

# Oregon Court of Appeals

## 2004 Workers' Compensation Summary

Information Management Division

Department of Consumer & Business Services

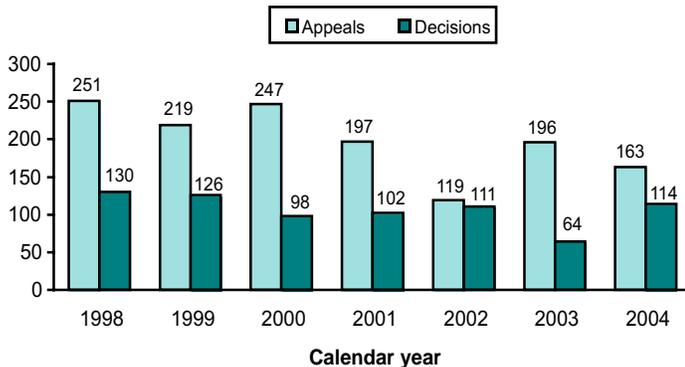
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by [Russ Reed](#)

### Appeals

In calendar year 2004 there were 163 appeals of Workers' Compensation Board (WCB) decisions to the Oregon Court of Appeals, 16.8 percent fewer than in 2003. See Figure 1. The rate at which board orders (excluding third party and crime victim) were appealed to the court was 20.7 percent for orders on review and 17.9 percent for all orders. The petitioner was the claimant in 63.1 percent of the cases, the lowest such percentage since 1999 (58.0 percent) but very close to the 1991-2004 average.

Figure 1. Number of appeals and decisions



### Orders

There were 114 court decisions in 2004 (based on the date of the slip opinion), up from just 64 in 2003 and about the same as in 2002. The decision count excludes 70 court dismissals, 2 cases remanded from the Oregon Supreme Court, 8 court remands to the board, and 2 orders on reconsideration by the court. Reasons for court dismissals: motion by petitioner, 28 cases; board to approve a settlement, 22 cases; petitioner in default, 15 cases; and other reasons, 5 cases.

An order is classified as "remand" when the court did not rule on the primary issue nor direct a specific resolution by the board. Remands constituted just 6.6 percent of court slip opinions (decisions plus remands, but not dismissals), the lowest percentage since 1994. The reasons for remanding: the board applied the wrong legal standard, 3 cases; the board did not have benefit of a recent

court decision, 2 cases; the board needs to determine something, 1 case; the board's order was inadequate for review, 1 case; and recent law changes, 1 case.

Order counts here exclude two Department of Consumer and Business Services (DCBS) contested cases (discussed briefly in the final section of this report) and all safety cases.

2004 Court of Appeals issues, frequencies, dispositions, WCB affirmation rates, and remands

Issue and disposition	Cases*	% of cases*	Rate WCB affirmed*	Remands
<b>Extent of perm. disability</b>	<b>21</b>	<b>18.4</b>	<b>95.2</b>	<b>0</b>
Affirm/no change	20			
Increase	1			
Decrease	0			
Reverse**	0			
<b>Extent of temp. disability</b>	<b>3</b>	<b>2.6</b>	<b>100.0</b>	<b>1</b>
Affirm/no change	3			
Increase	0			
Decrease	0			
Reverse**	0			
<b>ALL EXTENT OF DISABILITY</b>	<b>24</b>	<b>21.1</b>	<b>95.8</b>	<b>1</b>
<b>Claim denial</b>	<b>44</b>	<b>38.6</b>	<b>100.0</b>	<b>1</b>
WCB accept	18		100.0	1
Court accept	18			
Court deny	0			
Court reverse**	0			
WCB deny	26		100.0	0
Court accept	0			
Court deny	26			
Court reverse**	0			
<b>Aggravation denial</b>	<b>2</b>	<b>1.8</b>	<b>50.0</b>	<b>2</b>
WCB accept	0		N/A	0
Court accept	0			
Court deny	0			
Court reverse**	0			
WCB deny	2		50.0	2
Court accept	1			
Court deny	1			
Court reverse**	0			
<b>Partial denial</b>	<b>25</b>	<b>21.9</b>	<b>96.0</b>	<b>2</b>
WCB accept	10		90.0	1
Court accept	9			
Court deny	1			
Court reverse**	0			
WCB deny	15		100.0	1
Court accept	0			
Court deny	15			
Court reverse**	0			
<b>ALL COMPENSABILITY</b>	<b>71</b>	<b>62.3</b>	<b>97.2</b>	<b>5</b>
<b>OTHER ISSUES</b>	<b>19</b>	<b>16.7</b>	<b>94.7</b>	<b>2</b>
<b>ALL ISSUES</b>	<b>114</b>	<b>100.0</b>	<b>96.5</b>	<b>8</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.

