

# Reconsideration of Claim Closures, Oregon, Calendar Year 2000

Research and Analysis Section

Department of Consumer and Business Services

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## NOTE



Several changes have been made in this year's report. The definition of a substantive reconsideration order has been expanded to better reflect ARU's workload. The methodology for calculating the appeal rate of reconsiderations has been improved. Other minor changes have been made.

## Introduction

The Oregon workers' compensation system provides several levels of appeal for workers, employers, or insurers who are dissatisfied with claim closures. The appeal process was reformed as a part of a large-scale reform of the workers' compensation system in May 1990. One goal of the reform was to ensure that injured workers receive the benefits and services to which they are entitled without having to resort to litigation; if litigation is the only recourse, the goal was to resolve disputes more quickly and at lower costs. Toward these ends, Senate Bill 1197 created the reconsideration process. People dissatisfied with a claim closure may request the reconsideration of the closure by the Workers' Compensation Division Appellate Review Unit (ARU).

Prior to January 2001, insurers could issue Notices of Closure (NOCs), or they could request the WCD Evaluation Unit close the claim by issuing Determination Orders (DOs). Workers could appeal NOCs, while both workers and insurers could appeal DOs. The 1999 legislature passed Senate Bill 220, which provided for the phase out of department claim closures. Since the beginning of 2001, all claim closures have been insurer closures.

*This report provides data on the reconsideration requests received and the reconsideration orders issued during the 2000 calendar year. The highlights of the report are:*

The Appellate Review Unit received 4,207 requests for reconsideration of claim closures in 2000, down 5 percent from 1999. This decline is a result of a decline in the number of claim closures. Fifteen percent of closures were appealed to ARU. This percentage has remained steady the past four years.

ARU issued 4,244 reconsideration orders in 2000. Substantive orders totaled 4,228. (Non-substantive orders are general denials of reconsideration and cases in which ARU lost jurisdiction.) Of the substantive orders issued, 88 percent reviewed Notices of Closure issued by insurers.

Thirty-six percent of the substantive orders granted or increased PPD benefits, while 8 percent reduced PPD awards.

The net dollars awarded for PPD in the reconsideration process was \$7.6 million in 2000. This was an increase of \$0.7 million from 1999. Sixty percent of the net dollars were for scheduled awards.

The average change in PPD benefits awarded through reconsideration was an increase of \$4,228 in 2000.

Thirty-two percent of the 2000 substantive reconsideration orders were appealed to the Hearings Division.

## Legislative history

*The appeal process was reformed in May 1990 with the passage of Senate Bill 1197, which:*

Mandated the administrative reconsideration of a claim closure before the disputing party could proceed to a formal hearing for all claims for which the worker was determined to be medically stationary after July 1, 1990;

Permitted the correction of the claim record during the proceedings by the worker or employer, including medical evidence that should have been provided by the attending physician;

Set a time limit of 15 days (changed to 18 working days by the 1991 legislature) for completion of the reconsideration;

Required the referral to an independent medical arbiter of reconsideration requests disputing impairment findings, with the attendant fees paid by the insurer or self-insurer; and

In subsequent litigation, provided for the rating of disability as of the date of the reconsideration order, prohibiting the introduction of most new medical evidence after the reconsideration.

*In 1995, Senate Bill 369 provided further reforms:*

Expanded the conditions under which claims could be closed. Since June 7, 1995, claims can be closed if the accepted injury is no longer the major contributing cause of the worker's condition or if, without approval of the attending physician, the worker fails to seek medical treatment for a period of 30 days or fails to attend a closing examination;

Changed the appeal period of closures to 60 days from the mailing date of the closure order. Also changed the appeal period of reconsideration orders to 30 days from the mailing date of the reconsideration order. Prior to June 7, 1995, a party appealing a closure or a reconsideration order had to request a hearing within 180 days of the mailing date of the disputed closure (the reconsideration processing time was not counted as a part of the 180 days); and

Prohibited submitting evidence at the hearing that was not submitted during the reconsideration process.

