

Reconsideration of Claim Closures, Oregon, Calendar Year 1999

Research & Analysis Section

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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 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. These reconsiderations may be appeals of either the Determination Orders (DOs) issued by the WCD Evaluation Unit 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 1999 calendar year. The highlights of the report are:

The Appellate Review Unit received 4,450 requests for reconsideration of claim closures in 1999, down 4 percent from 1998. 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 three years.

ARU issued 4,543 reconsideration orders in 1999. Substantive orders totaled 4,133. Substantive orders are the orders in which the ARU reaches a decision about the merits of a case rather than dismissing it for lack of jurisdiction. Of the substantive orders issued, 77 percent reviewed Notices of Closure issued by insurers.

Permanent partial disability (PPD) was at issue in 87 percent of the substantive orders. The issues cited most often were the extent of scheduled disability, timeloss dates, and the rating of unscheduled impairment. 1999 was the first year in which timeloss was more often at issue than unscheduled impairment.

Thirty-nine percent of the substantive orders granted or increased PPD benefits; 10 percent reduced PPD awards.

The net dollars awarded for PPD in the reconsideration process was \$6.9 million in 1999. This was an increase of \$0.43 million from 1998. Sixty-seven percent of the net dollars were for scheduled awards.

The average change in PPD benefits awarded through reconsideration was an increase of \$3,588 in 1999.

Thirty-one percent of the 1999 substantive reconsideration orders were appealed to the Hearings Division. This appeal rate is the same as in 1998.

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 DOs and NOCs 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 DO or NOC (the reconsideration processing time was not counted as a part of the 180 days); and,

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

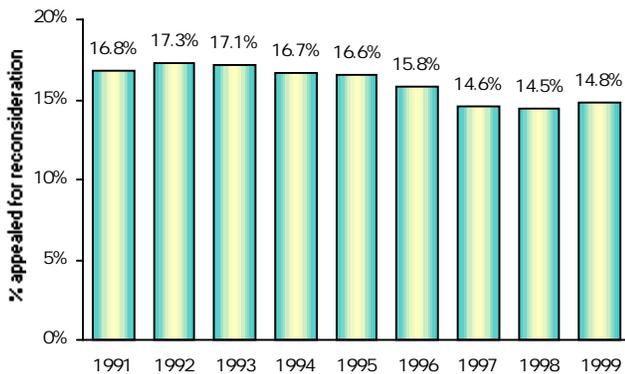
In 1999, Senate Bill 220 provided for the phaseout of department claim closures. After June 30, 2001, insurers will close all claims. After that time, all reconsiderations will be of disputed insurer NOCs.

Requests for reconsideration

In 1999, the Appellate Review Unit received 4,450 requests for reconsideration, down 4 percent from 1998. This is the smallest total since the reconsideration process began. The decline is the result of a decline in the number of claim closures. Fifteen percent of the claim closures were appealed (see Figure 1). This percentage has been fairly constant over the past three years. While workers can request the reconsideration of NOCs, both workers and insurers can request the reconsideration of DOs. In 1999, insurers made 11 percent of the requests for reconsideration of DOs (2 percent of all requests). Insurers seldom request the reconsideration of DOs that don't give permanent disability awards.

PPD awards are often contentious issues; in 1999, 23 percent of the closures with PPD awards were appealed for reconsideration. In contrast, 12 percent of the closures that provided only TTD 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.

Figure 1. Percent of closures appealed to reconsideration, Oregon, 1991-1999



Processing time

The law provides 18 working days to process reconsiderations, unless there is a need for postponement. In

1999, 81 percent of the requests were postponed. Eighty-five 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.

