

*Calvi v. Gallagher Bassett Services
Inc., 347 Or App 281 (2026)*

Penalty under ORS 656.268(5)(f)

ORS 656.268(5)(f)

- Provides for a penalty if:
 - The workers' compensation carrier has closed the claim
 - The correctness of the Notice of Closure is at issue at a hearing
 - A finding is made at the hearing that the Notice of Closure was unreasonable

Correctness of the Notice of Closure

- ORS 656.268(4) –
 - If a worker objects to the Notice of Closure, they must first request reconsideration with the Appellate Review Unit of the Workers' Compensation Division.
 - The worker can request a hearing with an Administrative Law Judge at the Workers' Compensation Board only after the Appellate Review Unit has made a determination regarding the Notice of Closure.
- Penalties under ORS 656.268(5)(f) are not awarded by the Appellate Review Unit because the reconsideration process is not a “hearing.”

Correctness of the Notice of Closure

- Workers with favorable reconsideration decisions must request a hearing with a Workers' Compensation Board Administrative Law Judge to seek a penalty for an unreasonable closure.
- *Warren D. Duffour*, 70 Van Natta 176 (2018): The Board held that a request for hearing seeking a penalty under ORS 656.268(5)(f) put the correctness of the notice of closure at issue at the hearing if the request is made “from” the reconsideration order.

Facts and Board Decision

- Appellate Review Unit issued a reconsideration order that set aside the Notice of Closure as premature
- The worker requested a hearing asserting entitlement to a penalty under ORS 656.268(5)(f) contending that the Notice of Closure was unreasonable, but the hearing request was not a request “from” the reconsideration order.
- The Board affirmed the Administrative Law Judge’s order that declined to award a penalty because the correctness of the Notice of Closure was not at issue at the hearing.

Member Ousey, Concurring

- Followed prior Board cases but expressed concerns with the statutory requirements in ORS 656.268(5)(f).
- Statutory scheme creates an “unnecessarily cumbersome process” for workers by requiring two levels of litigation – one to determine the validity of the closure and one to determine entitlement to a penalty.

Court of Appeals Decision

- The Court affirmed the Board.
- Plain language of ORS 656.268(5)(g) requires that the correctness of the Notice of Closure is at issue in the hearing.
- While separate hearing request puts the reasonableness of the Notice of Closure at issue, the correctness is only put at issue in a hearing when a party requests a hearing challenging the ARU's determination regarding the closure notice.
- Referenced Member Ousey's concurrence and noted that statute places the "unusual" requirement on workers seeking a penalty to challenge a favorable determination by the ARU.