

# Oregon Court of Appeals

## 2008 Workers' Compensation Summary

Information Management Division

Department of Consumer and Business Services

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### Appeals

In 2008, there were 105 Workers' Compensation Board (WCB) decisions appealed to the Oregon Court of Appeals, four more than in 2007. See Figure 1. The rate at which board-review orders (excluding third party) were appealed to the court was 17.3 percent for orders on review and 14.6 percent for all orders. The petitioner was the claimant in 66.7 percent of the cases with a 2008 decision or remand.

### Orders

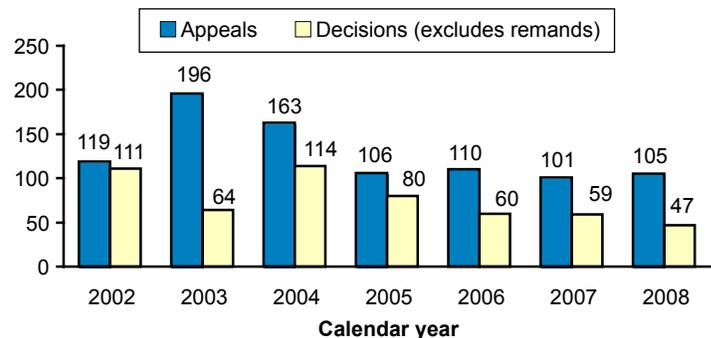
There were 47 court decisions in 2008 (based on the date of the slip opinion), the fewest on record. These court decisions were affirmations or reversals of WCB on workers' compensation cases. The count excludes 34 court dismissals, one court remand to the board, two DCBS contested cases (discussed briefly in the final section of this report), one reconsideration request on the issue of attorney fees, and one safety case. The reasons for court dismissal were as follows: for the board to approve a settlement, 38.2 percent; motion by petitioner, 29.4 percent; petitioner in default, 23.5 percent; and timeliness, 8.8 percent.

An order is classified as a "remand" when the court does not rule on the primary issue, nor directs a specific resolution by the board. There was only one case where the court remanded to the board: the court directed the board to determine whether the activity at injury was recreational or social.

### 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 (78.7 percent) was the highest on record. On the other hand, for the first time on record there were no cases about extent of permanent or temporary disability. The most frequent other issues (including those in cases with a specified issue) were insurer penalty, six cases; responsibility, four cases; claimant attorney fees, three cases; and timeliness, three cases.

Figure 1. Number of appeals and decisions



2008 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> [no cases]				
<b>Extent of temp. disability</b> [no cases]				
<b>ALL EXTENT OF DISABILITY</b>	0	0.0		0
<b>Claim denial</b>	17	36.2	88.2%	1
<u>WCB set-aside denial</u>	5			
Court set-aside denial	5			
Court affirm denial	0			
<u>WCB affirm denial</u>	12			
Court set-aside denial	1			
Court affirm denial	10			
Court reverse**	1			
<b>Partial denial</b>	20	42.6	100.0%	0
<u>WCB set-aside denial</u>	7			
Court set-aside denial	7			
Court affirm denial	0			
<u>WCB affirm denial</u>	13			
Court set-aside denial	0			
Court affirm denial	13			
<b>Aggravation denial</b> [no cases]				
<b>ALL COMPENSABILITY</b>	37	78.7	94.6%	1
<b>OTHER ISSUES</b>	10	21.3	100.0%	0
<b>ALL ISSUES</b>	47	100.0	95.7%	1

\* Remands are excluded from these counts and calculations.

\*\* In the "Court reverse" case, the court did not rule on the main issue.

**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 36.1 percent (13 of 36). The board rate, for these 36 cases, was 33.3 percent. The court's rate was slightly above the 19-year (1989 to 2007) average of 35.3 percent.

## WCB affirmation rates

The court affirmed the board in all but two compensability cases. Affirmation rates were 94.6 percent for compensability, 100 percent for other issues, and 95.7 percent overall. See Figure 2. (These counts and percentages exclude remands; remand counts are also given in the table.)

## Other data

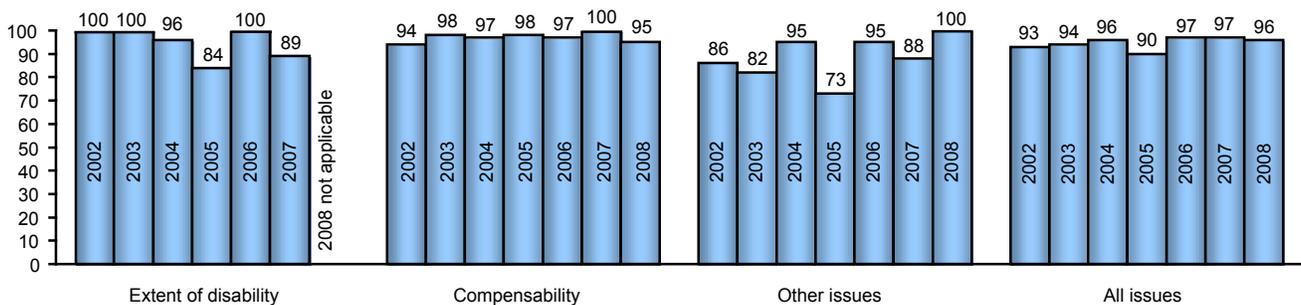
SAIF Corporation was the insurer in 47.9 percent of cases (includes multiple-insurer disputes). There were no permanent total disability cases (where PTD was

awarded at some level). The median time lag from appeal to order was 476 days (15.7 months), just six days shorter than 2006's record-high 482 days. The median time from injury to order was 1,455 days (4.0 years). Attorney fees in 14 appellate judgments (issued typically two months after the slip opinion) totaled \$103,000; the average fee was \$7,400. 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 2008 decided two appeals of Workers' Compensation Division orders in medical disputes (based on the slip opinion date, excluding dismissals). In one, the court reversed and remanded because it found that the judge applied the wrong review standard. In the other, the department awarded attorney fees after a claim disposition agreement had extinguished all releasable rights; the court found the fee award to be improper.

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



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