



# Workers' Compensation Board 2009 Board-Review Summary

Information Management Division

Department of Consumer and Business Services

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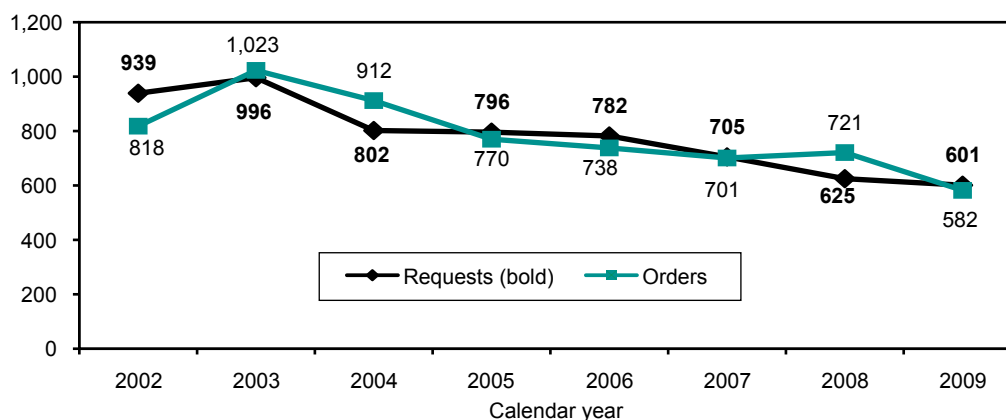
## Requests

In 2009, the Oregon Workers' Compensation Board received 601 requests for review of administrative law judge decisions, 3.8 percent fewer than in 2008. The worker was the appellant in 60.6 percent of these requests.

## Original orders

The board issued 582 original orders in 2009, 19.3 percent fewer than in 2008 (see graph). "Original orders" exclude reconsiderations, orders on remand from the courts, and third-party and crime-victim orders. (There were five third-party and two crime-victim orders in 2009.) The breakout by order type: orders on review (including remands to hearing), 82.3 percent; all settlements, 6.5 percent; and dismissals, 11.2 percent.

**Board review requests and original orders**



Order counts exclude reconsideration orders, orders on remand, third-party orders, and crime-victim cases. Multiple-case requests and orders are counted as one request and one order.

## Analyzed orders

To analyze data about the final disposition of issues, analyses below considered (1) unappealed orders in 2009, (2) orders affirmed or dismissed by the courts in 2009, (3) board on-remand orders in 2009 (court "reverse and remand"), and (4) 2009 board-approved settlements after court appeal. See Table 1. Cases pending court review or board order on remand are not analyzed. Note: A law change effective in 2008 allows the board to approve settlements without waiting for the court to dismiss.

## Issues

Issue frequencies for orders on review and orders on remand are given in Table 2, "percentage of orders" column. The percentage of cases about whole-claim or partial denial (43.1 + 42.9 = 86.0 percent) was the highest on record, and the percentage of cases about permanent disability (13.8 percent) was greater than 2008's record-low 13.1 percent. On the other hand, the percentage of cases about temporary disability (3.0 percent) was the lowest since 1997. The percentage of cases about insurer penalty (10.3 percent) was typical of most years since 1996.

**Table 1. Order types for board-review orders finally resolving contested issues, 2009**

Order type	Count	Percentage
Order on review	459	79.7%
Stipulation	9	1.6%
Disputed claim (DCS)	28	4.9%
Dismissal	64	11.1%
<b>Subtotal</b>	<b>560</b>	<b>97.2%</b>
Order on remand	5	0.9%
Stipulation on remand	0	0.0%
DCS on remand	0	0.0%
Dismissal on remand	0	0.0%
Court dismiss to settle	1	0.2%
Court dismiss for DCS	10	1.7%
<b>Subtotal</b>	<b>16</b>	<b>2.8%</b>
<b>All order types</b>	<b>576</b>	<b>100.0%</b>

See explanation in text. Excludes remands to hearing.

