



# MEMORANDUM

April 15, 2026

**To:** Bob Livingston, Governor's Office; Kelly Brooks, Governor's Office; Sarah Means, Governor's Office; and Members of the Management-Labor Advisory Committee

**From:** Joy Dougherty, Workers' Compensation Board Chair

**Subject:** WCB Update

## **SIGNIFICANT/NOTEWORTHY CASES (JANUARY 2026 – MARCH 2026)**

### **Court of Appeals**

*Calvi v. Gallagher Bassett Services Inc.* (February 19, 2026). Interpreting ORS 656.268(5)(f), the Court of Appeals held that a penalty under that statute may only be awarded when the correctness of a notice of closure is at issue in a hearing and it is found to be unreasonable at the hearing. The court explained that a matter is “at issue” when it is “presented for determination.” In doing so, the court noted that because the authority to award a penalty under ORS 656.268(5)(f) rests with the Workers' Compensation Board (WCB), a worker who receives a favorable reconsideration decision from the Workers' Compensation Division Appellate Review Unit (ARU) must challenge the order in a hearing request in order to place the correctness of the notice of closure at issue in a hearing. The court reasoned that, in the present case, the worker did not request a hearing on the reconsideration order that set aside the claim closure. Instead, after the reconsideration order became final, the worker filed a request for hearing seeking a penalty and attorney fees under ORS 656.268(5)(f) for unreasonable claim closure. The court concluded that because the worker had not challenged ARU's determination, the “correctness” of the notice of closure was not at issue in a hearing and a penalty was not awardable under the statute.

*Forsberg v. Providence Health & Services - Oregon* (March 11, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board's order that upheld the carrier's denial of the worker's claim for a respiratory condition identified as COVID-19 or a COVID-like illness. First, the court concluded that the worker's procedural contentions were not raised at the hearing level or on Board review. Consequently, the court determined that those contentions were not preserved. Moreover, reviewing the Board's order for substantial evidence and reason, the court concluded that the Board provided reasoned explanations of each of its findings. The court, therefore, affirmed the Board's order.

*Kopf v. SAIF* (March 18, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board's order on remand. The Board's initial order determined that the worker's request for hearing was untimely. In reaching this conclusion, the Board stated that the worker's attorney's letter explaining that he had timely mailed the request was not evidence. The court reversed and remanded the case to the Board, *Kopf v. SAIF*, 321 Or App 764 (2022), finding that the Board had erred when it did not consider counsel's unsworn statements as evidence and that the Board must decide "the persuasiveness of that evidence in light of the record as a whole." On remand, the Board considered counsel's letter as evidence but ultimately remained unpersuaded in light of the entire record that the worker had timely filed the request for hearing. The worker appealed the Board's order on remand.

Citing *Marsh v. SAIF*, 297 Or App 486 (2019), the court found that the Board did not err in concluding that the worker did not preserve his argument that the 60-day deadline to request a hearing runs from the time the denial is mailed to worker rather than to the worker's attorney. The court also determined that the worker did not preserve his argument that the Board's rule regarding timely mailing exceeded its statutory rulemaking authority. Finally, the court concluded that the Board's determination that the worker's request for hearing was untimely was without legal error and based on substantial evidence and reason. In doing so, the court reasoned that the Board was not required to credit the evidence in the worker's favor nor compelled to find that the worker had overcome the presumption that the request for hearing was untimely.

*Okon v. Broadspire* (March 25, 2026). The Court of Appeals reversed and remanded the Board's order that did not award permanent partial disability benefits at claim closure. Analyzing OAR 436-035-0007(5)(b), the court concluded that the Board had misapplied the court's opinions in *Hicks v. SAIF*, 194 Or App 655, 660, *adh'd to as modified on recons*, 196 Or App 146 (2004), and *Gage v. Fred Meyer Stores - Kroger Co.*, 329 Or App 360, 368 (2023), *adh'd to as modified on recons*, 330 Or App 669 (2024).

