



Workers' Compensation Board 2003 Board-Review Summary

Research & Analysis Section

Department of Consumer & Business Services

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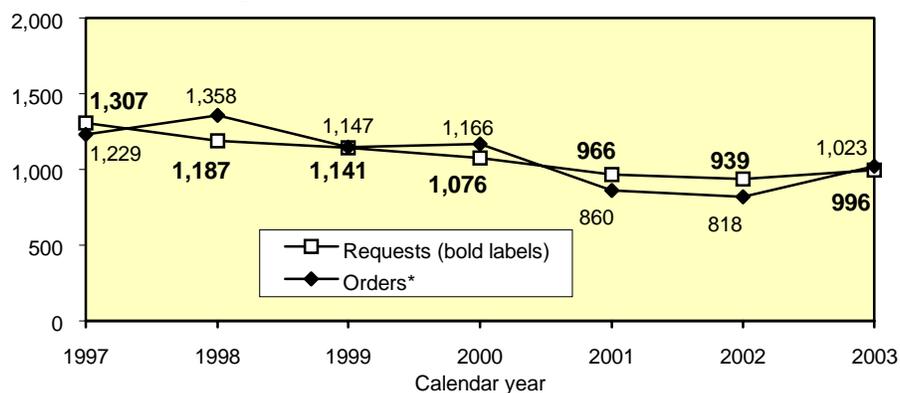
by **Russ Reed**

Requests. In 2003 there were 996 requests for Oregon Workers' Compensation Board review of decisions of the board's Hearings Division, about 6.1 percent more than in 2002. The worker was the appellant in 58.7 percent of the cases.

Original Orders. During 2003, the board issued 1,023 original orders, 25.1 percent more than in 2002. See Figure 1. "Original orders" excludes reconsideration orders and orders on remand from the courts; the count also excludes five third-party cases and one crime victim case. The data below, except Figure 1, exclude board remands to the Hearings Division and cases not directly dealing with worker claims. Claim disposition agreements and board own motion orders are not discussed here.

The breakout of original board-review orders by order type: orders on review, 84.5 percent; all settlements, 6.1 percent; and dismissals, 9.4 percent.

Figure 1. Board review requests and orders



*Note: Order counts exclude reconsideration orders, orders on remand, third party cases, crime victim cases and attorney fee cases.

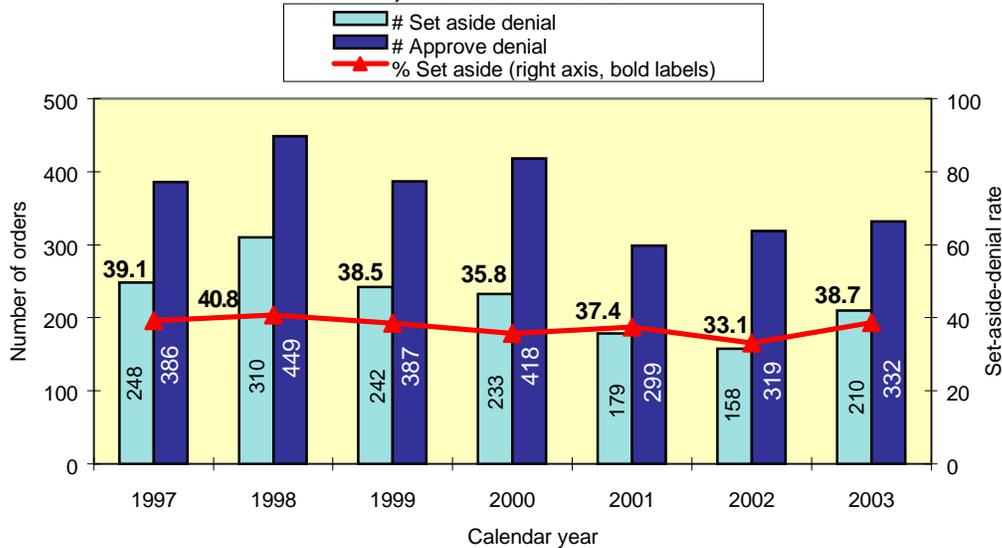
Analyzed Orders. Original orders affirmed or dismissed by the court are analyzed as original orders, but the order date is considered to be the date of the court's action. Court "reverse and remand" cases are analyzed as "on remand" and the date is considered to be the date of the board's on-remand order. Cases *pending* court review or board order on remand are not analyzed. Table 1 depicts the order types, which are the basis of most subsequent analyses.

Insurer. SAIF was the insurer in 32.1 percent of the cases in 2003, about the same as in 2002.

Table 1. Board review order types, 2003

Order type	Count	Percentage
Order on review	770	79.9%
Stipulation	10	1.0%
Disputed claim settlement	54	5.6%
Dismissal	95	9.9%
Order on remand	12	1.2%
Stip. on remand	3	0.3%
DCS on remand	17	1.8%
Dismissal on remand	3	0.3%
All order types	964	100.0%

Figure 2. Counts of compensability orders on review and orders on remand, with set-aside-denial rates



Issue frequency. Table 2, in the “percentage of orders” column, gives issue relative frequencies for orders on review and orders on remand. The percentage of 2003 order on review and order on remand cases with the compensability issues of whole-claim or partial denial (69.3 percent) was the highest on record, while the percentage of cases about aggravation (2.9 percent) was the lowest on record. Figure 2 gives historical data on compensability disputes.