In 1999, Senate Bill 220 provided for the phasing out of department claim closures. Since the beginning of 2001, insurers have been closing all claims. All appeals are now made by workers.

## Requests for reconsideration

In 2000, the Appellate Review Unit received 4,207 requests for reconsideration, down 5 percent from 1999. This is the smallest total since the reconsideration process began. The decline is mostly the result of the decline in the number of claim closures. Fifteen percent of the claim closures were appealed (see Figure 1). This percentage has been steady over the past four years.

PPD awards are often contentious issues; in 2000, 22 percent of the closures with PPD awards were appealed for reconsideration. In contrast, 12 percent of the closures that provided only timeloss awards were appealed. The department's publication *Workers' Compensation Claim*

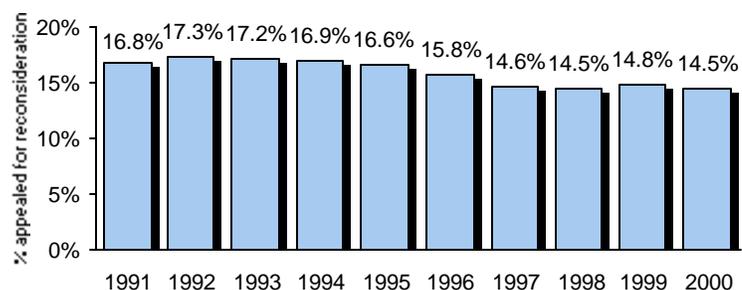
*Determinations by Workers' Compensation Division Evaluation Unit and by Insurers* provides more information on claim closures.

## Processing time

The law provides 18 working days to process reconsiderations, unless there is a need for postponement. In 2000, 79 percent of the requests were postponed. Seventy-eight percent of the postponements included a referral to a medical arbiter; this adds 60 calendar days to the time allowed for processing. The other postponement reasons include ARU's need for more information, requests for Claim Disposition Agreements (CDAs), and the promulgation of special rules.

The average (mean) processing time for all cases completed during 2000 was 72 calendar days; for non-postponed cases, the average was 24 days (about 17 working days). The average processing time for the cases that involved medical arbiter exams was 86 days.

Figure 1. Percent of closures appealed to reconsideration, Oregon, 1991-2000



## Reconsideration orders issued

In 2000, ARU issued 4,244 reconsideration orders. ARU issued 4,228 substantive orders, seven percent fewer than in 1999. An order is defined as substantive, except when ARU issues a general denial of the reconsideration request or when ARU loses jurisdiction.

Figure 2 shows the number of substantive reconsideration orders issued since 1991. In 2000, 88 percent of the substantive orders were reconsiderations of insurers' NOCs. Of the 515

orders that reconsidered DOs, 52 were orders in which insurers had made the request for reconsideration.

## Issues

The basis for a request for reconsideration may be one or more of seven issues related to claim closure: temporary disability (timeloss) dates; the statutorily qualified or medically stationary date; premature or improper claim closure; the extent of scheduled permanent disability; the rating of impairment as a component of the unscheduled permanent disability award; age, education, and

adaptability as a component of the unscheduled permanent disability award; and, "other" issues, such as whether an injury was disabling or nondisabling. A request for reconsideration results in the review of the entire disputed closure; therefore, ARU reviews the applicability of all issues. The data coded on these issues include the decisions in the closure that were changed by the ARU review specialist.

Permanent disability is the issue most commonly modified in reconsideration orders. In 2000, 45 percent of the substantive orders included changes in PPD. Twenty-one percent of the orders included an increase in scheduled PPD, 17 percent included an increase in unscheduled impairment, and 8 percent included an increase in the age, education, and adaptability component of the unscheduled permanent disability award (see Table 1). These percentages have remained fairly constant over the past five years.

In contrast to the stability in PPD, timeloss is a growing issue. In 2000, 31 percent of the substantive orders included an increase in timeloss, and 4 percent of the orders included a decrease. In 1996, five years earlier, only 10 percent of the orders increased timeloss; 6 percent decreased timeloss.

