

# Oregon Court of Appeals 2006 Workers' Compensation Summary

Information Management Division

Department of Consumer & Business Services

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## Appeals

In 2006 there were 110 appeals of Workers' Compensation Board (WCB) decisions to the Oregon Court of Appeals, four more than in 2005. See Figure 1. The rate at which board-review orders (excluding third party) were appealed to the court was 16.9 percent for orders on review and 14.9 percent for all orders. The petitioner was the claimant in 61.5 percent of the cases with a decision or remand in 2006.

## Orders

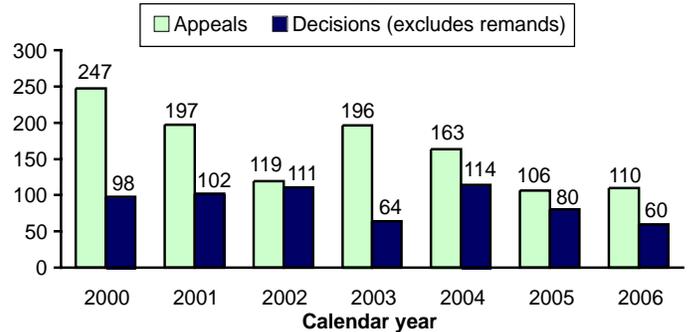
There were 60 court decisions in 2006 (based on the date of the slip opinion), the fewest since at least 1978. These decisions are court affirmations or reversals of WCB on workers' compensation cases. The count **excludes** 59 court dismissals, five court remands to the board, one order on remand from the Oregon Supreme Court, two DCBS contested cases (discussed briefly in the final section of this report), and safety cases; there were no orders on reconsideration by the court in 2006. **Reasons for dismissal** were: for the board to approve a settlement, 44.1 percent; motion by petitioner, 27.1 percent; petitioner in default, 16.9 percent; and other reasons, 11.9 percent.

An order is classified as a "remand" when the court does not rule on the primary issue, nor direct a specific resolution by the board. Remands constituted just 7.7 percent of court slip opinions (excludes dismissals). The **reasons for remanding** were: the board needed to determine something, two cases; the board erred in making a finding, two cases; and the board did not have the benefit of a recent court decision, one case.

## 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 the compensability issues (55.0 percent) was the lowest since 1999. On the other hand, the percentage for "other issues" (33.3 percent) was the highest since 1993. The most frequent **other issues** (including those in cases with a specified issue) were insurer penalty, nine cases; claimant attorney fees, seven cases; dismissal, five cases; and responsibility, four cases. Numbers given for permanent disability don't include own-motion cases.

Figure 1. Number of appeals and decisions



2006 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>6</b>	<b>10.0</b>	<b>100%</b>	<b>0</b>
Affirm	6			
Increase	0			
Decrease	0			
<b>Extent of temp. disability</b>	<b>1</b>	<b>1.7</b>	<b>100%</b>	
Affirm	1			
Increase	0			
Decrease	0			
<b>ALL EXTENT OF DISABILITY</b>	<b>7</b>	<b>11.7</b>	<b>100%</b>	<b>0</b>
<b>Claim denial</b>	<b>19</b>	<b>31.7</b>	<b>100%</b>	<b>0</b>
<u>WCB set aside denial</u>	5			
Court set aside denial	5			
Court affirm denial	0			
<u>WCB affirm denial</u>	14			
Court set aside denial	0			
Court affirm denial	14			
<b>Partial denial</b>	<b>11</b>	<b>18.3</b>	<b>90.9%</b>	<b>2</b>
<u>WCB set aside denial</u>	3			
Court set aside denial	3			
Court affirm denial	0			
<u>WCB affirm denial</u>	8			
Court set aside denial	1			
Court affirm denial	7			
<b>Aggravation denial</b>	<b>3</b>	<b>5.0</b>	<b>100%</b>	<b>0</b>
<u>WCB set aside denial</u>	2			
Court set aside denial	2			
Court affirm denial	0			
<u>WCB affirm denial</u>	1			
Court set aside denial	0			
Court affirm denial	1			
<b>ALL COMPENSABILITY</b>	<b>33</b>	<b>55.0</b>	<b>97.0%</b>	<b>2</b>
<b>OTHER ISSUES</b>	<b>20</b>	<b>33.3</b>	<b>95.0%</b>	<b>3</b>
<b>ALL ISSUES</b>	<b>60</b>	<b>100.0</b>	<b>96.7%</b>	<b>5</b>

