M E M O R A N D U M

November 2, 2026

To: Matthew Tschabold, 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
(JULY 2026 – SEPTEMBER 2026)

Court of Appeals

Dean v. Multnomah County, 351 Or App 608 (July 22, 2026). On reconsideration of its earlier decision, the Court of Appeals adhered to its opinion that upheld an order that eliminated the worker's impairment award. The court, however, modified its language regarding the scope of acceptance for purposes of claim closure and permanent disability rating.

The court clarified that the accepted condition continued to be that identified in the notice of acceptance and reiterated its holding that the Board had failed to articulate why it relied on the arbiter panel's analysis that had not considered a prior compensability determination.

Hayes v. TriMet, 352 Or App 843 (September 10, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed a Board order that upheld the carrier's denial of the worker's claim for adjustment disorder. Reviewing the Board's order for substantial evidence and reason, the court determined that the Board had applied the correct legal standard for mental disorder claims under ORS 656.802(2) and (3) and noted that the only medical opinion in the record did not carry the worker's burden of proof. The court concluded that the Board was not required to discredit the medical opinion, especially without an opinion to support the worker's position, and that a

reasonable person viewing the record as a whole could view the facts as the Board did. Additionally, the court opined that the order provided a rational explanation for why its factual findings supported its conclusions. Therefore, the court affirmed the Board's order.

Hill v. Trader Joes, 353 Or App 190 (September 23, 2026). Analyzing the text, context, and legislative history of the 2022 amendments to ORS 656.262 and ORS 656.268, the Court of Appeals held that the amendments applied to the worker's May 2022 Notice of Closure and remanded the claim for reconsideration.

The court addressed the issue of preservation as a preliminary matter. It noted that the amendments applied to "claims that exist on, or arise on or after, January 1, 2024, regardless of the date of injury or the date on which the claim is filed" and that they did not apply to disputes where a final determination had been made before that date. The court stated that, before January 1, 2024, there was no way to determine if the worker would have a pending claim without a final order, and his appeal to the court was the first opportunity to raise the issue. Under such circumstances, the court excused preservation. The court concluded that, because the claim existed on January 1, 2024, and the Board's order had not become final because it was pending before the court, the 2022 amendments applied to the worker's case and must be reconsidered under the new process.

SAIF v. Dahl, 351 Or App 181 (July 1, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board's order and determined it was supported by substantial evidence and reason.

While the SAIF Corporation argued that the Board exceeded its role as a lay factfinder and erred as a matter of law in its analysis of the medical evidence, the court clarified that SAIF's argument on appeal was better described as a substantial evidence challenge. Citing the factors considered by the doctor supporting compensability, the court concluded that there was substantial evidence to support the Board's finding.

Finally, the court concluded that the Board's explanation for finding the supporting doctor more persuasive was supported by substantial reason.

Workers' Compensation Board

Philip Amaya, 78 Van Natta 466 (August 3, 2026). The Board determined that the predicate facts to apply the rebuttable firefighter presumption under ORS 656.802(5)(b) to the worker's bladder cancer claim were established by the record. Contrasting the

statutory construction of ORS 656.802(5)(b) with ORS 656.802(7), the Board found that nothing in the text of ORS 656.802(5)(b) requires a firefighter to complete five years of qualifying employment by a certain date or event and that the legislature would have included such a restriction if that had been its intent. The Board also noted that case law and legislative history supported its conclusion.

Moving to the facts of the case, the Board determined that the claim met the threshold to apply the rebuttable presumption. The carrier conceded that it lacked clear and convincing evidence that the worker's bladder cancer was not caused or contributed in material part by his employment. Therefore, the Board found the claim compensable.

Greg A. Elkins, 78 Van Natta 424 (July 14, 2026). On reconsideration, the Board adhered to its previous order, which declined to award penalties and related attorney fees for the carrier's allegedly unreasonable claim processing and refusal to close the claim.

On reconsideration, the worker contested the Board's analysis of the carrier's refusal to close the claim. The Board determined that, had the carrier closed the claim 14 days after the worker's request to close, that closure would have been premature because the carrier did not have sufficient information to do so. Further, the Board found that after the worker's request, the carrier proactively contacted the attending physician, the MCO, and the worker's attorney to request information to aid in closing the claim. The carrier ultimately closed the claim 10 days after it received all necessary information regarding the worker's impairment. Under these circumstances, the Board did not find the carrier's refusal to close the claim to be unreasonable.

Deirdre Fitzpatrick, 78 Van Natta 510 (August 19, 2026). Analyzing ORS 656.268(1)(c), the Board found that the carrier did not strictly comply with the requirements for administrative claim closure under OAR 436-030-0034(1) and (2) and that the claim was prematurely closed.