The court determined that the Board had erroneously concluded that *Hicks* and *Gage* required it to rely on a medical arbiter report instead of an attending physician's opinion to establish impairment if it is clear and unambiguous. It also determined that the Board erred in concluding that it was not free to disregard a medical arbiter's opinion in the absence of persuasive reasons to the contrary. The court distinguished *Hicks* wherein the medical arbiter's opinion was the only impairment opinion and "unambiguously" attributed the worker's impairment to the compensable condition. The court also distinguished *Gage*, explaining that it reversed the Board's decision for lack of substantial evidence and reason because the Board did not adequately explain its conclusion that the attending physician's opinion was more persuasive than that of the medical arbiter panel.

The court concluded that when one party requests reconsideration and there is a report from an attending physician and a report from a medical arbiter, the Board is required to apply OAR 436-035-0007(5)(b), which states that impairment is established "based on the objective findings of the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician are more accurate and should be used." Therefore, the court remanded the case to the Board to apply that standard.

*SAIF v. Krusenstjerna* (January 7, 2026). Applying ORS 656.268(5)(f), the court held that the Board's order awarding a penalty for the carrier's allegedly unreasonable claim closure was not supported by substantial evidence or reason. The court explained that, although the Board concluded that it was unclear whether the worker was medically stationary at the time of closure, it did not explain why that lack of clarity made the carrier's closure unreasonable. The court, therefore, reversed and remanded the case to the Board.

*Smicz v. Deschutes County 911 Service Dist.* (February 11, 2026). Reviewing for legal error and substantial evidence and reason, the Court of Appeals affirmed the Board order's that upheld a denial of the worker's occupational disease claim for post-traumatic stress disorder. In reaching that conclusion, the court determined that the Board applied the ORS 656.802(7)(b) presumption appropriately. In addition, the court found that the Board's determination that the worker did not establish by a preponderance of persuasive medical evidence that she more likely than not met the diagnostic criteria for PTSD was supported by substantial evidence.

### **Workers' Compensation Board**

*William Bender* (March 9, 2026). The Board upheld the carrier's denial of the worker's injury claim for a left shoulder condition. In upholding the denial, the Board deferred to the ALJ's demeanor-based determination that the worker's testimony was not credible. The Board alternatively reasoned that, even if it did not defer to the ALJ's credibility finding, it would have found the worker not credible based on the record because his description of the work event, his actions after the event, and his presentation on examination were inconsistent. Therefore, the Board concluded that the record did not establish legal causation.

One member dissented. Because the ALJ's credibility determination was based on the witnesses' testimonies at hearing compared to the record, Member Ceja would not have given deference to the ALJ. Instead, he would have found that the totality of evidence supported legal causation. He would also have found that the medical opinions supporting compensability were persuasive based, in part, on the treating surgeon's direct surgical observations. Finally, Member Ceja would have found that the medical opinions supporting a combined condition to be unpersuasive.

*Christina Cornell* (February 3, 2026). Applying ORS 656.005(7)(a) and ORS 656.266(1), the Board held that the worker's injury arose out of and occurred within the course of her employment. Assessing the "in the course of" prong, the Board found that the parking lot exception to the going and coming rule applied because the worker was injured on the employer's premises and the employer exercised some control over the area where the worker slipped and fell. Considering the "arising out of" prong, the Board determined that the worker's injury arose out of a neutral risk to which the work environment exposed her because she fell minutes after finishing her shift, while using the exit designated by the employer. Accordingly, the Board set aside the denial.

*Ashley Fagerston* (March 5, 2026). The Board held that the worker was not entitled to temporary disability benefits beyond those awarded by an Order on Reconsideration because they were not authorized by an attending physician. In addition, the Board found that ORS 656.262(4)(j)(A), which provides that a carrier "may not end temporary disability benefits until written notice has been mailed or delivered to the worker," did not apply. The Board explained that the carrier never ended worker's temporary disability benefits for the disputed period but had paid these benefits and awarded them in the Notice of Closure. The Board noted that, although ARU subsequently found that the worker was not entitled to temporary disability benefits for that period, ORS

656.262(4)(j)(A) does not require the carrier to notify the worker when ARU makes an entitlement determination. Therefore, the Board concluded that the worker did not establish error in the reconsideration process.