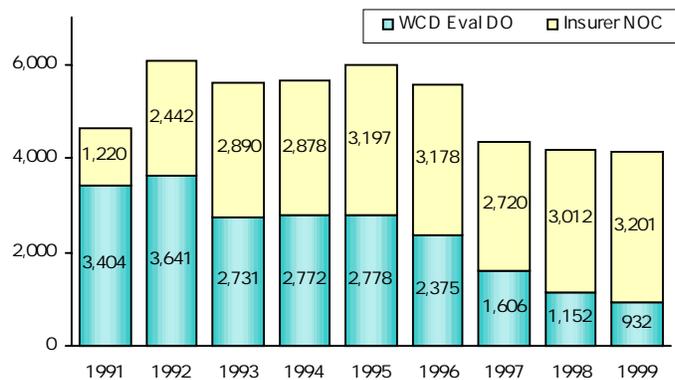
The average (mean) processing time for all cases completed during 1999 was 71 calendar days; for non-postponed cases, the average was 25 days (about 18 working days). The average processing time for the cases that involved medical arbiter exams was 82 days.

Reconsideration orders issued

In 1999, ARU issued 4,543 reconsideration orders. ARU issued 4,133 substantive orders, slightly less than in 1998. 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 and dismissal orders, usually dismissed because the request was filed late.

Figure 2 shows the number of substantive reconsideration orders issued since 1991. In 1999, 77 percent of the substantive orders were reconsiderations of insurers' NOCs. Of the 932 orders that reconsidered DOs, 120 were orders from insurers' requests for reconsideration.

Figure 2. Substantive reconsideration orders by disputed closure source, Oregon, 1991-1999



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 medically stationary date; premature 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 non disabling. 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 disputed in the reconsideration application or were changed by the ARU review specialist.

In 1999, the 4,133 substantive reconsideration orders cited over 18,000 issues, 4.4 issues per case. For all issues, the predominant disposition was the affirmation of the decision in the disputed closure (see Table 1). Most changes were increases in the prior awards. The issues cited most often were the extent of scheduled permanent partial disability, timeloss dates, and the rating of unscheduled impairment. Eighty-seven percent of the substantive orders cited at least one PPD issue. 1999 was the first year in which timeloss was an issue more often than unscheduled impairment.

Insurers have become skilled at recognizing DOs with which they disagree and at presenting their evidence during the reconsideration process. As a result, the 120 substantive reconsideration orders that resulted from insurer requests for reconsideration involved only 2.6 issues per case. In 55 percent of the cases in which scheduled disability was an issue, the result was a reduction in the scheduled PPD award; in 54 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, 1999

Issue	Orders citing	Percent of substantive orders citing	OUTCOMES: Percent of orders citing issue			
			Change	Decrease	Increase	No Change
Timeloss dates	3,027	73.2%		5.8%	39.3%	54.8%
Medically stationary date	2,669	64.6%	11.4%			88.6%
Premature closure	2,851	69.0%	13.3%			86.7%
Scheduled disability	3,230	78.2%		7.1%	28.9%	64.0%
Unscheduled, impairment	2,879	69.7%		7.6%	26.9%	65.5%
Unscheduled, A/E/A	2,758	66.7%		2.9%	13.0%	84.1%
Other issues	667	16.1%	33.3%			66.7%
Total issues decided	18,081					

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 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 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 it does increase the age, education, and adaptability segment of unscheduled PPD, then the primary outcome is a PPD increase.

increased PPD benefits, 17 percent reduced the awards, and 15 percent affirmed the awards. These are the highest percentages of grants and increases and the lowest percentages of reductions since the reconsideration process began.

Of the other primary outcomes, 53 percent of the temporary total disability (TTD) awards were affirmed, and 47 percent were modified. This is the highest percentage of modifications since the reconsideration process began. ARU also granted two permanent total disability (PTD) awards. The other substantive orders include cases in which the closure was rescinded due to premature closure or cases in which a medical-only claim was ruled to be disabling.

