

Reconsideration of Claim Closures Calendar Year 1996



**Research & Analysis Section
Oregon Department of Consumer
& Business Services**



May 1997

Reconsideration of Claim Closures Calendar Year 1996

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May 1997

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Highlights

The Appellate Unit received 5,914 requests for reconsideration of claim closures in 1996, down 15 percent from the 1995 figure. The decrease marks a return to the normal pattern after the implementation of Senate Bill 369, which resulted in a temporary increase in requests during the second half of 1995.

A total of 6,299 reconsideration orders were issued in 1996.

Substantive orders, in which the Appellate Unit reaches a decision about the merits of a case rather than dismissing it for lack of jurisdiction, totaled 5,637 in 1996, a six percent decrease from 1995.

Of the substantive orders issued, 57 percent reviewed Notices of Closure issued by insurers, compared to 53 percent the previous year.

Cases completed by the Appellate Unit during 1996 required an average of 66 calendar days to process. By comparison, for hearing requests resulting in an Opinion and Order issued in 1996, the average (median) time from request to order was 152 days.

About 77 percent of the 1996 requests were postponed, mostly for referral to a medical arbiter. Only 22 of the 6,299 completed cases resulted in statutory affirms due to exceeded time limits.

The issues cited most often in substantive reconsideration orders were the extent of scheduled disability, the rating of unscheduled impairment and the age, education and adaptability portion of unscheduled disability. Permanent partial disability was at issue in 85 percent of the orders.

The Appellate Unit granted five awards for permanent total disability and affirmed one award.

In 1996, 41 percent of substantive orders granted or increased PPD benefits, while 11 percent reduced awards.

Because of fewer cases, the net dollars awarded for PPD via reconsideration dropped to \$6.93 million in 1996, down from \$7.06 million in 1995. Sixty-nine percent of the net dollars were for scheduled awards.

Net degrees awarded for PPD via reconsideration decreased to 31,888 in 1996, compared to 34,474 the previous year. Scheduled awards accounted for 44 percent of the net degrees.

The average change in PPD benefits awarded through reconsideration was an increase of \$2,476 in 1996, up from \$2,211 per case in 1995. The average net increase in degrees awarded was 11.40, up from 10.80 in 1995.

Of the 2,798 cases that changed PPD benefits, 32 percent determined new awards or modified existing awards for the back. The net dollar change for back awards was an increase of about \$1.1 million.

In 1996, 91 percent of the injured workers party to a substantive reconsideration were represented by attorneys. The estimated attorney fees incurred by claimants who obtained additional PPD benefits through reconsideration totaled \$1,004,469 in 1996, for an average of \$422. For 1996 Hearings cases, the average claimant attorney fee was \$1,357.

Between 1994 and 1996, 17 percent of the claim closures resulted in a request for reconsideration. Of the claims closed in 1994, 46 percent of the reconsideration orders were appealed by requesting a hearing. For the claims closed during the first six months of 1995, this appeal rate was 42 percent. For the second half of 1995, after the implementation of SB 369, the appeal rate was 34 percent. Preliminary data for claims closed in 1996 show that the appeal rate will be about the same as in the second half of 1995.

Introduction. The Oregon workers' compensation system provides several levels of appeal for a worker or an employer dissatisfied with a claim closure. Prior to the passage in May 1990 of Senate Bill 1197, litigation of claims was increasing. A goal of the workers' compensation system reform was to ensure that injured workers received the benefits and services to which they were entitled without having to resort to litigation; if litigation was the only recourse, the goal was to resolve disputes faster, at lower costs. Toward these ends, Senate Bill 1197:

- 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 expanded the conditions under which claims could be closed (see ORS 656.268(1)(a) and (b)). After June 7, 1995, claims can be closed if:

- The accepted injury is no longer the major contributing cause of the worker's condition; or

- 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.

Also, the appeal period was shortened to 60 days from the mailing date of the closure order.

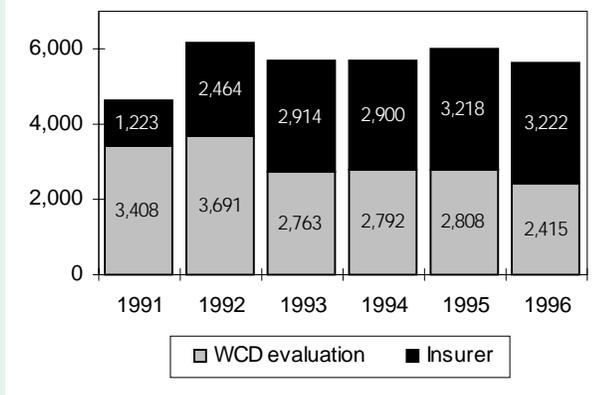
This report provides data on the reconsideration orders issued by the Appellate Unit of the Workers' Compensation Division (WCD) during the 1996 calendar year.