*Andrew C. McAdams* (March 5, 2026). The Board awarded an ORS 656.386(1) attorney fee for the rescission of the employer's *de facto* denial and an ORS 656.262(11)(a) penalty and related attorney fee for the employer's allegedly unreasonable failure to accept the worker's condition.

Analyzing ORS 656.267, the Board found that the record established that the carrier received a physician's Form 827 based on the "Recv'd Date" stamp on the form but the claim was not accepted or denied within 60 days. The Board cited *Coleman v. SAIF*, 304 Or App 122 (2020), stating that a physician could initiate a new or omitted medical condition claim on behalf of a worker and that the worker was not required to sign the form. Finding that the claim was properly initiated, the claim was not accepted within 60 days, and the worker's attorney filed a request for hearing before the claim was accepted, the Board awarded an attorney fee under ORS 656.386(1). Again, citing *Coleman* and the date of the court's opinion, the Board concluded that the employer's actions were unreasonable when it delayed processing the claim. As such, the Board found that a penalty and related attorney fee under ORS 656.262(11)(a) were warranted.

*Matthew J. Prendergast* (February 5, 2026). The Board held that the worker did not timely file a request for reconsideration of a notice of closure. Analyzing OAR 436-030-00145(1)(a), the Board reasoned that because the worker's mailed reconsideration request was postmarked the day after the 60-day deadline to request reconsideration, the worker did not timely request reconsideration. Citing OAR 436-030-0005(10) and *Ashley A. Rehfeld*, 62 Van Natta 1722, 1725 (2010), the Board also found that the faxed reconsideration request was untimely because it was sent to the wrong fax number.

The Board declined to consider the worker's arguments, raised for the first time on review, that the record did not establish that the notice of closure was mailed on the date determined by ARU and that the marking on the envelope containing the request was not an official postmark.

*Cynthia Reynolds* (January 28, 2026). Applying ORS 656.225 and the legal standard articulated in *Barnes v. Cache Valley Elec.*, 339 Or App 371, 374-75 (2025), the Board held that the record did not establish the compensability of the worker's new or omitted medical condition claim for preexisting conditions. The Board explained that the

record lacked a persuasive expert medical opinion establishing that the work injury was the major contributing cause of the preexisting conditions. Accordingly, the Board upheld the denial.

One member dissented. Citing *Arms v. SAIF*, 268 Or App 761 (2015), and *Salvador S. Santillan*, 70 Van Natta 562 (2018), the member stated that ORS 656.225 is reserved for medical services cases. Referencing *Phillip Valentine*, 70 Van Natta 529 (2018), and *Edward K. Merriweather*, the member explained that a material contributing cause standard applied and that the record established compensability under that standard.

*April R. White* (January 26, 2026). Applying ORS 656.382(2) and *Arvidson v. Liberty Northwest Ins. Corp.*, 366 Or 693 (2020), the Board held that the worker's attorney was entitled to an attorney fee award when the carrier withdrew its request for hearing challenging a reconsideration order and the administrative law judge (ALJ) dismissed the request. The Board explained that in *Arvidson*, the court concluded that an attorney fee was due under ORS 656.382(2) because an ALJ's dismissal order finding the carrier's hearing request untimely constituted a "finding" that the compensation awarded by a reconsideration order should not be disallowed or reduced for purposes of the statute. Turning to the case at hand, the Board concluded that the ALJ's dismissal order based on the carrier's withdrawal also constituted a "finding" that the compensation awarded in the reconsideration order should not be disallowed or reduced because it had the effect of finalizing that compensation award.