

Oregon Court of Appeals 2010 Workers' Compensation Summary

Information Management Division

Department of Consumer and Business Services

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Appeals

In 2010, there were 76 Workers' Compensation Board (WCB) decisions appealed to the Oregon Court of Appeals, one more than in 2009. See Figure 1. The rate at which board-review orders (excluding third party) were appealed to the court was 15 percent for orders on review (the lowest rate since at least 1983) and 12 percent for all orders. The worker was the petitioner in 67 percent of the cases with a 2010 court decision or remand.

Orders

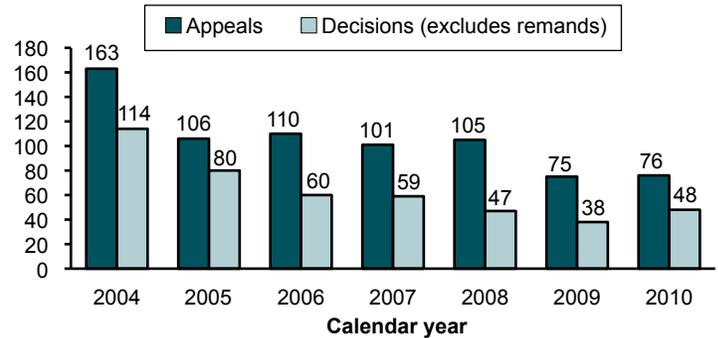
There were 48 court decisions on WCB orders in 2010 (based on the date of the slip opinion), 10 more than 2009's record-low count. These court decisions were affirmations or reversals of WCB on workers' compensation cases. The count excludes:

- Court dismissals (26 cases). The reasons for court dismissal were as follows: petitioner motion, 38 percent; settlement, 35 percent; petitioner in default, 12 percent; want of prosecution, 12 percent; and timeliness, 4 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 directs a specific resolution by the board. The reasons for remanding (one case each): the board didn't have the benefit of a recent court decision, the court disagreed with the board's interpretation of a statute, and for the board to determine something.
- WCD contested cases (three cases). The director found that two workers were ineligible for vocational service benefits, and another was not entitled to interim medical benefits. The court affirmed the director's order in each 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 (64.6 percent) was down from the 2007-2009 values of more than 70 percent, while the relative frequency of cases about extent of permanent or temporary disability (16.7 percent) was the highest since 2005.

Figure 1. Number of appeals and decisions



2010 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	7	14.6	100	0
Affirm/no change	7			
Increase	0			
Decrease	0			
Extent of temp. disability	1	2.1	100	0
Affirm/no change	1			
Increase	0			
Decrease	0			
ALL EXTENT OF DISABILITY	8	16.7	100	0
Claim denial	19	39.6	94.7	1
<u>WCB accept</u>	8			
Court accept	8			
Court deny	0			
<u>WCB deny</u>	11			
Court accept	1			
Court deny	10			
Aggravation denial	0	0		0
<u>WCB accept</u>	0			
Court accept	0			
Court deny	0			
<u>WCB deny</u>	0			
Court accept	0			
Court deny	0			
Partial denial	12	25.0	100	0
<u>WCB accept</u>	3			
Court accept	3			
Court deny	0			
<u>WCB deny</u>	9			
Court accept	0			
Court deny	9			
ALL COMPENSABILITY	31	64.6	96.8	1
OTHER ISSUES	9	18.8	88.9	2
ALL ISSUES	48	100	95.8	3

* Remands are excluded from these counts and calculations. Percentages may not add to totals due to rounding.

The most frequent other issues (including those in cases with a specified issue) were insurer penalty, five cases; attorney fees, four cases; timeliness, three cases; and evidence, three cases.

Issue disposition

Court dispositions and WCB affirmation rates are given in the table. On compensability issues, the court set aside denials in 12 of 31 cases (38.7 percent). The board had ruled that denials should be set aside in 11 of these 31 cases.

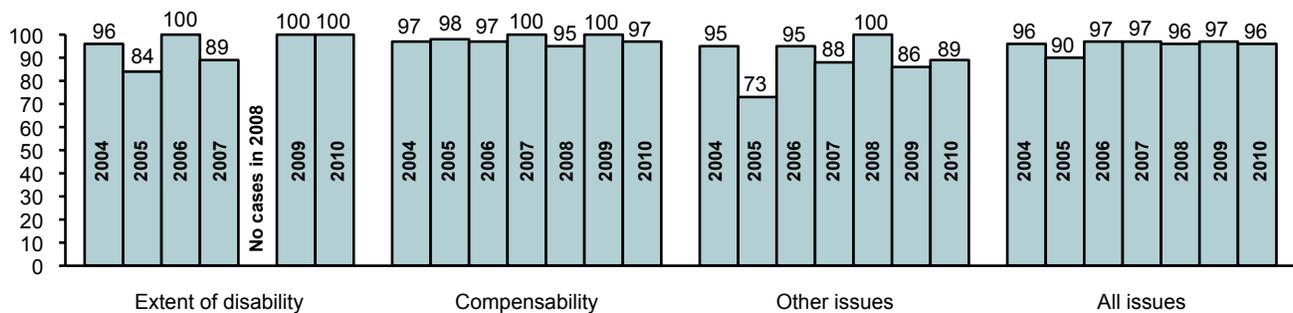
WCB affirmation rates

The court affirmed the board in all cases except one whole-claim denial case and one other-issue (jurisdiction) case. The overall affirmation rate was 95.8 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 39.2 percent of cases (includes multiple-insurer disputes). In the only permanent total disability case (PTD awarded at some level), the court affirmed the PTD rescission. The median time lag from appeal to order was 573 days (18.8 months), 20 days longer than 2009's then-record-high value. The median time from injury to order was 1,570 days (4.3 years). Attorney fees in 14 appellate judgments (based on the date of the appellate judgment, typically issued two months or more after the slip opinion) totaled \$92,400; the average fee was \$6,600. 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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