

# Oregon Court of Appeals 2000 Workers' Compensation Summary

Research & Analysis Section

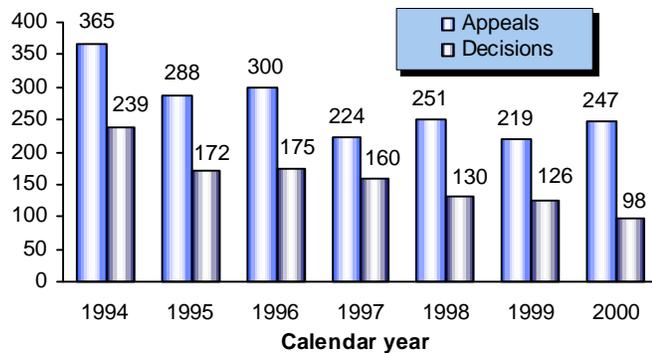
Department of Consumer & Business Services

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**Appeals.** In calendar year 2000 there were 247 appeals of Workers' Compensation Board (WCB) decisions to the Oregon Court of Appeals, an increase of 12.8 percent above the previous year's count. See Figure 1. The number of board orders on review increased by just 4.8 percent for this period, so the appeal rate rose from 21.9 to 23.5 percent. The petitioner was the claimant in a record-high 67.3 percent of the cases, well above the 1991-1999 average of 60.8 percent.

Figure 1. Number of appeals and decisions



**Orders.** There were 98 court decisions in 2000 (based on the date of the slip opinion), 22.2 percent fewer than in 1999. This count **excludes** court dismissals, one order on reconsideration by the court, and 12 court remands to the board (the fewest since 1994). Orders are classified as "remands" when the court did *not* (1) rule on the primary issue, (2) direct a specific action by the board, (3) rule on a major or precedent-setting sub-issue, nor (4) determine that the board applied the wrong standard. The **reasons for remanding:** the court couldn't determine whether the board considered something or the order was otherwise inadequate for review (five cases), the board did not have benefit of a recent court decision (three cases), the board failed to address or determine something (two cases), and the board erred (two cases).

Order counts here also exclude one safety case and six Department of Consumer and Business Services (DCBS) contested cases. Contested cases are discussed briefly in the final section of this report.

**Issues.** The number and the relative frequency of each issue are given in the table. Cases without one of the specified issues are counted in the "other issues" category. The relative frequency of extent of disability (10.2 percent) was the lowest on record (going back to 1988), while that for compensability (60.2 percent) was the highest on record (1997's 59.4 percent was the prior record). The percentage of cases classified as

"other issue" (29.6 percent) was the highest since 1996. The most frequent **other issues** (including those in cases with a specified issue) were insurer penalty (10 cases); responsibility (9 cases); claimant attorney fees (8 cases); timeliness (6 cases); evidence (5 cases); rate of temporary disability (4 cases); and dismissal, remand, and subjectivity (3 cases each).

2000 Court of Appeals issues, frequencies, dispositions, WCB affirmation rates, and remands

Issue & disposition	Cases*	% of cases*	RateWCB affirmed*	Remands
<b>Extent of permanent disability</b>	<b>8</b>	<b>8.2</b>	<b>87.5</b>	<b>3</b>
Affirm/no change	7			
Increase	1			
Decrease	-			
Reverse**	-			
<b>Extent of temporary disability</b>	<b>2</b>	<b>2.0</b>	<b>100.0</b>	<b>0</b>
Affirm/no change	2			
Increase	-			
Decrease	-			
Reverse**	-			
<b>ALL EXTENT OF DISABILITY</b>	<b>10</b>	<b>10.2</b>	<b>90.0</b>	<b>3</b>
<b>Claim denial</b>	<b>36</b>	<b>36.7</b>	<b>94.4</b>	<b>4</b>
WCB accept	13		84.6	1
Court accept	11			
Court deny	2			
Court reverse**	-			
WCB deny	23		100.0	3
Court accept	-			
Court deny	23			
Court reverse**	-			
<b>Aggravation denial</b>	<b>7</b>	<b>7.1</b>	<b>100.0</b>	<b>1</b>
WCB accept	1		100.0	1
Court accept	1			
Court deny	-			
Court reverse**	-			
WCB deny	6		100.0	0
Court accept	-			
Court deny	6			
Court reverse**	-			
<b>Partial denial</b>	<b>16</b>	<b>16.3</b>	<b>100.0</b>	<b>4</b>
WCB accept	4		100.0	0
Court accept	4			
Court deny	-			
Court reverse**	-			
WCB deny	12		100.0	4
Court accept	-			
Court deny	12			
Court reverse**	-			
<b>ALL COMPENSABILITY</b>	<b>59</b>	<b>60.2</b>	<b>96.6</b>	<b>9</b>
<b>OTHER ISSUES</b>	<b>29</b>	<b>29.6</b>	<b>75.9</b>	<b>0</b>
<b>ALL ISSUES</b>	<b>98</b>	<b>100.0</b>	<b>89.8</b>	<b>12</b>