Issue dispositions. Table 2, in the right column, gives issue dispositions for orders on review and orders on remand. Figure 2 depicts the rates at which denials have been historically set aside. The “set aside denial” rate for compensability (38.7 percent) was up from 2002’s near-record-low 33.1 percent; for aggravation (17.4 percent), it was the second lowest on record (after 2001’s 16.2 percent). The “increase” rate for extent of permanent disability (3.3 percent) was just above 2001’s record-low 2.7 percent, while temporary disability (20.0 percent) was much above 2002’s near-record-low 3.2 percent.

Permanent disability. In 2003, the board issued 125 orders on extent of permanent disability, including stipulations. For orders on review and orders on remand, dispositions are given in Table 2 and are discussed above. For all order types, dispositions were: affirm, 80.0; decrease award, 16.8 percent; and increase award, 3.2 percent.

Table 2. Issues and dispositions of 770 board orders on review and 12 orders on remand in 2003

Issue and disposition	Number of orders	Percentage of orders*	Percentage disposition
Compensability	542	69.3	
Set aside denial	210		38.7
Affirm denial	332		61.3
Permanent disability	121	15.5	
Increase	4		3.3
Decrease	18		14.9
Affirm	99		81.8
Temporary disability	35	4.5	
Increase	7		20.0
Decrease	9		25.7
Affirm	19		54.3
Aggravation	23	2.9	
Set aside denial	4		17.4
Affirm denial	19		82.6
Responsibility	28	3.6	-
Insurer penalty	78	10.0	
Yes	18		23.1
No	60		76.9
Other issue	217	27.7	
Yes	52		24.0
No	165		76.0
Total issues	1,044		

Notes: Table excludes settlements.

*Some orders resolve more than one issue, so the sum of these percentages exceeds 100.

For disability issues, dispositions are stated with respect to the hearing award. For compensability issues, dispositions are stated with respect to the insurer action. For other issue, “yes” indicates a decision in favor of the worker.

Average permanent partial disability *decreases* in 2003 were 17.4 scheduled degrees, 76.5 unscheduled degrees, and 45.5 degrees combined. Total net PPD awarded (the value of all increases, minus the value of all decreases) was a net *decrease* of \$250,100 in 2003.

There were two orders about permanent total disability in 2003 (where the board granted, rescinded, or affirmed the award of PTD). In one case, the board affirmed a hearing grant. In the other case, the board, on remand from the Court of Appeals, affirmed a hearing grant (after having reversed the judge on the original review).

Sanctions. In three cases, the board considered the issue of attorney sanctions for an appeal that was frivolous, made in bad faith, or for harassment purposes. In one case, the board reversed a hearing order that awarded sanctions against a claimant's attorney. In the other cases, sanctions for review and reconsideration requests, against insurer attorneys, were denied.

Hearing affirmations rates. For extent of disability, the rates are given in Table 2 (percentage disposition of "affirm"). For the issues of compensability, aggravation, and penalty, the rates are not determinable from the table; instead, matching of hearing and board-review cases is required. For these three issues, the 2003 hearing affirmation rates were 86.3 percent, 76.9 percent, and 74.6 percent, respectively (compared to 83.6, 88.2, and 73.7 percent for 2002).

Based on the "affirm/reverse/modify" codes, 80.7 percent of all 2003 orders on review and orders on

remand (combined) affirmed the administrative law judge on *all* issues (compared to 76.2 percent in 2002). This is the highest rate going back to at least 1997, the earliest year for which data are available. About 10.5 percent reversed the judge, and 8.8 percent affirmed *part* of the judge's order (A/R/M code of "modify").

Disputed claim settlements. The board approved 71 DCSs in 2003 (including original orders, reconsideration orders, and on-remand orders). In consideration for not contesting denials, insurers paid to workers a total of \$898,000. The average amount of \$12,650 was very close to the averages for 2000, 2001, and 2002.

Time lags. The median time from request to order on review was 168 days (5.5 months) for 2003. The median time from court remand to board order on remand (excludes settlements and dismissals) was 80 days (2.6 months).

Attorney fees. The board directed payment of fees totaling \$721,000 to claimant attorneys. The average fee was \$2,261 (compared to \$2,227 in 2002). About 70.4 percent of all fees were assessed against insurers (70.5 percent in 2002), 27.2 percent were taken from DCS consideration, and 2.4 percent were out of worker compensation.

The board also reduced hearing-awarded fees by over \$438,000 in 2003 (about 4.9 percent of total 2003 hearing fees). Most of these fee reductions were due to reversal of the judge on the primary issue, while some were due to successful challenges to the fee amounts.

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