



Reconsideration of Claim Closures, Oregon, Calendar Year 1998

Research & Analysis Section

Department of Consumer & Business Services

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Introduction and Highlights

The Oregon workers' compensation system provides several levels of appeal for workers, employers, or insurers who are dissatisfied with claim closure decisions. 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 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 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 Appellate Review Unit (ARU) of the Workers' Compensation Division (WCD). These reconsiderations may be appeals of either the Determination Orders (DOs) issued by the Evaluation Unit of WCD or the Notices of Closure (NOCs) issued by insurers.

This report provides data on the reconsideration requests received and the reconsideration orders issued during the 1998 calendar year. The highlights of the report are:

The Appellate Review Unit received 4,650 requests for reconsideration of claim closures in 1998, down 2 percent from the 1997 figure. This decline is a result of a decline in the number of claim closures.

ARU issued 4,585 reconsideration orders in 1998. Substantive orders, orders in which the ARU reached a decision about the merits of a case rather than dismissing it for lack of jurisdiction, totaled 4,164 in 1998, a 4 percent decrease from 1997.

Of the substantive orders issued, 72 percent reviewed Notices of Closure issued by insurers, compared to 63 percent in 1997. This reflects the increasing percentage of claims that are closed by insurers.

Permanent partial disability (PPD) was at issue in 89 percent of the substantive orders. The issues cited most often were the extent of scheduled disability; the rating of unscheduled impairment; and the age, education, and adaptability portion of unscheduled disability.

Forty-one percent of the substantive orders granted or increased PPD benefits, while 12 percent reduced PPD awards.

The net dollars awarded for PPD in the reconsideration process was \$6.45 million in 1998 up from \$5.21 in 1997. Sixty-two percent of the net dollars were for scheduled awards.

The net scheduled PPD degrees awarded through reconsideration was 10,027 in 1998, up 3 percent from 1997. The net unscheduled degrees awarded was 16,282 in 1998, 35 percent higher than in 1997.

The average change in PPD benefits awarded through reconsideration was an increase of \$3,172 in 1998, up 30 percent from 1997. The average net increase in scheduled degrees was 8.48. The average net increase in unscheduled degrees was 15.78.

About 31 percent of the 1998 substantive reconsideration orders were appealed to the Hearings Division. This appeal rate has been declining.

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 appealable period of DOs and NOCs to 60 days from the mailing date of the closure order. Also changed the appealable 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 DO or NOC (the reconsideration processing time was not counted as a part of the 180 days).

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

Requests for reconsideration

In 1998, the Appellate Review Unit received 4,650 requests for reconsideration, down 2 percent from the 1997 figure. This is the smallest total since the reconsideration process began. The decline is the result of a decline in the number of claim closures. The percentage of claim closures being appealed remained the same (see Figure 1). While workers request the reconsideration of NOCs, both workers and insurers can request the reconsideration of DOs. In 1998, insurers made 16 percent of the requests for reconsideration of DOs (4 percent of all requests). Insurers seldom request the reconsideration of DOs that don't give permanent disability awards.

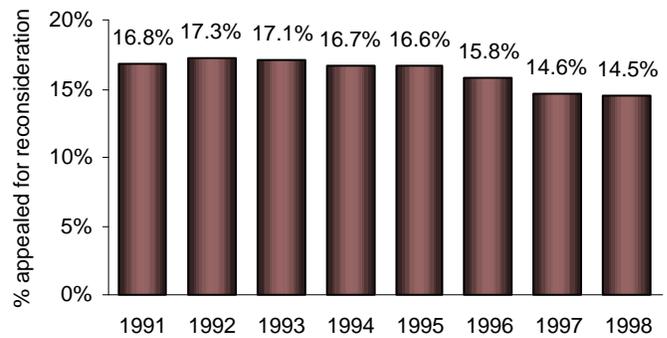
Insurers are closing an increasing percentage of the claims, increasing from 48 percent of the 1991 closures to 72 percent of the 1998 closures. Each year, therefore, an increasing percentage of the reconsiderations have reconsidered NOCs rather than DOs. Insurers are closing an increasing percentage of the PPD closures, up from 26 percent to 76 percent over the same period. PPD awards are the most contentious issues, and in 1998, 24 percent of the closures with PPD awards were appealed for reconsideration. The department 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 1998, 81 percent of the requests were postponed. Eighty-six 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 ARU's need for more information, requests for Claim Disposition Agreements (CDAs), and the promulgation of special rules. In 1998, just two orders were statutory affirmations that were due to exceeded time limits.

