

# Oregon Court of Appeals

## 2007 Workers' Compensation Summary

Information Management Division

Department of Consumer & Business Services

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### Appeals

In 2007 there were 101 Workers' Compensation Board (WCB) decisions appealed to the Oregon Court of Appeals, nine fewer than in 2006. See Figure 1. The rate at which board-review orders (excluding third party) were appealed to the court was 16.7 percent for orders on review and 14.4 percent for all orders. The petitioner was the claimant in 61.9 percent of the cases with a 2007 court decision or remand.

### Orders

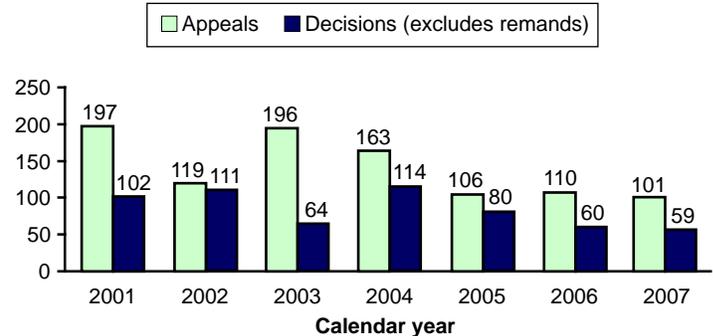
There were 59 court decisions in 2007 (based on the date of the slip opinion), the fewest since at least 1978. These court decisions were affirmations or reversals of the board on workers' compensation cases. The orders count **excludes** 60 court dismissals, four court remands to the board, two non-complying employer cases, one DCBS contested case (discussed briefly in the final section of this report), and one safety case; there were no orders on reconsideration by the court in 2007. The **reasons for court dismissal**: for the board to approve a settlement, 31.7 percent; motion by petitioner, 35.0 percent; petitioner in default, 26.7 percent; and other reasons, 6.7 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 6.3 percent of court slip opinions (excludes dismissals). The **reasons for remanding**: the board needed to provide explanation or clarification, two cases; the board erred in a finding, one case; and the board did not have benefit of a recent court decision, one case.

### Issues

The number and 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 (71.2 percent) was the highest since at least 1988. Conversely, the percentage for "other issue" (13.6 percent) was the lowest of that period. The most frequent **other issues** (including those in cases with a specified issue) were insurer penalty, six cases; claimant attorney fees, five cases; evidence, four cases; and responsibility and jurisdiction, three cases each.

Figure 1. Number of appeals and decisions



2007 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>10.2</b>	<b>100%</b>	<b>0</b>
Affirm	6			
Increase	0			
Decrease	0			
<b>Extent of temp. disability</b>	<b>3</b>	<b>5.1</b>	<b>67%</b>	<b>0</b>
Affirm	2			
Increase	0			
Decrease	1			
<b>ALL EXTENT OF DISABILITY</b>	<b>9</b>	<b>15.3</b>	<b>89%</b>	<b>0</b>
<b>Claim denial</b>	<b>22</b>	<b>37.3</b>	<b>100%</b>	<b>3</b>
WCB set aside denial	7			
Court set aside denial	7			
Court affirm denial	0			
WCB affirm denial	15			
Court set aside denial	0			
Court affirm denial	15			
<b>Partial denial</b>	<b>19</b>	<b>32.2</b>	<b>100%</b>	<b>0</b>
WCB set aside denial	8			
Court set aside denial	8			
Court affirm denial	0			
WCB affirm denial	11			
Court set aside denial	0			
Court affirm denial	11			
<b>Aggravation denial</b>	<b>1</b>	<b>1.7</b>	<b>100%</b>	<b>0</b>
WCB set aside denial	0			
Court set aside denial	0			
Court affirm denial	0			
WCB affirm denial	1			
Court set aside denial	0			
Court affirm denial	1			
<b>ALL COMPENSABILITY</b>	<b>42</b>	<b>71.2</b>	<b>100%</b>	<b>3</b>
<b>OTHER ISSUES</b>	<b>8</b>	<b>13.6</b>	<b>87.5%</b>	<b>1</b>
<b>ALL ISSUES</b>	<b>59</b>	<b>100.0</b>	<b>96.6%</b>	<b>4</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. The court **set-aside-denial rate** for the three compensability issues was 35.7 percent (15 of 42). The board rate, for these 42 cases, was the same. The court's rate was slightly below the 19-year (1989 to 2007) average of 35.3 percent.

## WCB affirmation rates

The court affirmed the board in 100 percent of *compensability* cases, 88.9 percent for *extent of disability*, 87.5 percent for *other issues*, and 96.6 percent for *all issues*. The all-issues rate was the second highest on record (going back to 1990). See Figure 2. The court reversed the board in one TTD case and one other-issue case. (These counts and percentages exclude remands; remand counts are also given in the table.)

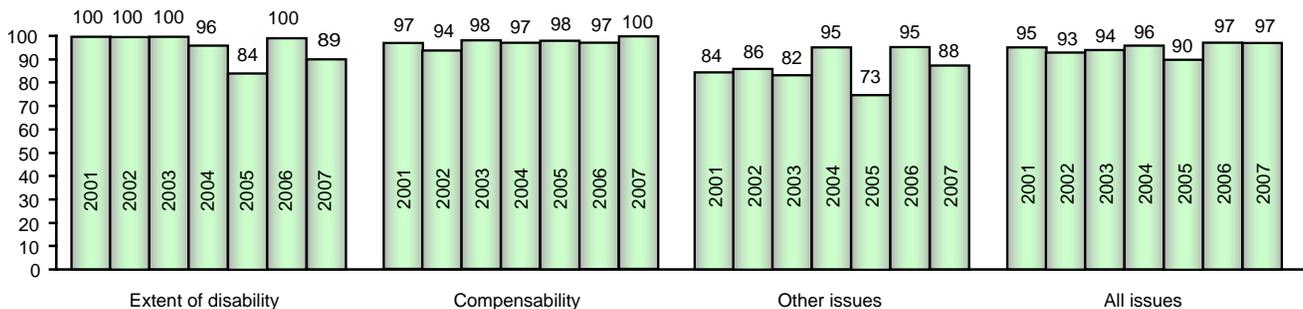
## Other data

SAIF Corporation was the **insurer** in 41.3 percent of cases (includes multiple-insurer disputes). There was one **permanent total disability** case (where PTD was awarded at some level): the court affirmed a hearing grant. The median **time lag** from *appeal* to order was 453 days (14.9 months), a month shorter than 2006's record-high 482 days. The median time from *injury* to order was 1,440 days (3.9 years). **Attorney fees** in 24 *appellate judgments* (issued typically two months after the slip opinion) totaled \$173,000; the average fee was \$7,200. 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 2007 decided one appeal of Workers' Compensation Division orders (based on the slip opinion date, excluding dismissals). The department found SAIF not liable for medical-cost reimbursement, and the court affirmed.

Figure 2. WCB affirmation rates (percent)



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