Requests for reconsideration. In 1996, the Appellate Unit received 5,914 requests for reconsideration, down 15 percent from 6,925 requests in 1995. The number of requests in 1996 was similar to the numbers of requests in 1993 and 1994. The number of requests in 1995 was unusually high, probably because of Senate Bill 369's new conditions for claim closure and shorter appeal period. As in previous years, 95 percent of the requests came from workers; the remainder came from insurers and employers.

Reconsideration orders issued. In 1996, the Appellate Unit issued a total of 6,299 reconsideration orders, compared to 6,568 orders the previous year. Substantive orders totaled 5,637 in 1996, down six percent from 6,026 in 1995. An order is counted as substantive when the Appellate Unit reaches a decision about the merits of the case, rather than dismissing it for lack of jurisdiction.

Figure 1 displays the distribution of disputed closures that have been reconsidered during the six calendar years since the 1990 reform. In 1996, 57 percent of the substantive orders reconsidered insurer Notices of Closures (NOCs). Each year, an increasing percentage of the orders have reconsidered NOCs, rather than Determination Orders (DOs), which are issued by the division's Evaluation Unit. This increase in the percentage of reconsiderations of insurer NOCs reflects the increasing use by insurers of their expanded authority under Senate Bill 1197 to close claims and a dispute rate for insurer NOCs similar to the dispute rate for DOs.

Figure 1. Substantive reconsideration orders, by disputed closure source, Oregon, 1991-1996



Processing time. Although the law provides 18 working days to process reconsiderations, 77 percent of the 1996 requests were postponed. Ninety percent of the postponements included a referral to a medical arbiter, which adds 60 calendar days to the time allowed for processing. The other major reasons for a postponement were the Appellate Unit’s need for more information, requests for a Claim Disposition Agreement and the promulgation of special rules. In 1996, just 22 of the 6,299 completed orders were statutory affirms due to exceeded time limits.

At the end of 1996, 942 cases (16 percent of the 1996 requests) were in process. The average processing time for cases completed during 1996 was 66 calendar days. The average processing time for medical arbiter cases was 79 days and for non-postponed cases 21 days (about 15 working days). By comparison, for all cases where a hearing request resulted in an Opinion and Order issued in 1996, the average (median) time from request to order was 152 days.

Issues. The basis for a request for reconsideration may be one or more of seven issues related to claim closure: (1) temporary disability (time loss) dates, (2) medically stationary date, (3) premature closure, (4) extent of the scheduled permanent disability, (5) rating of impairment as a component of the unscheduled permanent disability award, (6) age, education and adaptability as a component of the unscheduled permanent disability award, and (7) “other” issues, such as whether an injury was disabling or nondisabling. Because a request for reconsideration results in the review of the entire disputed closure, the applicability of all issues is reviewed during the reconsideration process. Data collection on these issues includes all decisions in the closure that were disputed in the application for reconsideration or were changed by the review specialist.

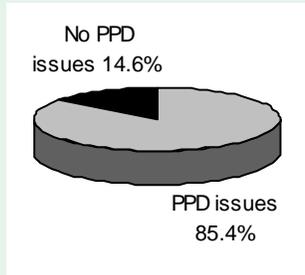
In 1996, the 5,637 substantive reconsideration orders cited 22,536 issues, five percent fewer than in 1995. For all issues, the predominant disposition was the affirmation of the decision (“no change”) in the disputed closure (see Table 1). The percentages of dispositions that affirmed the decisions in the disputed closures were higher in 1996 than in 1995 for all issues except the “other issues” category. The issues cited most often were the extent of scheduled permanent partial disability (PPD), the rating of unscheduled impairment and the age, education and adaptability segment of unscheduled disability. Over 85 percent of the substantive orders cited at least one PPD issue (see Figure 2).

Table 1. Issues decided, substantive reconsideration orders, Oregon, 1996

Issue	Orders citing	Percent of substantive orders citing	OUTCOMES: Percent of orders citing issue			
			Change	Decrease	Increase	No Change
Time loss dates	3,441	61.0%		10.4%	17.9%	71.7%
Medically stationary	3,168	56.2%	11.3%			88.7%
Premature closure	3,415	60.6%	9.0%			91.0%
Scheduled disability	4,163	73.9%		7.4%	32.8%	59.7%
Unscheduled, impairment	3,738	66.3%		9.6%	29.3%	61.0%
Unscheduled, A/E/A	3,569	63.3%		5.7%	13.0%	81.3%
Other issues	1,042	18.5%	22.6%			77.4%
Total issues decided	22,536					

Note: Percentages may not sum to 100.0% due to rounding.
A/E/A = Age, education and adaptability.