## Issues

The number and the relative frequency of each issue are given in the table (“cases” and “% of cases” columns). Cases without one of the specified issues are counted in the “other issues” category. The relative frequency of extent of disability (21.1 percent) was the highest since 1999. On the other hand, the percentage for “other issues” ( 16.7 percent) was the lowest on record. The most frequent other issues (including those in cases with a specified issue) were insurer penalty, 14 cases; claimant attorney fees, 9 cases; responsibility, 8 cases; and evidence, 5 cases. Numbers given for permanent disability don’t include five own-motion cases, in which the court affirmed the board.

## Issue disposition

Court dispositions and WCB affirmation rates are given in the table. The court reversed the board in 1 permanent disability case, 2 compensability cases, and 1 other-issue case. (These counts exclude remands; remand counts for each issue are also given in the table.)

The WCB affirmation rates were 95.8 percent for extent of disability and 97.2 percent for compensability. For other issues (94.7 percent) and for all issues (96.5 percent), WCB affirmation rates were the highest on record (going back to 1990). See Figure 2.

For the three compensability issues, the court acceptance (set-aside-denial) rate was 39.4 percent, down from the relatively-high 42.9 percent of 2003. For these 71 cases, the WCB rate was the same as that of the court.

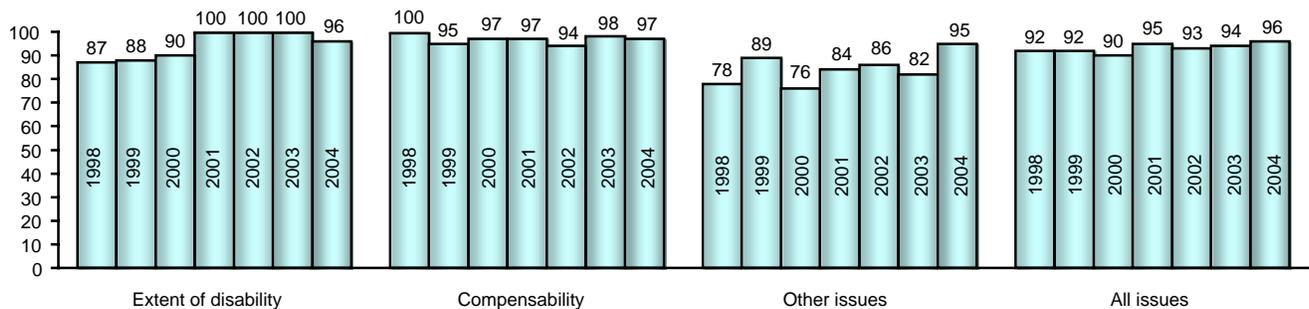
## Other data

SAIF was the insurer in 32.8 percent of the cases (includes multiple-insurer disputes). There were no cases about permanent total disability (where PTD was awarded at some level). The median time lag from appeal to court order was 441 days (14.5 months), 16 days less than the near-record-long time lag of the previous year. The median time from injury to court order was 1,481 days (4.1 years). Attorney fees in 33 appellate judgments in 2004 totaled \$192,000; the average fee was \$5,822.

## DCBS contested cases

Two contested cases (appeals of Workers’ Compensation Division orders) were decided by the court in 2004. (This count is based on the date of the slip opinion and excludes dismissals.) In one case, the claimant appealed an order declaring him ineligible for vocational assistance; the court affirmed. In the other case, the court (on reconsideration) reversed and remanded, holding SAIF liable for medical treatment after a specific date.

Figure 2. WCB affirmation rates (percent)



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