## Primary outcome

The primary outcome of an order on reconsideration reflects the net effect on the highest level of awarded benefits. Therefore, while an order may resolve several issues, it will have only one primary outcome. For example, if a reconsideration order modifies timeloss benefits and reduces permanent partial disability, then the primary outcome is a PPD reduction. Or, if a reconsideration order does not change the ratings of scheduled and unscheduled impairment, but increases the age, education, and adaptability segment of unscheduled PPD, then the primary outcome is a PPD increase.

Figure 2. Substantive reconsideration orders, Oregon, 1991-2000 by disputed closure source

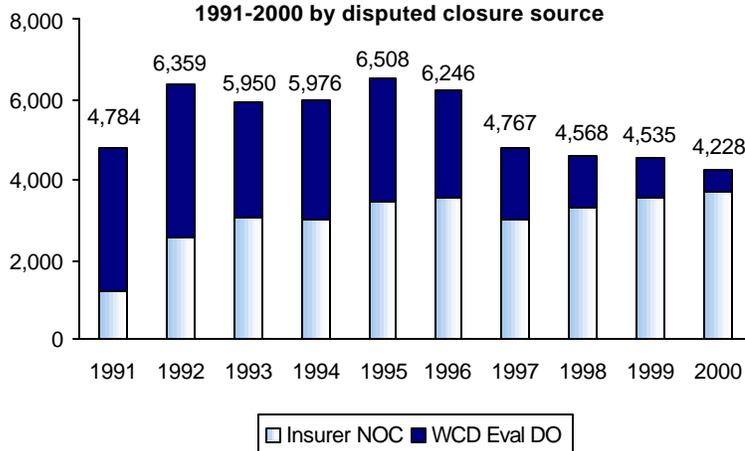


Table 1. Issues decided in substantive reconsideration orders, Oregon, 2000

Issue	Percentage of substantive orders		
	Increase	Decrease	Change
Timeloss dates	30.7%	3.5%	
Statutorily qualified/ Medically stationary date			7.5%
Premature/improper closure			9.4%
Scheduled disability	21.3%	4.7%	
Unscheduled: impairment	16.9%	4.8%	
Unscheduled: age, education, and adaptability	8.4%	2.0%	
Other issues			5.7%

**Table 2. Primary outcomes of substantive reconsideration orders, Oregon, 2000**

Source	TTD orders			PPD orders					PTD orders				Rescind closure	CDA dismissal	All		Total
	Affirm	Modify	Total	Affirm	Grant	Increase	Reduce	Total	Affirm	Grant	Reduce	Total			others	Total	
All orders	466	508	974	303	685	856	346	2,190	2	3	0	5	406	168	485	4,228	
Insurer NOCs	407	485	892	280	618	762	291	1,951	0	1	0	1	386	145	338	3,713	
Evaluation DOs	59	23	82	23	67	94	55	239	2	2	0	4	20	23	147	515	
-worker requests	59	21	80	22	67	86	36	211	2	2	0	4	17	21	130	463	
-insurer requests	0	2	2	1	0	8	19	28	0	0	0	0	3	2	17	52	
% of total orders	11.0%	12.0%	23.0%	7.2%	16.2%	20.2%	8.2%	51.8%	0.0%	0.1%	0.0%	0.1%	9.6%	4.0%	11.5%	100%	
% of order type	47.8%	52.2%	100%	13.8%	31.3%	39.1%	15.8%	100%									

In 2000, the primary outcome of 52 percent of the substantive reconsideration orders concerned permanent partial disability (see Table 2). Of these PPD orders, 70 percent granted or increased PPD benefits, 16 percent reduced the awards, and 14 percent affirmed the awards. These are the highest percentages of grants and increases and the lowest percentages of affirmations and reductions since the reconsideration process began. This reflects the shift in ARU's workload from reconsideration of DOs to reconsideration of NOCs. ARU has always increased PPD awards for NOCs more often than for DOs.

