



Oregon Court of Appeals 2005 Workers' Compensation Summary

Information Management Division

Department of Consumer & Business Services

July 2006

by [Russ Reed](#)

Appeals

In 2005 there were 106 appeals of Workers' Compensation Board (WCB) decisions to the Oregon Court of Appeals, 35.0 percent fewer than in 2004. See Figure 1. The rate at which board-review orders (excluding third party) were appealed to the court was 16.2 percent for orders on review and 13.8 percent for all orders. The petitioner was the claimant in 76.1 percent of the cases, the highest percentage since at least 1991.

Orders

There were 80 court decisions in 2005 (based on the date of the slip opinion). The decision count **excludes** 70 court dismissals, 12 court remands to the board, and two orders on reconsideration by the court. **Reasons for dismissals were:** for the board to approve a settlement, 44.3 percent; motion by petitioner, 34.3 percent; petitioner in default, 14.3 percent; and other reasons, 7.1 percent.

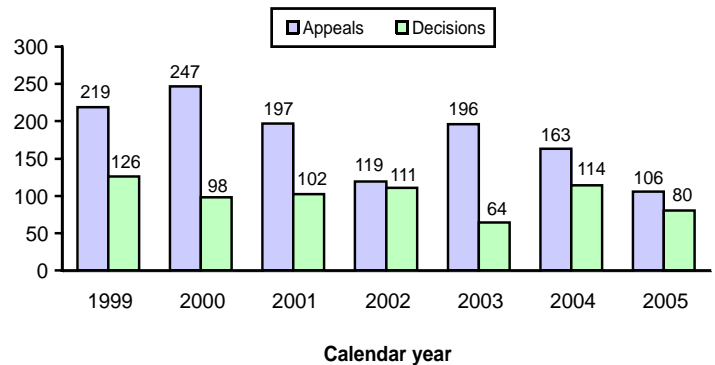
An order is classified as "remand" when the court did not rule on the primary issue, nor direct a specific resolution by the board. Remands constituted just 13.0 percent of court slip opinions (excludes dismissals). The most frequent **reasons for remanding were:** the board did not have benefit of a recent court decision, five cases; the board needed to determine something, two cases; and the board erred in a finding, two cases.

Order counts here exclude four DCBS contested cases (discussed briefly, below) and all safety cases.

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 (23.8 percent) was the highest since 1999. On the other hand, the percentage for "other issue" (18.8 percent) was the third lowest on record. The most frequent **other issues** (including those in cases with a specified issue) were insurer penalty, 10 cases; timeliness, six cases; claimant attorney fees, five cases; evidence, five cases; and responsibility, five cases. Numbers given for permanent disability don't include own-motion cases.

Figure 1. Number of appeals and decisions



2005 Court of Appeals issues, frequencies, dispositions, WCB affirmation rates, and remands

Issue and disposition	Cases*	% of cases*	Rate WCB affirmed*	Remands
Extent of perm. disability	13	16.3	84.6	1
Affirm/no change	11			
Increase	2			
Decrease	0			
Extent of temp. disability	6	7.5	83.3	0
Affirm/no change	5			
Increase	1			
Decrease	0			
ALL EXTENT OF DISABILITY	19	23.8	84.2	1
Claim denial	23	28.8	100.0	5
WCB accept	6		100.0	1
Court accept	6			
Court deny	0			
WCB deny	17		100.0	4
Court accept	0			
Court deny	17			
Aggravation denial	3	3.8	100.0	0
WCB accept	1		100.0	0
Court accept	1			
Court deny	0			
WCB deny	2		100.0	0
Court accept	0			
Court deny	2			
Partial denial	20	25.0	95.0	1
WCB accept	3		100.0	0
Court accept	3			
Court deny	0			
WCB deny	17		94.1	1
Court accept	1			
Court deny	16			
ALL COMPENSABILITY	46	57.5	97.8	6
OTHER ISSUES	15	18.8	73.3	5
ALL ISSUES	80	100.0	90.0	12

* Remands are excluded from these counts and calculations.

