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Bulletin 1 (Revised) - Annual Adjustment to Attorney Fee Awards Effective July 1, 2025

The maximum attorney fee awarded under ORS 656.262(11)(a), ORS 656.262(14)(a), and ORS 656.308(2)(d), which are tied to the increase in the state average weekly wage (SAWW), will increase by 6.427 percent on July 1, 2025. On June 4, 2025, the Board published Bulletin No. 1 (Revised), which set forth the new maximum attorney fees. The Bulletin can be found on the Board's website at <https://www.oregon.gov/wcb/Documents/wcbbulletin/bulletin1-2025.pdf>.

An attorney fee awarded under ORS 656.262(11)(a) shall not exceed \$6,357 absent a showing of extraordinary circumstances. OAR 438-015-0110(3).

An attorney fee awarded under ORS 656.262(14)(a) shall be \$485 per hour. OAR 438-015-0033. This rule concerns the reasonable hourly rate for an attorney's time spent during a personal or telephonic interview or deposition conducted under ORS 656.262(14)(a).

An attorney fee awarded under ORS 656.308(2)(d) shall not exceed \$4,585, absent a showing of extraordinary circumstances. OAR 438-015-0038; OAR 438-015-0055(5).

These adjusted maximum fees apply to attorney fees awarded under ORS 656.262(11)(a) and ORS 656.308(2)(d) by orders issued on July 1, 2025 through June 30, 2026, and to a claimant's attorney's time spent during a personal or telephonic interview or deposition under ORS 656.262(14)(a) between July 1, 2025 and June 30, 2026.

CASE NOTES

PENALTIES: On Remand - Claimant Has Burden of Proving a Penalty Under ORS 656.262(11)(a) - Carrier Unreasonable When It Terminated Claimant's TTD Benefits For Violation of Work Rule or Other Disciplinary Reason When The Only Information it Had at The Time Was Its Own TTD Termination Letter

ATTORNEY FEES: Claimant's Counsel Entitled to Attorney Fees for Services at Court of Appeals Under ORS 656.382(3) and ORS 656.388(1) and Before the Supreme Court And on Remand Under ORS 656.262(11)(a)

Hipolito Coria, 77 Van Natta 311 (June 30, 2025). On remand from the Oregon Supreme Court, the Board held that a penalty and attorney fee were warranted under ORS 656.262(11)(a) for the carrier's unreasonable cessation of the claimant's temporary disability (TTD) benefits.

The Board explained that the claimant has the burden to prove that he is entitled to a penalty under ORS 656.262(11)(a). The Board stated that the carrier's decision to unilaterally terminate the claimant's TTD benefits for violation of a work rule or other disciplinary reasons was unreasonable because the only basis for its assertion at the time was its own letter notifying the claimant that the employer had informed it that his employment had been terminated for violation of a work rule or other disciplinary reason. Therefore, the Board concluded that the carrier did not have a legitimate doubt regarding its obligation to pay benefits and that the claimant met his burden of proof under ORS 656.262(11)(a).

The Board awarded an attorney fee under ORS 656.382(3) for services regarding the penalty issue at the Court of Appeals because the carrier raised the claimant's entitlement to a penalty at that level. However, because the carrier did not raise the penalty issue before the Supreme Court or on remand, the claimant's attorney was not entitled to an attorney fee under ORS 656.382(3) at those levels, but instead, under ORS 656.262(11)(a).

Member Ousey specially concurred, stating that he did not believe that the claimant also has the burden to establish that the carrier did not have a legitimate doubt as to its liability in unreasonably refusing to pay compensation. He stated that "legitimate doubt" does not appear in ORS 656.262(11)(a), and there are no cases in which it was the worker's burden to prove that the insurer lacked legitimate doubt. He stated that it was the claimant's burden to prove that the carrier unreasonably delayed or unreasonably refused to pay compensation, but not to prove the absence of legitimate doubt.

CLAIM FILING/TIMELINESS: Carrier Did Not Overcome Presumption of Timely Notice of Injury COMPENSABLE INJURY: Record Established Injury Claim Was Compensable

David B. Miller, 77 Van Natta 349 (June 30, 2025). Applying ORS 656.265(1) and ORS 656.310(1)(a), the Board found that the claimant gave timely notice of a work injury and that the claim was timely filed. The Board deferred to the ALJ's demeanor-based credibility finding in determining that, despite the employer not recollecting nor having a record of the injury, the

claimant persuasively testified that he had immediately notified the employer of his right shoulder injury. Citing ORS 656.310(1)(a), the Board was not persuaded that the employer had overcome the presumption that the claimant provided timely notice of the work injury.