Of the other primary outcomes, 48 percent of the temporary disability (TTD) awards were affirmed, and

52 percent were modified. This was the first year in which the number of modifications was greater than the number of affirmations. This reflects changes in the reconsideration of NOCs. Prior to 1998, 5 to 7 percent of the primary outcomes of appeals of NOCs were modifications of TTD. In 2000, this figure was 13 percent.

ARU also granted 3 permanent total disability awards and affirmed 2 others.

Ten percent of the substantive orders were cases in which the closure was rescinded due to premature or improper closure. Four percent of the orders were dismissals after the parties concluded a Claim Disposition Agreement (CDA). Many of the other resolutions of NOC appeals were

withdrawn requests for reconsideration. The majority of the other orders that were appeals of DOs involved issues of whether the claim was disabling or nondisabling.

Insurers have most often appealed DOs when they disagreed with the PPD awards. In 19 of the 52 orders that resulted from insurer requests, the primary outcome was a reduction in the PPD award.

### Permanent partial disability changes

This section provides information on those reconsiderations that resulted in a change to the PPD benefits awarded in the disputed closures. PPD awards are divided into scheduled and unscheduled awards. Scheduled awards

are awards for injured body parts listed in ORS 656.214(2)-(4); most of these are parts of arms and legs. Those parts not listed in these sections are given unscheduled awards. More information about PPD awards in the workers' compensation system can be found in the department's publication *Permanent Partial Disability in the Oregon Workers' Compensation System*.

There was a change to the PPD benefits in 1,809 reconsideration orders (see Table 3). This was 6 percent fewer than in 1999. The net dollars awarded for PPD via the reconsideration process (the sum of the new and increased awards, minus the reduced awards) were \$7.6 million, an increase of \$0.7 million from 1999.

**Table 3. Net changes on reconsideration of PPD awards, Oregon, 2000**

Type of disability	Net dollars			Net degrees	
	Cases	Total	Mean	Total	Mean
Scheduled	1,060	\$4,584,469	\$4,325	10,317	9.73
Unscheduled	932	\$3,063,314	\$3,287	17,671	18.96
Combined total	1,809	\$7,647,783	\$4,228		

Sixty percent of the additional award was for scheduled disability. The average net scheduled degrees awarded per case was 9.7 degrees, unchanged from 1999. The average net unscheduled degrees awarded per case was 19.0 degrees, up from 15.4 degrees in 1999.

Of the cases that changed PPD benefits, 26 percent determined new awards or modified existing awards for the back. The net dollar change for back awards was an increase of \$1.4 million, 20 percent of the total net dollar change.

The shift in ARU's workload to reconsideration of NOCs has an impact on the size of the ARU PPD awards. In 2000, the average PPD change in the reconsideration of NOCs was 10.5 degrees; for the reconsideration of DOs was 9.2 degrees. This difference, 1.3 degrees, is the same as the average difference over the past five years (see Table 4). During its history, ARU has, on average, raised the PPD awards of disputed NOCs more than disputed DOs. This may have been because insurers made smaller PPD awards at closure than did the Evaluation Unit. The dollar value per degree for scheduled awards in 2000

**Table 4. Average degrees awarded by insurers and the Evaluation Unit, and average net degrees by ARU, averages for 1996 - 2000**

	Closures			Reconsiderations			PPD value per degree
	NOCs	DOs	Difference	NOCs	DOs	Difference	
Scheduled awards							
Cases	17,948	6,268		4,249	1,651		
Average degrees	14.21	17.00	-2.79	10.47	9.16	1.31	\$511.29
Unscheduled awards							
Cases	11,341	4,711		3,734	1,501		
Average degrees	43.88	45.86	-1.98	18.40	13.73	4.67	\$153.00

Notes: The closures are shown by the year of the closure; the reconsideration orders are shown by the year of the reconsideration order. The reconsiderations include just the reconsiderations requested by workers. The dollar values shown are for CY 2000. The dollar value shown for unscheduled degrees is for the first 64 degrees. Higher degrees have higher dollar values.

was \$511.29. Therefore, the average dollar difference was \$670. The average dollar difference for unscheduled awards was over \$700.