Figure 2. Substantive reconsideration orders, one or more PPD issues cited, Oregon, 1996



Primary outcome. While an order on reconsideration may decide several issues, it will have only one primary outcome. The primary outcome reflects the net effect upon the highest level of awarded benefits. For example, if a single reconsideration order modifies temporary disability benefits while reducing permanent partial disability (PPD), the primary outcome is a PPD reduction. Or, if a reconsideration order does not change the ratings of scheduled impairment and unscheduled impairment, but does increase the age, education and adaptability segment of unscheduled PPD, then the primary outcome is a PPD increase.

In 1996, the primary outcomes of 63 percent of the substantive reconsideration orders addressed permanent partial disability (see Table 2). Forty-one percent of the substantive orders granted or increased PPD benefits, while 11 percent reduced the awards. These figures are similar to the 1995 figures.

Of the other primary outcomes, 74 percent of the awards of temporary total disability (TTD) were affirmed. Also, reconsiderations granted five permanent total disability (PTD) awards and affirmed

one other PTD award. The “other” substantive orders included cases in which the closure was rescinded due to premature closure or, more rarely, cases in which a medical-only claim was ruled to be disabling — both of which may have affected time loss and permanent disability benefits.

Permanent partial disability (PPD) changes. This section analyzes only those reconsiderations that resulted in a change to the PPD benefits specified by the disputed closure. In 1996, the number of cases in which there was a change to the PPD benefits was 2,798, 12 percent fewer than in 1995 (see Table 3). The net dollars awarded for PPD via reconsideration (the total of the new and increased awards, less the reduced awards) were \$6.93 million. Because of the fewer cases, this amount was two percent lower than the \$7.06 million awarded in 1995. The average net increase in the award was \$2,476 in 1996, compared to \$2,211 in 1995. Sixty-nine percent of the additional award was for scheduled disability. The average net degrees awarded per case was 11.40 degrees, compared to 10.80 degrees in 1995. Forty-four percent of the additional degrees were for scheduled disability.

As in previous years, the results of the reconsideration of insurer closures differed substantially from the reconsideration of Evaluation Unit closures. The average net dollar award for reconsiderations of insurer closures was 91 percent higher than for reconsiderations of Evaluation Unit closures; the average net degrees was 94 percent higher.

Of the 2,798 cases that changed PPD benefits, 32 percent determined new awards or modified existing

Table 2. Primary outcomes, substantive reconsideration orders, Oregon, 1996

Source	TTD orders			PPD orders					PTD orders				Rescind closure		All Total
	Affirm	Modify	Total	Affirm	Increase	Reduce	Grant	Total	Affirm	Reduce	Grant	Total	closure	others	
Evaluation	352	96	448	257	590	386	338	1,571	1	0	3	4	119	273	2,415
Insurer	618	237	855	315	764	255	632	1,966	0	0	2	2	191	208	3,222
Total	970	333	1,303	572	1,354	641	970	3,537	1	0	5	6	310	481	5,637
% of award	74.4%	25.6%	100.0%	16.2%	38.3%	18.1%	27.4%	100.0%	16.7%	0.0%	83.3%	100.0%			100.0%
% of total orders	17.2%	5.9%	23.1%	10.1%	24.0%	11.4%	17.2%	62.7%	0.0%	0.0%	0.1%	0.1%	5.5%	8.5%	100.0%

Note: Percentages may not sum to 100.0% due to rounding.

Table 3. Net changes on reconsideration of PPD awards, Oregon, 1996

Type of disability	Net dollars			Net degrees		Evaluation closures			Insurer closures		
	Cases	Total	Mean	Total	Mean	Cases	Mean dollars	Mean degrees	Cases	Mean dollars	Mean degrees
Scheduled	1,584	\$4,796,906	\$3,028	13,888	8.77	726	\$2,085	6.10	858	\$3,826	11.03
Unscheduled	1,484	\$2,129,790	\$1,435	18,000	12.13	688	\$889	7.67	796	\$1,908	15.98
Combined total	2,798	\$6,926,696	\$2,476	31,888	11.40	1,283	\$1,656	7.56	1,515	\$3,169	14.64

Note: As a reconsideration may grant or modify awards for both scheduled and unscheduled disability, the sum of those cases will exceed the combined total of cases. Dollar figures have been rounded.

awards for back injuries. The net dollar change for back awards was an increase of about \$1.1 million, 16 percent of the total net dollar change.