In 1999, the primary outcome of 57 percent of the substantive reconsideration orders concerned permanent partial disability (see Table 2). Of these PPD orders, 68 percent granted or

Table 2. Primary outcomes of substantive reconsideration orders, Oregon, 1999

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	178	44	222	61	167	136	151	515	0	0	2	2	51	142	932
- worker requests	174	41	215	55	154	70	149	428	0	0	1	1	47	121	812
- insurer requests	4	3	7	6	13	66	2	87	0	0	1	1	4	21	120
Insurer NOCs	408	481	889	284	728	271	566	1,849	0	0	0	0	328	135	3,201
Total	586	525	1,111	345	895	407	717	2,364	0	0	2	2	379	277	4,133
% of total orders	14.2%	12.7%	26.9%	8.3%	21.7%	9.8%	17.3%	57.2%	0.0%	0.0%	0.0%	0.0%	9.2%	6.7%	100%
% of order type	52.7%	47.3%	100%	14.6%	37.9%	17.2%	30.3%	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 changes to the PPD benefits awarded in the disputed closures (including new awards). 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.

There was a change to the PPD benefits in 1,914 reconsideration orders (see Table 3A). This was 6 percent fewer than in 1998. The net dollars awarded for PPD via the reconsideration process (the sum of the new and increased awards, minus the reduced awards) were \$6.9 million. The average net increase in the award was \$3,588 in 1999, up from \$3,165 in 1998. Sixty-seven percent of the additional award was for scheduled disability. The average net scheduled degrees awarded per case was 9.7 degrees, up from 8.5

degrees in 1998. The average net unscheduled degrees awarded per case was 15.3 degrees, down from 15.8 degrees in 1998.

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 \$1.1 million, 16 percent of the total net dollar change.

The net change on reconsideration of NOCs was \$4,165, nearly \$800 more than the change on worker-requested reconsideration of DOs (see Table 3B). This difference has existed throughout the history of the reconsideration process, although not to the same extent as in 1999. This may be related to the fact that the average PPD awarded in NOCs by insurers is usually lower than that awarded in DOs. There was an average reduction of more than \$5,896 in the PPD awards for the 81 cases in which insurer-requested reconsiderations resulted in changed PPD awards.

Table 3A. Net changes on reconsideration of PPD awards, Oregon, 1999

Type of disability	Net dollars			Net degrees	
	Cases	Total	Mean	Total	Mean
Scheduled	1,118	\$4,623,246	\$4,135	10,859	9.7
Unscheduled	997	\$2,243,788	\$2,251	15,280	15.3
Combined total	1,914	\$6,867,034	\$3,588	-	-

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	208	\$3,710	8.9	50	(\$3,868)	-8.9	860	\$4,703	11.0
Unscheduled	198	\$2,292	16.0	49	(\$5,800)	-30.6	750	\$2,766	18.2
Combined total	364	\$3,367	-	81	(\$5,896)	-	1,469	\$4,165	-

Notes: 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 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 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 unscheduled body parts 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 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.

In 1999, 68 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 1999, the result was a 37 percent increase in benefits for those conditions; for unscheduled disability, the increase in benefits was 15 percent.

Table 4. Reconsideration cases with new awards and modified awards of PPD, Oregon, 1999

	Cases	Avg. degree award	Total dollar award
New Awards			
Scheduled	510	14.05	\$3,069,788
Unscheduled	381	30.10	\$1,601,929
Total	852	-	\$4,671,717
Modifications:			
Increased scheduled	398	14.50	\$2,432,551
Decreased scheduled	230	-9.04	-\$879,093
Total, scheduled	632	5.84	\$1,553,458
Increased unscheduled	398	23.04	\$1,521,961
Decreased unscheduled	216	-24.81	-\$880,103
Total, unscheduled	617	6.18	\$641,858
Total	1,192	-	\$2,195,316

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 28 percent of the substantive reconsideration cases completed in 1999 (see Table 5). Private insurers carried 50 percent of the cases, and self-insured employers carried 21 percent of the cases.

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 25 penalty cases in 1999, resulting in almost \$98,500 in penalties.

Table 5. Substantive reconsideration orders by insurer, Oregon, 1999

Insurer	Cases	% of total	Penalty	
			cases	Penalties
SAIF	1,172	28.4%	9	\$29,121
Private insurer	2,078	50.3%	14	\$64,534
Self-insured employer	852	20.6%	2	\$4,840
Noncomplying employer	31	0.8%	0	\$0
Total	4,133	100%	25	\$98,495

Claimant attorney fees

In 1999, 91 percent of the injured workers with a substantive reconsideration order were represented by an attorney.