Table 5 further categorizes PPD reconsideration cases

as new awards (no prior awards for specific conditions or impaired body parts) or as modifications (increases and reductions made to prior awards for specific parts). An order may determine new awards for both scheduled and un-

scheduled body parts and modify existing awards for both scheduled and unscheduled parts. Therefore, the total cases in Table 5 are higher than in Table 3.

Modified awards include the technical conversion of body part awards, usually for scheduled parts such as limbs. For example, if a reconsideration results in the replacement of an award for a disabled right hand with an award for the right arm, the result is treated as a modified award rather than both as a modification (a rescission in this case) of an award for the hand and a new award for a disabled arm. This inclusion of body-part conversions within modifications prevents an over-count of total dollars for new awards.

**Table 5. Reconsideration cases with new awards and modified awards of PPD, Oregon, 2000**

	Cases	Average degree award	Total dollar award
New Awards			
Scheduled	475	13.6	\$2,885,201
Unscheduled	362	32.9	\$1,793,641
Total	793	-	\$4,678,842
Modifications:			
Increased scheduled	413	13.2	\$2,399,187
Decreased scheduled	189	-8.9	-\$732,861
Total, scheduled	606	6.3	\$1,666,326
Increased unscheduled	377	24.2	\$1,806,293
Decreased unscheduled	183	-21.0	-\$608,893
Total, unscheduled	560	9.4	\$1,197,400
Total	1,121	-	\$2,863,726

Note: As a reconsideration may modify a case's awards or grant new awards for both scheduled and unscheduled body parts, the sum of those cases will exceed the combined total of cases.

In 2000, 62 percent of the net additional dollars awarded were for new awards. Cases with modified awards of existing conditions had higher awards for those conditions after the reconsideration process. For cases in which an existing scheduled disability was modified by reconsideration in 2000, the result was a 41 percent increase in benefits for those conditions; for unscheduled disability, the increase in benefits was 27 percent.

## Insurers

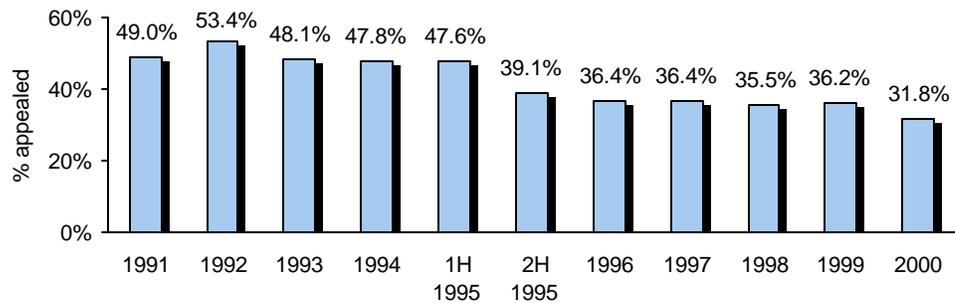
The SAIF Corporation provided coverage in 31 percent of the substantive reconsideration cases completed in 2000 (see Table 6). Private insurers carried 50 percent of the cases, and self-insured employers carried 19 percent of the cases. This is approximately the same distribution as the distribution of claim closures in 2000, indicating that the appeal rate of closures was about equal for these three insurer groups.

OAR 436-30-175 provides for penalties paid by insurers to claimants when reconsiderations of NOCs order at least 25 percent additional permanent disability compensation and a rating of at least 64 degrees. There were 17 penalty cases in 2000, resulting in \$52,500 in penalties.

**Table 6. Substantive reconsideration orders by insurer, Oregon, 2000**

Insurer	Cases	% of total	Penalty	
			cases	Penalties
SAIF	1,294	30.6%	5	\$20,526
Private insurer	2,115	50.0%	9	\$24,159
Self-insured employer	786	18.6%	3	\$7,822
Noncomplying employer	33	0.8%	0	\$0
Total	4,228	100%	17	\$52,507

**Figure 3. Percent of substantive reconsideration orders appealed, Oregon, 1991-2000**



Note: 1995 is split into two six-month periods to show the effect of SB 369.

