

Oregon Court of Appeals

2009 Workers' Compensation Summary

Information Management Division

Department of Consumer and Business Services

January 2011

By [Russ Reed](#)

Appeals

In 2009, there were 75 Workers' Compensation Board (WCB) decisions appealed to the Oregon Court of Appeals, 30 fewer than in 2008. See Figure 1. The rate at which board-review orders (excluding third party) were appealed to the court was 15.6 percent for orders on review (the lowest rate since at least 1983) and 12.9 percent for all orders. The petitioner was the worker in 73.2 percent of the cases with a 2009 decision or remand.

Orders

There were 38 court decisions on WCB orders in 2009 (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 court excludes:

Court dismissals (48 cases). The reasons for court dismissal were as follows: for the board to approve a settlement, 50.0 percent; motion by petitioner, 22.9 percent; petitioner in default or want of prosecution, 20.8 percent; and timeliness, 6.3 percent.

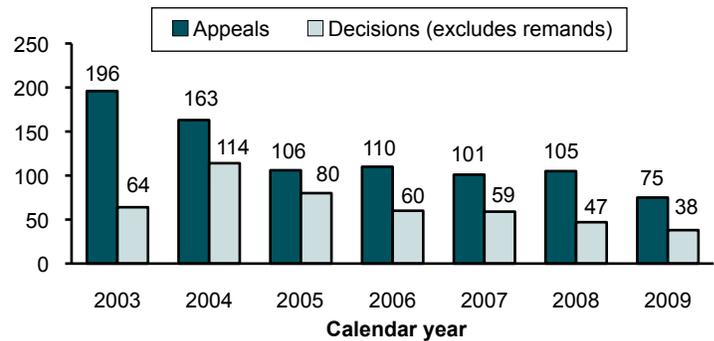
Court remands to the board (three cases). An order is classified as a "remand" when the court does not rule on the primary issue, nor direct a specific resolution by the board. Two cases were remanded for the board to determine something, and a third case for further explanation.

There was also one 2009 court decision on a Workers' Compensation Division order (excludes dismissals). The court affirmed the director in finding that the insurer was not responsible for paying for medical procedures.

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 (71.1 percent) was down from 2008's record-high of 78.7 percent, while the relative frequency of cases about extent of permanent or temporary disability (10.5 percent) was up from 2008, when there were no cases. The most frequent other issues (including those in cases with a specified issue) were insurer penalty, six cases; timeliness, four cases; and evidence, three cases.

Figure 1. Number of appeals and decisions



2009 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	3	7.9	100	1
Affirm/no change	3			
Increase	0			
Decrease	0			
Extent of temp. disability	1	2.6	100	0
Affirm/no change	1			
Increase	0			
Decrease	0			
ALL EXTENT OF DISABILITY	4	10.5	100	1
Claim denial	15	39.5	100	1
<u>WCB accept</u>	5			
Court accept	5			
Court deny	0			
<u>WCB deny</u>	10			
Court accept	0			
Court deny	10			
Aggravation denial	1	2.6	100	0
<u>WCB accept</u>	0			
Court accept	0			
Court deny	0			
<u>WCB deny</u>	1			
Court accept	0			
Court deny	1			
Partial denial	11	28.9	100	0
<u>WCB accept</u>	3			
Court accept	3			
Court deny	0			
<u>WCB deny</u>	8			
Court accept	0			
Court deny	8			
ALL COMPENSABILITY	27	71.1	100	1
OTHER ISSUES	7	18.4	85.7	1
ALL ISSUES	38	100.0	97.4	3

* Remands are excluded from these counts and calculations. 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 compensability issues was 29.6 percent (8 of 27). The board rate, for these 27 cases, was the same. The court's rate was below the 20-year (1989 to 2008) average of 35.4 percent.

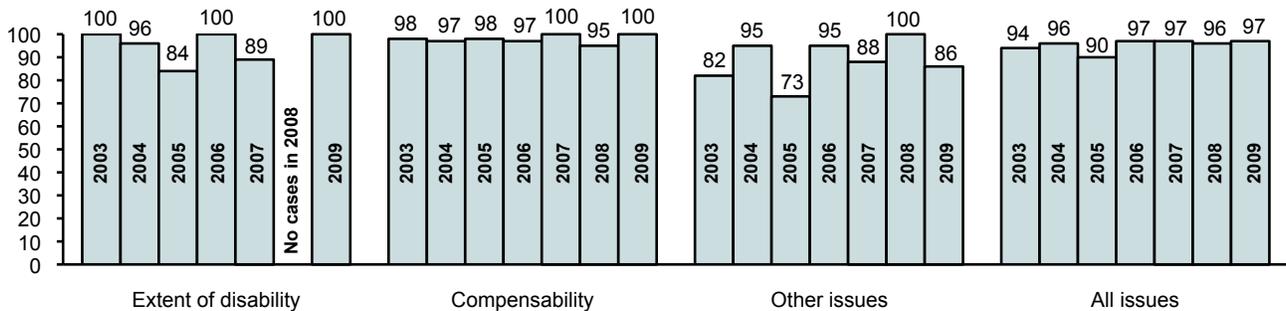
WCB affirmation rates

The court affirmed the board in all cases except one other-issue case. The issue was insurer penalty. The overall affirmation rate was 97.4 percent. 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 31.7 percent of cases (includes multiple-insurer disputes), down from 2008's 47.9 percent. There were no permanent total disability cases (PTD awarded at some level). The median time lag from appeal to order was 553 days (18.2 months), 71 days longer than 2006's then-record-high 482 days. The median time from injury to order was 1,790 days (4.9 years). Attorney fees in eight appellate judgments (based on the date of the appellate judgment, typically issued two months or more after the slip opinion) totaled \$69,600; the average fee was \$8,700. 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).

Figure 2. WCB affirmation rates (percent)



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