The Board stated that under OAR 436-030-0034(1) and (2), a carrier cannot administratively close a claim unless it provides certain notice to the worker. Here, the carrier's notice stated that the worker must treat with an "authorized attending physician," where the statute requires that the worker treat with an "authorized health care provider." Additionally, the carrier's assertions that the worker did not satisfy other obligations were not supported by the record. Therefore, the Board set aside the claim closure and remanded the claim to the carrier for further processing.

David Green, 78 Van Natta 568 (September 17, 2026). The Board found that the worker was a subject worker and set aside the carrier's compensability denial. Analyzing the text, context, and legislative history of the 2022 amendments to ORS 656.005(28)(a), the Board found that it was appropriate to apply the "right to control" and "nature of the work" tests to determine whether the workers was a subject worker. Although the 2022 amendments removed the "direction and control" language from the definition of a worker, the Board reasoned that the "right to control" and "nature of the work" tests continued to be considerations in determining a worker's subjectivity.

The Board found that the definition of "independent contractor" under ORS 670.600(2)(a) supported the application of the "right to control" and "nature of the work" tests because it required that an independent contractor be "free from direction and control." The legislative history of the 2022 amendments also supported the conclusion that the removal of the "direction and control" language did not affect the subjectivity analysis. The sponsor of the amendments testified that they were meant to streamline and add consistency to such determinations across state agencies and an independent contractor determination remained applicable to workers' compensation claims. Finally, the Workers' Compensation Division's analysis of the amendments maintained that "a person who * * * is subject to direction and control would be a worker under" both former ORS 656.005(30) and ORS 656.005(28)(a).

Determining that the application of the "right to control" and "nature of the work" tests was appropriate, the Board concluded that the worker met the definition of "worker" under ORS 656.005(28) and a "subject worker" under ORS 656.027. Finally, because the carrier had conceded medical causation, the Board set the denial aside.

Tracy L. Hager, 78 Van Natta 541 (September 1, 2026). The Board found that there was insufficient evidence to establish that the carrier was entitled to a claimed overpayment. Contrasting *Krystal A. Schriner*, 78 Van Natta 178 (2026), *Johnny A. Stacey*, 77 Van Natta 425 (2025), and *Nyla J. Vanalstine*, 67 Van Natta 510 (2015), the Board concluded that the carrier did not provide a verifiable calculation to establish the amount of overpayment, a detailed audit of benefits paid, or evidence from a claims adjuster to support the alleged overpayment. In addition, the record included three different amounts for the worker's average weekly wage (AWW), but no evidence as to which amount was correct. Therefore, the Board determined that the record did not include sufficient information regarding pre-injury wage records to determine the worker's AWW. Finally, the Board found that the carrier's evidence was insufficient in this case in light of the worker's rebuttal evidence that the AWW used to calculate the overpayment was different than the AWW used at claim closure.

The Board declined to award penalties and related attorney fees under ORS 656.262(11)(a) for the carrier's allegedly unreasonable claim processing. Under these particular circumstances, it determined that the carrier was not precluded from asserting an overpayment after claim closure and its actions in doing so were not unreasonable.

Karista D. Peabody, 78 Van Natta 454 (July 28, 2026). Analyzing ORS 656.295(8) and OAR 438-015-0082(2), the Board concluded that the carrier was not required to pay an attorney fee authorized by a nonfinal Board order that was pending judicial review. The Board explained that, under OAR 438-015-0082(2), an attorney fee must be paid within 14 days of the date the order is final. Citing ORS 656.295(8), the Board noted that an order is final unless "one of the parties appeals to the Court of Appeals for judicial review." Because the prior Board order was appealed to the court, the Board concluded that it was not final and, therefore, the carrier was not required to pay the fee authorized by the order.

The Board also concluded that ORS 656.313(1)(a) and 183.482(3) did not apply because an attorney fee is not compensation, the worker appealed the prior Board order authorizing the fee, and the carrier was the respondent on judicial review.

Finally, the Board found that a penalty and related attorney fee were not warranted under ORS 656.262(11)(a) because the carrier had a legitimate doubt as to its obligation to pay the authorized attorney fee and it was not unreasonable to defer payment of the fee while the order was pending judicial review.

Ronald J. Wagner, DCD, 78 Van Natta 481 (August 11, 2026). Applying the notice requirements in ORS 656.295, the Board found that not all parties received timely notice of the deceased worker's beneficiary's request for Board review and dismissed the request. While the beneficiary timely requested review by the Board, the record did not establish that the carrier or its attorney was provided with a copy of the request or received actual knowledge of the request within the 30-day appeal period. Because there is no "good cause" exception to the 30-day appeal deadline and the Board is not able to relax this jurisdictional requirement, the request for review was dismissed.