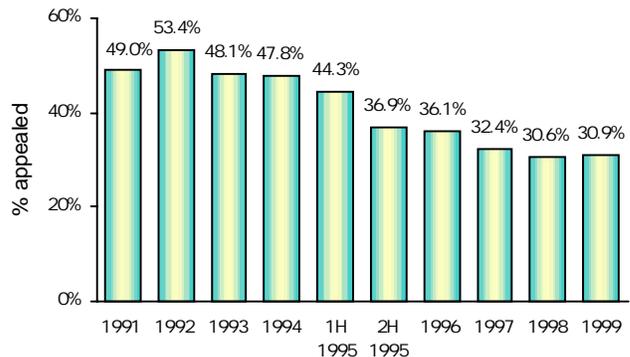
Attorney fees are set by law at 10 percent of any additional compensation awarded to the worker, up to a maximum of \$4,600 in PPD cases and \$12,500 in PTD cases. The fees are paid out of the additional compensation awarded. Data on fees paid by workers to attorneys are estimated only for PPD cases. Attorney representation in these cases was about the same as for all substantive reconsiderations. In 1999, attorney fees totaled nearly \$918,500. Attorney fees were

incurred in 69 percent of the represented PPD cases; the average attorney fee was \$565 for these cases.

Subsequent litigation

Reconsideration orders may be appealed to the Hearings Division. Until 1999, the appeal rate of substantive reconsiderations had 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.

Figure 3. Percent of substantive reconsideration orders appealed, Oregon, 1991-1999



Notes: 1995 is split into two six-month periods. The 1997 and 1998 rates have been revised. The 1999 rate is preliminary.

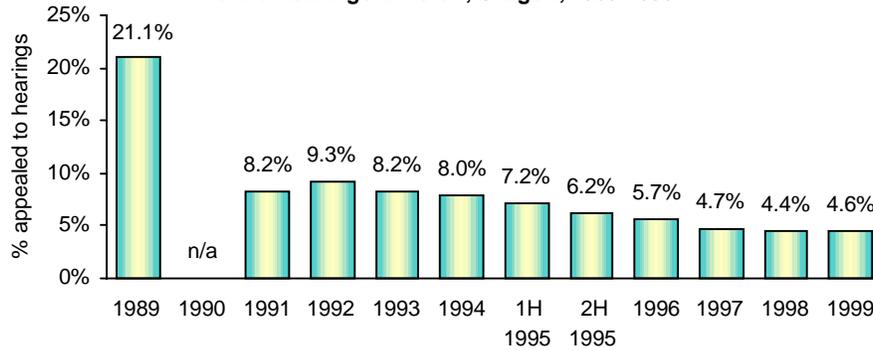
In combination, Figures 1 and 3 show the effect of the reconsideration process on litigation (see Figure 4). In 1989, 21 percent of the closures were appealed to hearings. In 1991, after the start of the reconsideration process, eight percent of the closures went to hearings; in 1999, with smaller percentages of closures being reconsidered and reconsideration orders being appealed, just five percent of the closures went to hearings.

Because many of the appealed 1999 reconsiderations have not had hearing orders as of the date of this report, the following data covers appealed 1998 reconsiderations. Thirty-one percent of the 1998 substantive reconsideration orders were appealed. As would be expected, the appeal rate of reconsideration orders that reduced PPD awards was higher, 48 percent, than the appeal rate of reconsideration orders that granted or raised PPD awards, 28 percent. Of those appeals for which there have been hearing orders (a small number have not yet been resolved), 40 percent of the hearing requests were withdrawn, dismissed, or settled with a CDA. Another 13 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 58 percent of the stipulations.

The remaining 47 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-six percent of the O&Os affirmed the reconsideration orders. Twenty-nine percent of the O&Os increased the PPD awards, and 14 percent reduced the PPD awards. 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 1998, 172 Board orders dealt with PPD issues; the hearing orders were affirmed in 78 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, 1989-1999



Notes: 1995 is split into two six-month periods. The 1998 rate has been revised. The 1999 rate is preliminary.

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