Turning to compensability, the Board relied on the only physician opinion in the record, which supported that the work event was a material contributing cause of the claimant's disability or need for treatment. As there was no persuasive medical evidence contradicting the physician's opinion, the Board found that the injury claim was compensable.

Member Ogawa dissented. She disagreed that timely "claim filing" was at issue because the claimant filed his claim within one year of the date of injury. She concluded that because the claim was filed timely, ORS 656.265(4) and ORS 656.310(1)(a), in turn, would not apply. She stated that, instead, timely notice of the injury was at issue. Because she found that the claimant's testimony was inconsistent with the record, she would have concluded that the claimant did not provide timely notice of the work event.

Additionally, she would have found that the claimant's testimony regarding the work event was not supported by the record and that the physician's opinion was insufficient to support compensability.

DENIAL: Carrier's Acceptance of a Combined Condition Consisting of a Wrist Strain and Preexisting Wrist Osteoarthritis Was Not a De Facto Denial of the Claimed Osteoarthritis Condition

PENALTY: Penalty Not Warranted Because Claimed Condition Was Not De Facto Denied

INTERIM COMP: Claimant Not Entitled to Interim Compensation Because Carrier Accepted Combined Condition Within 14 Days

Amelia Negrini, 77 Van Natta 256 (June 11, 2025). The Board held that: (1) the claimant's new or omitted medical condition claim for right wrist osteoarthritis was not de facto denied; (2) the claimant was not entitled to a penalty or related attorney fee; and (3) the claimant was not entitled to interim temporary disability benefits.

Analyzing the carrier's claim processing obligation under ORS 656.262(6)(a), the Board found that the carrier had complied with its statutory obligation to accept or deny the claim within 60 days when it accepted the claimed right wrist osteoarthritis as the preexisting component of a combined condition. The Board acknowledged that the combined condition acceptance was not an outright acceptance of the claimed condition. Nevertheless, the fact remained that the carrier had processed the claimed condition when it accepted a combined condition. See *Juan A. Arenas-Raya*, 65 Van Natta 1639 (2013).

The Board noted that its conclusion was further supported by ORS 656.267(1), which did not require the carrier to accept each and every medical condition with particularity, as long as the acceptance reasonably apprised the claimant and the medical providers of the nature of the compensable conditions. In this case, the claimant's claimed condition was accepted as the preexisting component of a compensable combined condition and, as a result, rendered medical services for that condition compensable until the carrier issued a combined condition denial.

Moreover, the Board reiterated that, regardless of how a condition is claimed, it was the Board's obligation to determine the appropriate legal standard. *Dibrito v. SAIF*, 319 Or 344, 348 (1994). Here, the carrier's obligation to process the request as a combined condition was supported by ORS 656.005(7)(a)(B) because the parties did not contest that the claim was for a statutory preexisting condition and the persuasive medical evidence established the existence of a combined condition. Finally, citing to *Barnes v. Cache Valley Elec.*, 339 Or App 371(2025), the Board noted that the court's discussion regarding the appropriate legal standards for legally cognizable preexisting conditions – whether independently compensable under ORS 656.225 or as a combined condition – was instructive. Under such circumstances, the Board concluded that the carrier properly processed the claim as a combined condition and that it was not de facto denied. Therefore, the Board declined to award a penalty and related attorney fee.

Finally, citing ORS 656.262(2), (4), and *Stanley Smith Sec. v. Pace*, 118 Or App 602 (1993), the Board found that, because the carrier properly processed and accepted the claim within 14 days, the claimant was not entitled to interim temporary disability benefits.

Member Ousey dissented. He disagreed with the majority's reliance on *Arenas-Raya*, finding it distinguishable because, in this case, the claimant made a specific request that the right wrist osteoarthritis be processed as an independently compensable condition. He would have applied *Crawford v. SAIF*, 241 Or App 470 (2011), and *Rose v. SAIF*, 200 Or App 654 (2005), finding that the carrier did not process the claim as requested and that their actions were unreasonable. Thereafter, analyzing the compensability of an independent claim for right wrist osteoarthritis claim, he would find that the claimant established compensability of the previously asymptomatic right wrist osteoarthritis, award a penalty and related attorney fee, and interim temporary disability benefits.

APPELLATE DECISIONS

There were no Board-related appellate decisions for the month of June.