The average (mean) processing time for all cases completed during 1998 was 70 calendar days; for non-postponed cases,

Figure 1. Percent of closures appealed for reconsideration, Oregon, 1991-1998



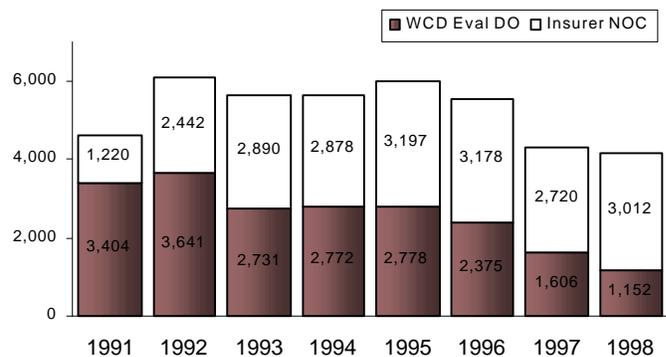
the average was 23 days (about 17 working days). The average processing time for the cases that involved medical arbiter exams was 82 days.

Reconsideration orders issued

In 1998, ARU issued 4,585 reconsideration orders. ARU issued 4,164 substantive orders, 4 percent fewer than in 1997. An order is defined as substantive when ARU reaches a decision about the merits of the case. Nonsubstantive orders include orders issued after a reconsideration request is withdrawn or the parties agree to a CDA, abatement orders and dismissal orders, usually dismissed because the request was filed late.

Figure 2 shows the number of substantive reconsideration orders issued since the 1990 reform. In 1998, 72 percent of the substantive orders were reconsiderations of insurers' NOCs. Of the 1,152 orders that reconsidered DOs, 182 were orders that came from insurers' requests for reconsideration.

Figure 2. Substantive reconsideration orders by disputed closure source, Oregon, 1991-1998



Issues

The basis for a request for reconsideration may be one or more of seven issues related to claim closure: (1) temporary disability (timeloss) dates, (2) the medically stationary date, (3) premature closure, (4) the extent of scheduled permanent disability, (5) the 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, ARU reviews the applicability of all issues during the reconsideration process. The data coded on these issues include the decisions in the closure that were disputed in the reconsideration request or were changed by the ARU review specialist.

In 1998, the 4,164 substantive reconsideration orders cited nearly 18,000 issues, 4.3 issues per case. For all issues, the predominant disposition was the affirmation of the decision (“no change”) in the disputed closure (see Table 1). The issues cited most often were the extent of scheduled disability, the rating of unscheduled impairment, and the age, education, and

adaptability segment of unscheduled disability. Eighty-nine percent of the substantive orders cited at least one PPD issue.

Insurers have become skilled at recognizing DOs with which they disagree and at presenting their evidence during the reconsideration process. They also sometimes request DOs on claims for which they believe that they will want a reconsideration, which they can’t do if they issue a NOC. As a result, the 182 substantive reconsideration orders that resulted from insurer requests for reconsideration involved only 2.4 issues per case. In 48 percent of the cases in which scheduled disability was an issue, the result was a reduction in the scheduled PPD award; in 53 percent of the cases in which unscheduled impairment was an issue, the result was a reduction.

