

Workers' Compensation Board 2010 Board-Review Summary

Information Management Division

Department of Consumer and Business Services

December 2011

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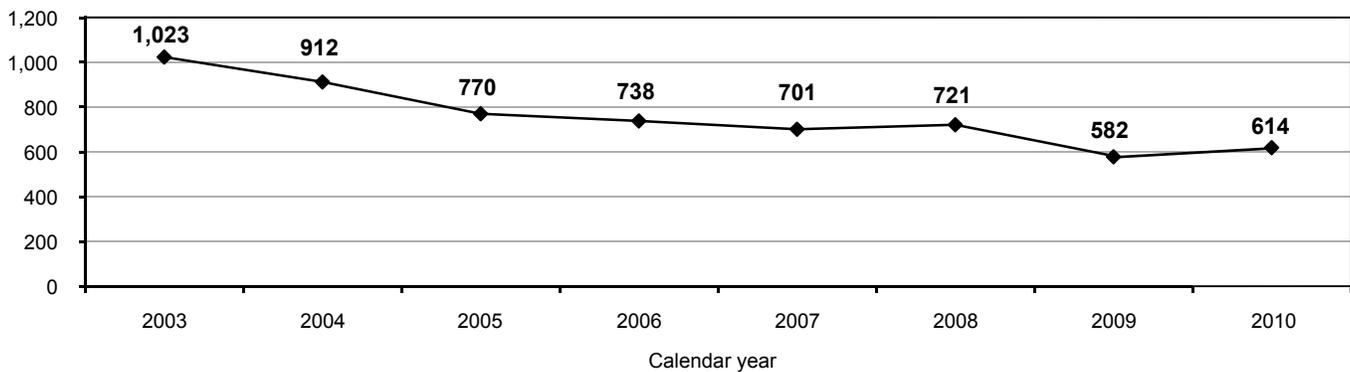
Requests

In 2010, the Oregon Workers' Compensation Board received 588 requests for review of administrative law judge decisions, 2.2 percent fewer than in 2009. Workers made 61.6 percent of these requests.

Original orders

The board issued 614 original orders in 2010, 5.5 percent more than in 2009 (see graph). Counts exclude reconsiderations, orders on remand from the courts, 13 third-party orders, and two crime victim orders. The breakout by order type: orders on review (including remands to hearing), 81.4 percent; settlements, 8.7 percent; and dismissals, 9.9 percent.

Board review original orders*



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

Analyzed orders

To analyze data about final issue dispositions, analyses below considered (1) un-appealed orders in 2010, (2) orders affirmed or dismissed by the courts in 2010, (3) board on-remand orders in 2010 (court "reverse and remand"), and (4) 2010 board-approved settlements after court appeal. See Table 1. Cases pending court review or board order on remand are not analyzed.

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 (41.5 percent + 40.5 percent = 82.0 percent) was down from 2009's record-high 86 percent. The percentage of cases about permanent disability (13.5 percent) was typical of recent years. On the other hand, the percentage of cases about temporary disability (3.1 percent) was the second lowest since 1997. The percentage of cases about insurer penalty (11.8 percent) was fairly typical.

Table 1. Order types for board-review orders finally resolving contested issues, 2010

Order type	Count	Percentage
Order on review	477	79.2%
Stipulation	12	2.0%
Disputed claim (DCS)	41	6.8%
Dismissal	59	9.8%
Subtotal	589	97.8%
Order on remand	5	0.8%
Court dismiss, stipulation	4	0.7%
Court dismiss for DCS	4	0.7%
Subtotal	13	2.2%
All order types	602	100.0%

See explanation in text. Excludes remands to hearing.

Permanent disability

The board, in 2010, issued 67 orders, including stipulations, on permanent disability. Their dispositions: affirm award, 79.1 percent; decrease award, 10.4 percent; and increase award, 10.4 percent. Table 2 gives dispositions for orders on review and orders on remand, only.

In PPD cases with injury date before 2005, the board increased one award and decreased one. In PPD cases with injury date in 2005 or later, members increased six awards and decreased six. Total net PPD awarded (the value of all increases, less the value of decreases) was approximately minus \$105,000 – only two orders increased work disability, while six decreased work disability (five decreased it to zero, three of which still allowed impairment). The board made no permanent total disability award changes in 2010.

Hearing affirmation rates

The board affirmed administrative law judges (ALJs) on permanent and temporary disability issues at 81.5 percent and 86.7 percent, respectively (Table 2, right column). For other frequent issues, affirmation rates were: claim denial, 88.3 percent; partial denial, 82.9 percent; and penalty, 72.5 percent. (Table 2 gives dispositions of these issues, except for penalty, with respect to the insurer decision.)

In 2010, board orders on review and orders on remand affirmed 80.6 percent of ALJ decisions on all issues (based on the affirm/reverse/modify classifications). About 10.6 percent of these orders reversed the ALJ, and 8.8 percent affirmed part of the judge's order.

Attorney fees

The board directed payment of fees totaling \$980,000 to claimant attorneys. The average fee was \$4,100 (\$3,600 in 2009). About 80.2 percent of all fees were assessed against insurers, 18.2 percent were from disputed claim settlement (DCS) proceeds, and 1.6 percent were from disability award increases. Assessed fees include those awarded, on review, for attorney services at hearing.

The board also reduced hearing-awarded fees by \$348,000 in 2010 (about 3.0 percent of total 2010 hearing fees). Most fee reductions occur because the board reversed the hearing decision that led to the fees.

Other data

The median time lag from request to order on review was 195 days (6.4 months). The median time from docket (date the briefing schedule is completed) to order date was 107 days. The board approved 45 DCSs in 2010 (includes settlements approved after appeal to the Court of Appeals). Insurers paid \$1,131,000 (compared to 795,000 in 2009), or \$25,100 per settlement, for not contesting denials. SAIF was the insurer in 38.9 percent of 2010 cases. Three claimants and one employer requested attorney sanctions for frivolous appeal (ORS 656.390); the board declined to impose sanctions in all four cases.

Table 2. Issues and dispositions of orders on review and orders on remand, 2010

Issue and disposition	Number of orders	Percentage of orders**	Percentage disposition
Claim denial	200	41.5%	
Set aside denial	81		40.5%
Affirm denial	119		59.5%
Partial denial	195	40.5%	
Set aside denial	68		34.9%
Affirm denial	127		65.1%
Aggravation denial	13	2.7%	
Set aside denial	3		23.1%
Affirm denial	10		76.9%
Permanent disability	65	13.5%	
Increase*	5		7.7%
Decrease*	7		10.8%
Affirm*	53		81.5%
Temporary disability	15	3.1%	
Increase*	0		0.0%
Decrease*	2		13.3%
Affirm*	13		86.7%
Responsibility	17	3.5%	
Penalty	57	11.8%	
Yes	28		49.1%
No	29		50.9%
Subjectivity	4	0.8%	
Yes	2		50.0%
No	2		50.0%
Premature closure	7	1.5%	
Yes	4		57.1%
No	3		42.9%
Attorney Fee	24	5.0%	
Yes	19		79.2%
No	5		20.8%
Temp. disab. Rate	6	1.2%	
Increase*	1		16.7%
Decrease*	2		33.3%
Affirm*	3		50.0%

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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440-2363 (12/11/COM)

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