\* Remands are excluded from these counts and calculations. Dispositions for extent of disability are stated with respect to worker awards after the WCB order; for compensability issues, they are stated with respect to the insurer denial. Percentages may not add to totals due to rounding.

## Issue disposition

Court dispositions and WCB affirmation rates are given in the table. For the three compensability issues, the court **set-aside-denial rate** was 33.3 percent, below the 18-year average of 35.3 percent. For these 33 cases, the set-aside-denial rate for WCB was 30.3 percent.

## WCB affirmation rates

For *compensability*, 2006's 97.0 percent WCB affirmation rate was typical of recent years. The rate for *extent of disability* was 100 percent. For *other issues* (95.0 percent) and all issues (96.7 percent), the rates were the highest on record (since 1990). See Figure 2.

The court reversed the board in one compensability case and one other-issue case. (These counts and percentages exclude remands; remand counts are also given in the table.)

## Other data

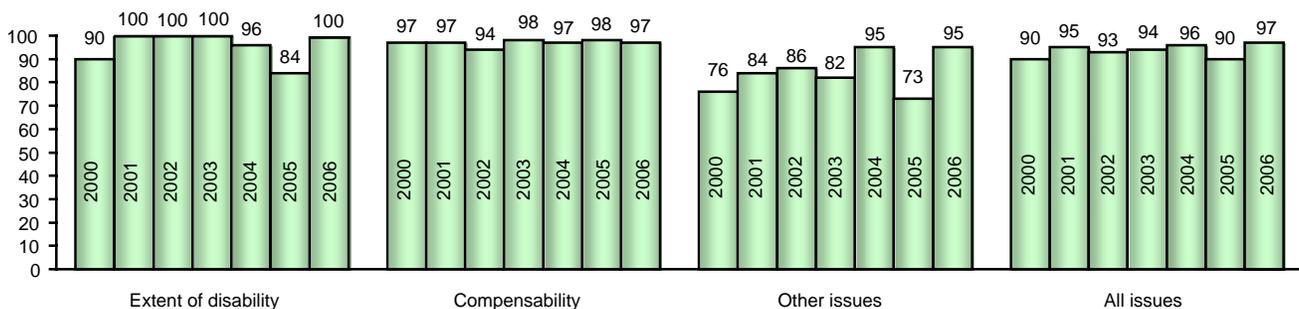
SAIF Corporation was the **insurer** in 26.2 percent of the cases (includes multiple-insurer disputes). There were no cases about **permanent total disability** (where PTD

was awarded at some level). The median **time lag** from *appeal* to order was 482 days (15.9 months), the longest on record; the previous record was 2002's 458 days. The median time from *injury* to order was 1,447 days (4.0 years). **Attorney fees** in 16 *appellate judgments* (issued typically two months after the slip opinion) totaled \$110,000; the average fee was more than \$6,800. There were no cases where parties requested **attorney sanctions** against opposing counsel for an appeal that was frivolous, made in bad faith, or for harassment purposes (ORS 656.390).

## DCBS contested cases

The court in 2006 decided two appeals of Workers' Compensation Division orders (based on the slip opinion date, excluding dismissals). In a vocational assistance case, a worker had been found *not* eligible for assistance. In a medical case, an insurer had been found *not* liable for a consultation. The court affirmed the director in both cases.

Figure 2. WCB affirmation rates (percent)



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