Table 1. Issues decided in substantive reconsideration orders, Oregon, 1998

Issue	Orders citing	Percent of substantive orders citing	OUTCOMES: Percent of orders citing issue			
			Change	Decrease	Increase	No Change
Timeloss dates	2,848	68.4%		5.6%	27.6%	66.8%
Medically stationary date	2,672	64.2%	13.3%			86.7%
Premature closure	2,799	67.2%	13.1%			86.9%
Scheduled disability	3,292	79.1%		8.5%	30.3%	61.2%
Unscheduled, impairment	2,904	69.7%		8.8%	26.8%	64.4%
Unscheduled, A/E/A	2,824	67.8%		4.0%	13.3%	82.7%
Other issues	638	15.3%	22.9%			77.1%
Total issues decided	17,977					

Notes: Percentages may not sum to 100.0% due to rounding. A/E/A is age, education, and adaptability.

Primary outcome

The primary outcome of an order on reconsideration reflects the net effect upon 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 single reconsideration order modifies temporary disability benefits while reducing permanent partial disability, then the primary outcome is a PPD reduction. Or, if a reconsideration order does not change the ratings of scheduled disability and unscheduled impairment, but does increase the age, education, and adaptability segment of unscheduled PPD, then the primary outcome is a PPD increase.

In 1998, the primary outcomes of 61 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 12 percent reduced the awards. Of the other primary outcomes, 71 percent of the temporary total disability (TTD) awards were affirmed. Also, ARU granted one permanent total disability (PTD) award and affirmed two PTD awards. The other substantive orders include cases in which the closure was rescinded due to premature closure and cases in which a medical-only claim was found to be disabling.

Table 2. Primary outcomes of substantive reconsideration orders, Oregon, 1998

Source	TTD orders			PPD orders					PTD orders				Rescind closure	All others	Total
	Affirm	Modify	Total	Affirm	Increase	Reduce	Grant	Total	Affirm	Reduce	Grant	Total			
Evaluation DOs	209	45	254	80	239	190	181	690	2	0	1	3	65	140	1,152
worker requests	207	37	244	67	206	106	179	558	0	0	1	1	62	105	970
insurer requests	2	8	10	13	33	84	2	132	2	0	0	2	3	35	182
Insurer NOCs	496	247	743	290	732	289	543	1,854	0	0	0	0	308	107	3,012
Total	705	292	997	370	971	479	724	2,544	2	0	1	3	373	247	4,164
% of total orders	16.9%	7.0%	23.9%	8.9%	23.3%	11.5%	17.4%	61.1%	0.0%	0.0%	0.0%	0.1%	9.0%	5.9%	100%
% of order type	70.7%	29.3%	100%	14.5%	38.2%	18.8%	28.5%	100%	66.7%	0.0%	33.3%	100%			

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

Permanent partial disability changes

This section provides information on those reconsiderations that resulted in a change to the PPD benefits that were awarded in the disputed closures. PPD awards are broadly categorized 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.

The number of cases in which there was a change to the PPD benefits was 2,033, 5 percent fewer than in 1997 (see Table 3A). Despite the decline in the number of cases, the net dollars awarded for PPD via reconsideration (the total of the new and increased awards, less the reduced awards) were up \$1.24 million, totalling nearly \$6.45 million. The average net increase in the award was \$3,172 in 1998, 30 percent above the 1997 aver-

age. Sixty-two percent of the additional award was for scheduled disability. The average net scheduled degrees awarded per case was 8.48 degrees, up from 7.66 degrees in 1997. The average net unscheduled degrees awarded was 15.78, up from 11.29 degrees in 1997.

Back injuries are the most common injury. Of the 2,033 cases that changed PPD benefits, 27 percent determined new awards or modified existing awards for the back. The net dollar change for back awards was an increase of \$1.02 million, 16 percent of the total net dollar change.

There was an average reduction of \$6,154 in the PPD awards for the 118 cases in which insurer-requested reconsiderations resulted in changed PPD awards (see Table 3B).