## Claimant attorney fees

The reconsideration process does not include personal appearances by the parties to the claim or their representatives, unless requested by the department. Nevertheless, in 2000, 92 percent of the injured workers with a substantive reconsideration order were represented by an attorney.

Attorney fees are set by law at 10 percent of any additional compensation awarded to the worker, up to a maximum of \$4,600 in PPD cases and \$12,500 in PTD cases. The fees are paid out of the additional compensation awarded. Data on fees paid by workers to attorneys are esti-

mated only for PPD cases. In 2000, attorney fees totaled \$865,200. Attorney fees were incurred in 70 percent of the represented PPD cases; the average attorney fee was \$588 for these cases.

## Subsequent litigation

Reconsideration orders may be appealed to the Hearings Division. In 2000, 32 percent of the substantive reconsideration orders were appealed (see Figure 3). Between 1996 and 1999, the appeal rate was 36 percent. The rate had dropped in the second half of 1995. This drop may have been a result of the Senate Bill 369 provisions that changed the appeal period and limited the evidence allowed at the hearing.

In combination, Figures 1 and 3 show the effect of the reconsideration process on litigation (see Figure 4). In 1989, 21 percent of the clo-

tures were appealed to hearings. In 1991, after the start of the reconsideration process, eight percent of the closures went to hearings; in 2000, with smaller percentages of closures being reconsidered and reconsideration orders being appealed, just five percent of the closures went to hearings.

Because many of the appealed 2000 reconsiderations have not had hearing orders as of the date of this report, the following data covers appealed 1999 reconsiderations. Thirty-six percent of the 1999 substantive reconsideration orders were appealed. As

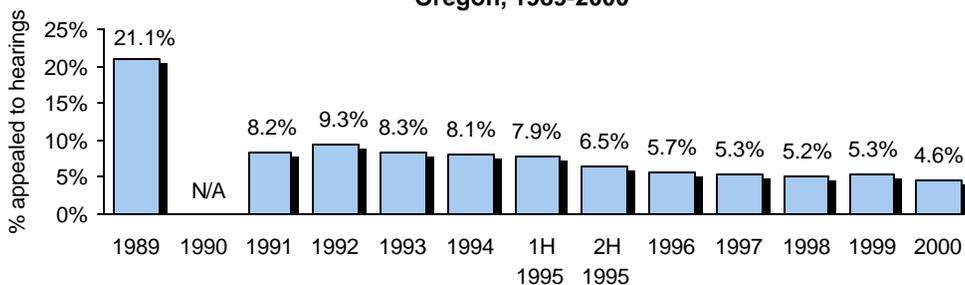
would be expected, the appeal rate of reconsideration orders that reduced PPD awards was higher, 67 percent, than the appeal rate of reconsideration orders that granted or raised PPD awards, 37 percent. Of those appeals for which there have been hearing orders (a small number have not yet been resolved), 37 percent of the hearing requests were withdrawn, dismissed, or settled with a CDA. Another 22 percent were resolved with a stipulation.

The remaining 41 percent of the cases were resolved by an Opinion & Order (O&O). Eighty-one per-

cent of the O&Os included PPD as an issue. Of these orders, 31 percent increased the PPD awards, and 16 percent reduced the PPD awards; in the other cases the PPD awards were not changed. Information about all hearings orders is included in the department's publication, *Hearings Division Statistical Report*.

Hearings Division orders can be appealed to the Oregon Workers' Compensation Board. In 1999, 133 Board orders dealt with PPD issues; the hearing orders were affirmed in 76 percent of these cases. More information about board orders and higher levels of appeal are included in the department's publications, *Workers' Compensation Board Activity Summary*, *Oregon Court of Appeals Workers' Compensation Summary*, and *Oregon Supreme Court Workers' Compensation Summary*. ■

Figure 4. Percent of closures appealed to the Hearings Division, Oregon, 1989-2000



Notes: 1995 is split into two six-month periods to show the effects of SB 369. The 1990 appeal rate is not available.