Table 4 further categorizes PPD reconsideration cases as new awards (no prior awards for specific conditions or impaired parts of the body) or as modifications (increases and reductions made to prior awards for specific parts). One order may determine new awards for both scheduled and unscheduled parts of the body and modify existing awards for both scheduled and unscheduled parts. Therefore, the total cases in Table 4 are higher than in Table 3.

Modified awards include technical conversions 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, then the transaction is treated as a modified award, rather than 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. Nevertheless, 69 percent of the \$6.9 million net additional dollars were for new awards.

In total, cases with modified awards of existing conditions left the Appellate Unit with higher awards for those conditions, whether scheduled or unscheduled. For cases in which an existing scheduled disability was modified by reconsideration in 1996, the result was a

Table 4. Reconsideration cases with new awards and modified awards of PPD, Oregon, 1996

	Cases	Average degree award	Total dollar award
New Awards:			
Scheduled	648	13.56	\$3,036,032
Unscheduled	519	28.67	\$1,750,752
Total	1,118	21.17	\$4,786,783
Modifications:			
Increased scheduled	662	13.06	\$2,975,510
Decreased scheduled	302	(11.73)	(\$1,214,636)
Total, scheduled	968	5.27	\$1,760,874
Increased unscheduled	584	21.68	\$1,538,032
Decreased unscheduled	380	(25.11)	(\$1,158,993)
Total, unscheduled	965	3.23	\$379,039
Total	1,845	4.46	\$2,139,913

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.

32 percent increase in benefits for those conditions; for unscheduled disability, the result was a six percent increase in benefits.

Insurers. The SAIF Corporation provided coverage in 31 percent of the substantive reconsideration cases completed in 1996 (see Table 5). Private insurers were the carriers in 48 percent of the cases. Self-insured employers carried 20 percent of the cases, and non-complying employers were involved in one percent of the cases.

Senate Bill 1197 provided for penalties paid by insurers to claimants in reconsiderations of NOCs ordering at least 25 percent additional permanent disability compensation and a rating of at least 64 degrees (see OAR 436-30-175). The estimated number of penalty cases in 1996 was 28, compared to 41 in 1995. Penalties were estimated to be \$45,532, compared to \$61,892 the previous year.

Claimant attorney fees. The reconsideration process does not include personal appearances by any of the parties to the claim or their representatives, unless requested by the department. Nevertheless, in 1996, 91 percent of the injured workers party to a substantive reconsideration were represented by an attorney. Attorney fees are set by law at 10 percent of any additional compensation awarded the worker and are paid out of the additional compensation.

Data on fees paid by workers to attorneys are estimated only for PPD cases. Attorney representation in these cases was about the same as for all substantive

reconsiderations. In 1996, attorney fees totaled \$1,004,469 compared to \$993,770 in 1995. Attorney fees were incurred (additional compensation was ordered) in 67 percent of the represented PPD cases in 1996. The average attorney fee was about \$422 for 1996 cases awarded additional PPD benefits. For 1996 Hearings cases, the average claimant attorney fee was \$1,357.

Subsequent litigation. Senate Bill 369 changed the procedure for the appeal of a reconsideration order. For claims that were medically stationary prior to June 7, 1995, a party objecting to a reconsideration order had to request a hearing within 180 days of the mailing date of the disputed Determination Order or Notice of Closure; the time from the request for reconsideration until the reconsideration was completed was not counted as a part of that 180 days. Now, for claims that are medically stationary on or after June 7, 1995, or that are closed under the new conditions of SB 369, the request for a hearing must be made within 30 days of the mailing date of the Reconsideration Order.

Between 1994 and 1996, 17 percent of the claim closures resulted in a request for reconsideration. Of the claims closed in 1994, 46 percent of the reconsideration orders were appealed by requesting a hearing (see *Hearing Request Rates on Claim Closures*). For the claims closed during the first six months of 1995, this appeal rate was 42 percent. For the second half of 1995, after the implementation of SB 369, the appeal rate was 34 percent. Preliminary data for claims closed in 1996 show that the appeal rate will be about the same as in the second half of 1995.

An earlier study (*Appeals of Reconsiderations to Hearings*) determined that of approximately 3,000 reconsideration cases for which there was a hearing request, less than a third were resolved by an Opinion and Order of a referee and just over ten percent were modified by an Opinion and Order. The remainder were resolved by stipulations, Claim Disposition Agreements and other types of dismissal.

Table 5. Substantive reconsideration orders, by insurer, Oregon, 1996

Insurer	Cases	Estimated	
		Penalty cases	Total penalties
SAIF	1,745	18	\$26,379
Private	2,692	8	\$15,865
Self-insured	1,118	2	\$3,289
NCE	82	0	\$0
TOTAL	5,637	28	\$45,532

Notes: NCE = Noncomplying employer

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