Table 3A. Net changes on reconsideration of PPD awards, Oregon, 1998

Type of disability	Net dollars			Net degrees	
	Cases	Total	Mean	Total	Mean
Scheduled	1,183	\$4,011,784	\$3,391	10,027	8.48
Unscheduled	1,032	\$2,437,893	\$2,362	16,282	15.78
Combined total	2,033	\$6,449,677	\$3,172		

Table 3B. Net changes on reconsideration of PPD awards, by disputed closure type

Type of disability	DOs, worker requests			DOs, insurer requests			Insurer NOCs		
	Cases	Mean dollars	Mean degrees	Cases	Mean dollars	Mean degrees	Cases	Mean dollars	Mean degrees
Scheduled	280	\$3,688	9.25	68	(\$5,260)	-12.35	835	\$3,996	9.91
Unscheduled	239	\$2,458	17.22	66	(\$5,584)	-30.11	727	\$3,052	19.47
Combined total	477	\$3,396		118	(\$6,154)		1,438	\$3,864	

Notes: As 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 and total degree figures have been rounded.

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 3A.

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, then that 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 net additional dollars awarded in 1998 were for new awards.

In total, cases with modified awards of existing conditions had higher awards for those conditions, whether scheduled or unscheduled, after the reconsideration process. For cases in which an existing scheduled disability was modified by reconsideration in 1998, the result was a 30 percent increase in benefits for those conditions; for unscheduled disability, the increase in benefits was 14 percent.

Table 4. Reconsideration cases with new awards and modified awards of PPD, Oregon, 1998

	Cases	Average degree award	Total dollar award
New Awards			
Scheduled	471	14.20	\$2,691,525
Unscheduled	410	31.55	\$1,777,069
Total	844	-	\$4,468,594
Modifications:			
Increased scheduled	465	13.59	\$2,517,375
Decreased scheduled	263	-11.33	(\$1,197,116)
Total, scheduled	729	4.58	\$1,320,259
Increased unscheduled	377	25.04	\$1,597,616
Decreased unscheduled	247	-24.67	(\$936,792)
Total, unscheduled	624	5.36	\$660,824
Total	1,298	-	\$1,981,083

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.

Insurers

The SAIF Corporation provided coverage in 33 percent of the substantive reconsideration cases completed in 1998 (see Table 5). Private insurers carried 50 percent of the cases, and self-insured employers carried 17 percent of the cases. SAIF covered 42 percent of the disputed NOCs but just 8 percent of the disputed DOs. This occurred because SAIF closed 97 percent of its PPD orders; in contrast, private insurers closed 63 percent of their PPD orders.

Senate Bill 1197 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 (see OAR 436-30-175). There were 35 penalty cases in 1998, resulting in nearly \$94,000 in penalties.

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 1998, 92 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 to the worker, up to a maximum of \$2,800 in PPD cases and \$4,600 in PTD cases. The fees are paid out of the additional compensation awarded. 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 1998, attorney fees totaled nearly \$887,600. Attorney fees were incurred (additional compensation was ordered) in 67 percent of the represented PPD cases; the average attorney fee was about \$521 for these cases.

Subsequent litigation

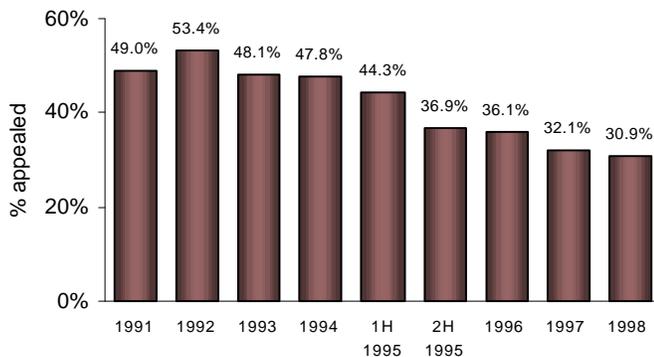
Reconsideration orders may be appealed to the Hearings Division. The appeal rate of substantive reconsiderations has been dropping (see Figure 3). The largest drop occurred between the first and second halves of 1995. This drop may have been a result of the Senate Bill 369 provisions that changed the appeal period and limited the evidence allowed at the hearing.