\* Remands are excluded from these counts and calculations.

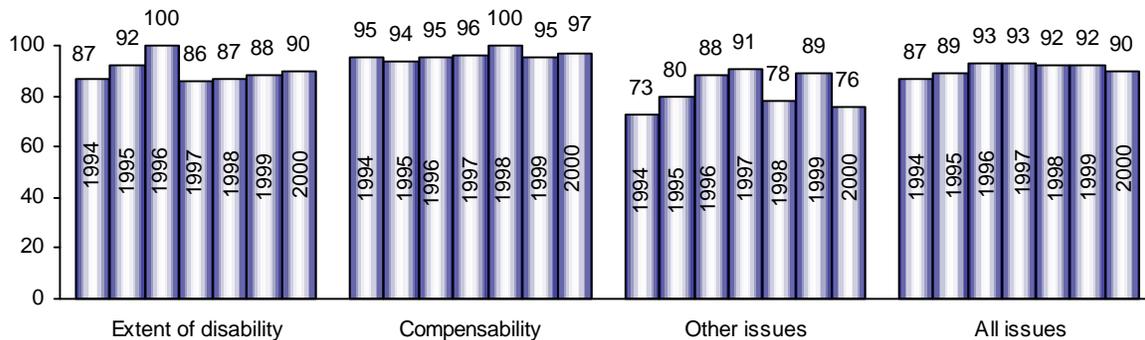
\*\* For this table, "reverse" indicates no court decision on the broad issue. Percentages may not add to totals due to rounding.

**Issue Disposition.** Court dispositions and WCB affirmation rates are given in the table. The court reversed the board in 1 permanent disability case (but no temporary disability cases), 2 compensability cases, and 7 other-issue cases. (These counts exclude remands; remand counts for each issue are also given in the table.) The **WCB affirmation rates** were 90.0

percent for extent of disability, 96.6 percent for the compensability, and 89.8 percent overall (see Figure 2).

The court acceptance rate (percent found compensable) for the three compensability issues was 27.1 percent. Last year, this figure was 37.9 percent.

**Figure 2. WCB affirmation rates (percent)**



**Other Data.** SAIF was the **insurer** in 36.4 percent of the cases. There was only one case about **permanent total disability** (PTD was awarded at some level): the court affirmed a board decision that rescinded a PTD award. The median **time lag** from *appeal* to order was 376 days (12.4 months), over a month longer than 1999's 343 days and the longest time on record. This result is expected, given the increase in review requests and decrease in the number of court decisions from 1999 to 2000. The median time from *injury* to order was 1,238 days (3.4 years).

**DCBS Contested Cases.** Six contested cases (disputes heard for the Workers' Compensation Division by an administrative law judge) were decided by the court in 2000 (based on the date of the slip opinion). This count excludes settlements. Dispute types were vocational assistance (4 cases), penalty (1 case), and medical services (1 case). The worker was the petitioner in three cases. The court affirmed the director in five of the six cases (83.8 percent). Four of the six cases (66.7 percent) were decided in favor of the worker.

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