Issue disposition

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

WCB affirmation rates. For compensability, the 97.8 percent WCB affirmation rate in 2005 was the highest since 1998, while for extent of disability the 84.2 percent was the lowest on record. For all issues, the rate was 90.0 percent, down from the record-high 96.5 percent in 2004. See Figure 2.

For compensability issues (claim, partial, and aggravation denial), the court **set-aside denial rate** was 23.9 percent, down from 39.4 percent in 2004 and the relatively high 42.9 percent of 2003. For these 46 compensability cases, the set-aside denial rate for WCB was 21.7 percent.

Other data

SAIF Corp. was the **insurer** in 51.1 percent of the cases (includes multiple-insurer disputes). There was just one case about **permanent total disability** (where PTD had previously been granted): The court affirmed a SAIF PTD termination that had been affirmed by a hearings judge and the board. The median **time lag** from appeal to order was 440 days (14.5 months), one

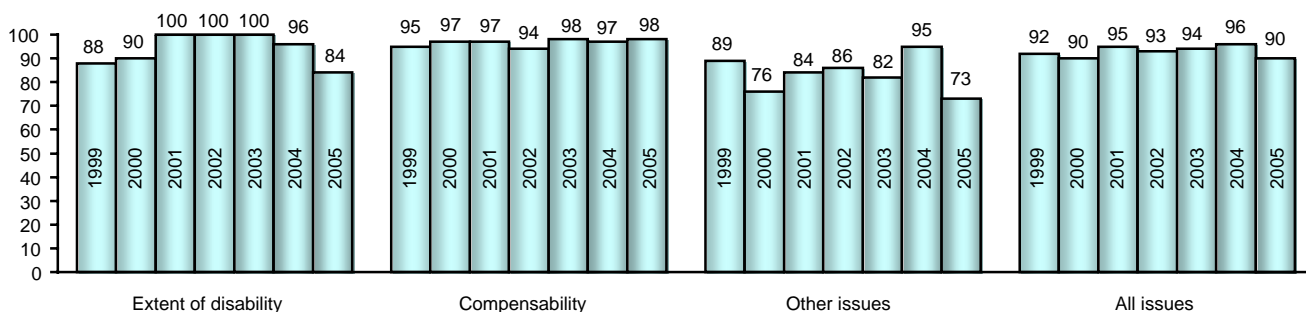
day less than the previous year. The median time from injury to order was 1,446 days (four years). **Attorney fees** in 24 appellate judgments in 2005 totaled \$160,000; the average fee was almost \$6,700. The court allowed claimant-requested **attorney sanctions** of \$5,813 for an appeal made “without reasonable prospect of prevailing” according to ORS 656.390.

DCBS contested cases

The court in 2005 decided four appeals of Workers’ Compensation Division orders (based on the slip opinion date, excluding dismissals). In two vocational assistance cases, one worker had been found eligible and another worker not eligible. In two medical cases, a scan had been determined not compensable, and an insurer had been required to reimburse a worker for medications. The court affirmed the director of DCBS in all cases (all without opinion).

Six contested cases were decided by the court in 2004, but four were omitted from the 2004 edition of this report. In three cases, workers had been found not eligible for vocational services. In three medical cases, a worker had been entitled to treat outside a managed care organization, SAIF had been found not liable to pay for a record review, and SAIF had been found not liable for treatment costs. The court affirmed the DCBS director in all but the last-mentioned case.

Figure 2. WCB affirmation rates (percent)



In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats. Please call (503) 378-4100 (V/TTY).

The information in this report is in the public domain and may be reprinted without permission. Visit the DCBS Web site, <http://dcbs.oregon.gov>.

To receive electronic notification of new publications, see “Electronic Notification” on IMD’s home page, <http://www.cbs.state.or.us/imd>.



Information Management Division
350 Winter St. NE, Room 300
P.O. Box 14480
Salem, OR 97309-0405
(503) 378-8254