Table 5. Substantive reconsideration orders by insurer, Oregon, 1998

Insurer	Cases	% of total	% disputed DOs	% disputed NOCs	Penalty cases	Penalties
SAIF	1,354	32.5%	7.7%	42.0%	21	\$56,557
Private insurer	2,070	49.7%	74.6%	40.2%	12	\$31,873
Self-insured employer	705	16.9%	17.7%	16.6%	2	\$5,408
Noncomplying employer	35	0.8%	0.0%	1.2%	0	\$0
Total	4,164	100%	100%	100%	35	\$93,838

In combination, Figures 1 and 3 show the effect of the reconsideration process on litigation (see Figure 4). In 1989, 21 percent of the closures were appealed to Hearings. In 1991, after the start of the reconsiderations process, 8 percent of the closures went to Hearings; in 1998, with smaller percentages of closures being reconsidered and reconsideration orders being appealed, just 4 percent of the closures went to Hearings.¹

Figure 3. Percent of substantive reconsideration orders appealed, Oregon, 1991 - 1998



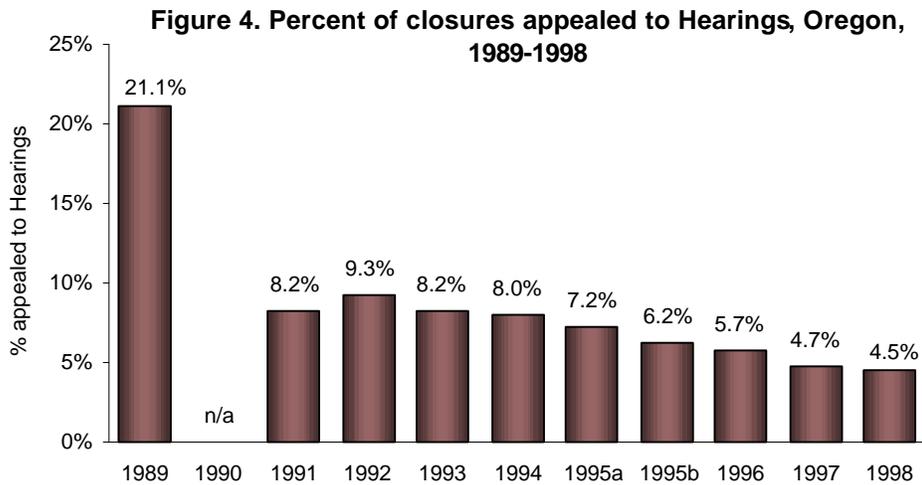
Notes: 1995 is split into two six-month periods.
 The 1996 and 1997 rates have been revised.
 The 1998 rate is preliminary.

Thirty-two percent of the 1997 substantive reconsideration orders were appealed. As would be expected, the appeal rate of reconsideration orders that reduced PPD awards was higher, 52 percent, than the appeal rate of reconsideration orders that raised PPD awards, 29 percent. Of those appeals for which there have been Hearings orders (some had not been resolved at the time of this report), 39 percent of the hearing requests were withdrawn, dismissed, or settled with a CDA. Another 15 percent were resolved with a stipulation. In most stipulations, the parties agreed to modify the reconsideration order; they agreed to an increase in the PPD award in 70 percent of the stipulations.

The remaining 46 percent of the cases were resolved by an Opinion & Order (O&O). Eighty-nine percent of the O&Os included PPD as an issue. Forty-nine percent of the O&Os affirmed the reconsideration orders. Thirty percent of the O&Os increased the PPD awards, and 10 percent reduced the PPD awards. More information about all Hearings orders is included in the department publication, *Hearings Division Statistical Report*.

Hearings Division orders can be appealed to the Oregon Workers' Compensation Board. In 1997, 202 Board orders dealt with PPD issues; the Hearings orders were affirmed in 65 percent of these cases. More information about Boards orders and higher levels of appeal are included in the department

publications, *Workers' Compensation Board Activity Summary*, *Oregon Court of Appeals Workers' Compensation Summary*, and *Oregon Supreme Court Workers' Compensation Summary*.



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¹Other publications that have provided appeal rates of reconsiderations in the calculations. This publication uses substantive reconsiderations. have used a set of substantive and some nonsubstantive reconsiderations



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