to fully comply with WCB rules. These proposals result in an addendum letter, requiring supplementation of the CDA before receiving approval. To avoid future delays in the CDA approval process, parties and practitioners are reminded to double-check their agreement before submitting it for Board approval. As a means to reduce or eliminate these processing problems, the CDA Unit has listed the following common situations that result in addendum letters.

Confidentiality Clause. Some CDAs contain a provision stating that the terms of the disposition will be kept confidential. An approved CDA constitutes a Board order and, as such, is a public document. Therefore, if the confidentiality provision of a proposed CDA purports to extend beyond the parties (to include the Board), the CDA is not approvable.

In addition, some proposed CDAs containing a “confidentiality” clause will occasionally include a “civil remedy” provision that purports to authorize a carrier to bring a civil action for damages for any breach of the “confidentiality” clause. The Board’s authority to approve CDAs does not extend to matters outside of chapter 656. *Karen A. Vearrier*, 42 Van Natta 2071 (1990). Consequently, if a “confidentiality” clause includes a “civil remedy” provision, the CDA will not be approved.

No vocational/work history. Always provide claimant’s extent of vocational training and a list of occupations that he/she has performed. OAR 438-009-0022(4)(e), (f). (If claimant is deceased, provide the extent of vocational training and the work history for each of claimant’s beneficiaries. *Id.* If all surviving beneficiaries are minors, guardianship documents should be included.)

No highest education. A CDA must include the highest level of education reached by claimant (or if deceased, his/her beneficiaries). *See* OAR 438-009-0022(4)(e).

Proceeds inconsistent. The amounts listed on the summary page and in the body of the CDA should be consistent. If a handwritten change has been made to amounts, all references to the amounts should be changed and all provisions in the CDA consistent. All parties or their representatives should initial/date the changes.

Assignment of Responsibility for Installment Payments of Structured Settlements. A carrier may assign its obligations to pay future installments of CDA payments, provided that the carrier remains ultimately responsible in the event that the assignee is unable to fulfill its obligation. *See Thomas H. Kistler*, 55 Van Natta 3310 (2003); *William I. Tarr*, 54 Van Natta 2071 (2002).

Medical Service-Related” Reservation. Parties/practitioners are encouraged to revise any proposed CDA provision that expressly addresses the release of future “aggravation rights,” “new/omitted medical condition claims,” “own motion relief” rights, and penalties/attorney fees (whether in the “summary page” or in the text of the CDA) to clarify that such a release is “partial” because the claimant remains entitled to any “medical service-related” benefits concerning such rights. *See Merritt Hopson, 67 Van Natta 1426 (2015).*

Payment of CDA Proceeds to Someone Other Than Claimant. For CDAs involving a child support lien, 50 percent of the total consideration (prior to the allowance for an attorney fee) is subject to the child support lien. *See* ORS 656.234(2)(b); ORS 656.234(3)(c). In other words, the total consideration is subject to the child support lien, rather than the total consideration after the attorney fee is deducted.

Missing signature lines. The CDA should contain signature lines for two Board Members who will sign the agreement or the Administrative Law Judge who mediated the agreement (whichever is applicable).

Missing postcard. Provide a postcard for an unrepresented claimant, unless the CDA is filed by way of the portal.

Missing pages. Some submitted CDAs have missing pages, often including the Order paragraph and Board Member signature lines. Before filing the CDA, double check that all pages have been included.

CDA/DCS submissions. Both agreements may be filed simultaneously. The Disputed Claim Settlement (DCS) will be held until the CDA is approved; thereafter, notice of their approval will be announced together. If a claimant is unrepresented, the 30-day “cooling off” period under ORS 656.236(1)(b) applies. Therefore, if the agreements are filed together, they will be held until expiration of the 30-day period.

No Copy Required - Signatures Need Not Be Original. A copy of the CDA need not be filed. OAR 438-009-0025(1). In addition, signatures of the parties and attorneys may be provided in writing, by FAX, or other electronic means. OAR 438-005-0046(4).

A CDA may include signatures that have been faxed or scanned between the parties/attorneys.

CDA Approval - On-Line Notification. Notification of approval is provided via the portal. In addition, WCB’s website allows parties and practitioners to access information concerning approved CDAs. Specifically, WCB posts a list of approved CDAs, which are compiled on a daily basis. This notification confirms that the listed CDAs have been approved by two Board Members or an ALJ/Mediator. The list is updated daily,

including the date of approval, claimant name, and CDA number. A link to the CDA web page can be accessed at: <http://www.oregon.gov/wcb/board-orders/Pages/index.aspx>.

CDA Filing by WCB Portal. Registered users of the WCB Portal can file CDAs electronically by the portal. Announcements of the CDA approval will be emailed to registered portal contacts. Be sure to activate your Settlement and CDA notifications in the “Contact Detail” of the portal.