## Permanent disability

The board, in 2009, issued 65 orders, including stipulations, on permanent disability. Their dispositions: affirm award, 81.5 percent; decrease award, 6.2 percent; and increase award, 12.3 percent. Table 2 gives dispositions for orders on review and orders on remand (only).

In “old PPD” cases (injury date before Jan. 1, 2005), the board increased two awards and decreased one. In “new PPD” cases, members increased six awards and decreased three. The total net PPD awarded (the value of all increases, less the value of decreases) was plus \$88,000. The board made no permanent total disability award changes in 2009, but affirmed one hearings order that rescinded a PTD award.

## Hearing affirmation rates

The board affirmed administrative law judges (ALJs) on permanent and temporary disability issues at 81.3 percent and 78.6 percent, respectively (Table 2, right column). For other frequent issues, affirmation rates were: claim denial, 90.3 percent; partial denial, 82.7 percent; and penalty, 67.4 percent. (Table 2 gives dispositions of these issues, except for penalty, with respect to the insurer decision.)

In 2009, board orders on review and orders on remand affirmed 81.8 percent of ALJ decisions on all issues (based on the affirm/reverse/modify classifications). About 10.1 percent of these orders reversed the ALJ, and 8.1 percent affirmed part of the judge’s order.

## Attorney fees

The board directed payment of fees totaling more than \$778,000 to claimant attorneys. The average fee was \$3,600 (compared to \$3,150 in 2008). About 77.6 percent of all fees were assessed against insurers, 19.3 percent were from disputed claim settlement (DCS) proceeds, and 3.1 percent were from disability award increases.

The board also reduced hearing-awarded fees by almost \$321,000 in 2009 (about 2.8 percent of total 2009 hearing fees).

## Other data

The median time lag from request to order on review was 180 days (5.9 months). The median time from docket (the date the briefing schedule is completed) to order date was 95 days, well below the 117 days of 2008. The board approved 38 DCSs in 2009 (includes orders after court remand or dismissal). Insurers paid to workers, via these DCSs, \$795,000 (\$20,900 per settlement) for not contesting denials. SAIF was the insurer in 35.6 percent of 2009 cases. Attorney sanctions were requested against two attorneys for employer frivolous appeal. The board denied sanctions in both cases (see ORS 656.390).

**Table 2. Issues and dispositions of orders on review and orders on remand, 2009**

Issue and disposition	Number of orders	Percentage of orders**	Percentage disposition
<b>Claim denial</b>	<b>200</b>	<b>43.1%</b>	
Set aside denial	62		31.0%
Affirm denial	138		69.0%
<b>Partial denial</b>	<b>199</b>	<b>42.9%</b>	
Set aside denial	79		39.7%
Affirm denial	120		60.3%
<b>Aggravation denial</b>	<b>9</b>	<b>1.9%</b>	
Set aside denial	1		11.1%
Affirm denial	8		88.9%
<b>Permanent disability</b>	<b>64</b>	<b>13.8%</b>	
Increase*	8		12.5%
Decrease*	4		6.3%
Affirm*	52		81.3%
<b>Temporary disability</b>	<b>14</b>	<b>3.0%</b>	
Increase*	0		0.0%
Decrease*	3		21.4%
Affirm*	11		78.6%
<b>Responsibility</b>	<b>13</b>	<b>2.8%</b>	
<b>Penalty</b>	<b>48</b>	<b>10.3%</b>	
Yes	14		29.2%
No	34		70.8%
<b>Subjectivity</b>	<b>7</b>	<b>1.5%</b>	
Yes	4		57.1%
No	3		42.9%
<b>Premature closure</b>	<b>14</b>	<b>3.0%</b>	
Yes	2		14.3%
No	12		85.7%
<b>Attorney Fee</b>	<b>25</b>	<b>5.4%</b>	
Yes	22		88.0%
No	3		12.0%
<b>Temp. disab. Rate</b>	<b>5</b>	<b>1.1%</b>	
Increase*	3		60.0%
Decrease*	0		0.0%
Affirm*	2		40.0%

Notes: Excludes settlements. \*Dispositions stated with respect to the hearing award. \*\*Orders may resolve more than one issue, so percentages add to more than 100.

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