

Workers' Compensation Board 2011 Board-Review Summary

Information Management Division

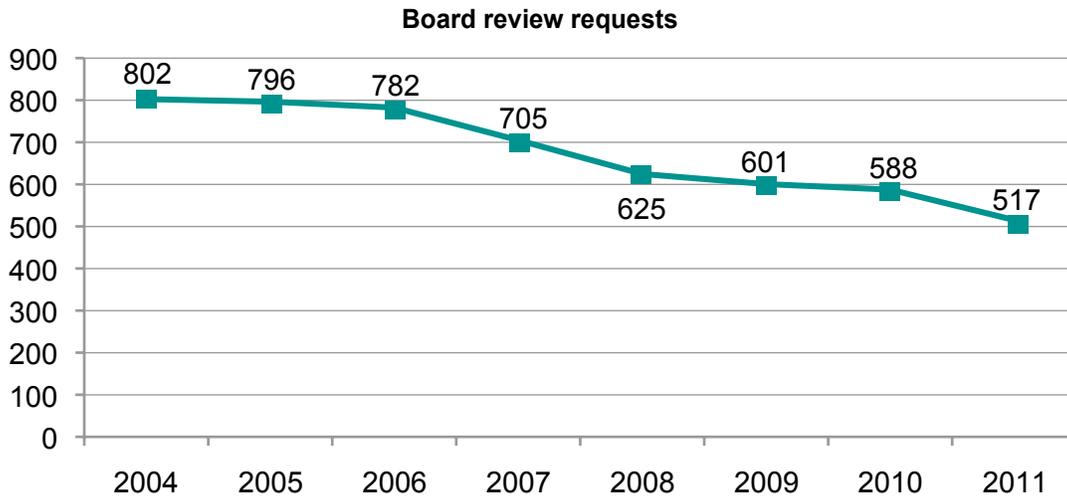
Department of Consumer and Business Services

September 2012

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Requests

In 2011, the Oregon Workers' Compensation Board received 517 requests for review of hearings decisions, 12 percent fewer than in 2010 (see graph). Workers made 68 percent of these requests.



Original orders

The board issued 551 original orders in 2011, 10 percent fewer than in 2010. Counts exclude reconsiderations, orders on remand from the courts, 14 third-party orders, and four crime victim orders. The breakout by order type: orders on review (including remands to hearing), 82 percent; settlements, 7 percent; and dismissals, 11 percent.

Analyzed orders

To describe dispute outcomes, the analyses below considered (1) unappealed orders in 2011, (2) orders affirmed or dismissed for cause by the courts in 2011, (3) board on-remand orders in 2011, and (4) 2011 board-approved settlements after court appeal. See Table 1. Cases pending court review or board order on remand will be analyzed when their outcomes become final.

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 (51 percent + 37 percent = 88 percent) was the highest on record. The percentages of cases about permanent disability (less than 12 percent) and temporary disability (1.6 percent) were record-low values. The percentage of cases about insurer penalty (9 percent) was the lowest since 2004.

Compensability

The board reversed insurer denials in 27 percent of claim-denial cases and 39 percent of partial-denial cases. Together, the board set aside compensability denials (excluding aggravation) in 32 percent of the cases, tying the record-low value of 1983. ("Reversed insurer denials" includes board affirmation of ALJ orders setting aside a denial, and reversal of ALJ orders upholding a denial.)

Table 1. Order types for board-review orders finally resolving contested issues, 2011

Order type	Count	Percentage
Original Orders		
Order on review	434	78.1%
Stipulation	7	1.3%
Disputed claim (DCS)	33	5.9%
Dismissal	63	11.3%
Subtotal	537	96.6%
After court action		
Order on remand	5	0.9%
Stipulation	3	0.5%
DCS	11	2.0%
Subtotal	19	3.4%
All order types	556	100.0%

See explanation in text. Excludes remands to hearing. Court action may be to remand or dismiss for settlement.

Permanent disability

The board, in 2011, issued 52 orders, including stipulations, on permanent disability. Their dispositions: affirm award, 79 percent; decrease award, 8 percent; and increase award, 13 percent. Table 2 gives dispositions for orders on review and orders on remand, only.

In PPD cases with injury date after 2004, members increased seven awards and decreased four. Six orders increased work disability, while three decreased it to zero (one of which still allowed impairment). Total net PPD awarded was approximately \$64,000. The board, on review, made no permanent total disability award changes in 2011.

Hearing affirmation rates

The board affirmed administrative law judges (ALJs) on permanent and temporary disability issues at 80 percent and 57 percent, respectively (Table 2, right column). Affirmation rates were 91 percent for claim denial, 84 percent for partial denial, and 63 percent for penalty. (Table 2 gives dispositions of these issues, except for penalty, with respect to the insurer decision. Denial-issue affirmation rates include cases where ALJs upheld or set aside denials.)

In 2011, board orders on review and orders on remand affirmed 82 percent of ALJ decisions on all issues (based on the affirm/reverse/modify classifications). About 10 percent of these orders reversed the ALJ, and 8 percent affirmed part of the judge's order.

Attorney fees

The board directed payment of fees totaling \$900,000 to claimant attorneys. The average fee was \$4,160 (\$4,120 in 2010). About 76 percent of all fees were assessed against insurers, 22 percent were from disputed claim settlement (DCS) proceeds, and 2 percent were from disability award increases. The board also reduced fees awarded in appealed hearings orders by \$382,000 in 2011.

Other Data

The median time lag from request to order on review was 194 days (6.4 months). The median time from docket (date the briefing schedule is completed) to order date was 108 days. The board approved 44 DCSs in 2011 (includes orders after court remand or dismissal). Insurers paid \$927,000 (\$21,000 per settlement) for not contesting denials. SAIF was the insurer in 36 percent of 2011 cases. The board declined to impose attorney sanctions for frivolous appeal requested by one claimant and one employer (ORS 656.390).

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	226	51.5%	
Set aside denial	61		27.0%
Affirm denial	165		73.0%
Partial denial	161	36.7%	
Set aside denial	63		39.1%
Affirm denial	98		60.9%
Aggravation denial	6	1.4%	
Set aside denial	3		50.0%
Affirm denial	3		50.0%
Permanent disability	51	11.6%	
Increase*	6		11.8%
Decrease*	4		7.8%
Affirm*	41		80.4%
Temporary disability	7	1.6%	
Increase*	2		28.6%
Decrease*	1		14.3%
Affirm*	4		57.1%
Responsibility	9	2.1%	
Penalty	40	9.1%	
Yes	19		47.5%
No	21		52.5%
Subjectivity	3	0.7%	
Yes	1		33.3%
No	2		66.7%
Premature closure	7	1.6%	
Yes	2		28.6%
No	5		71.4%
Attorney Fee	21	4.8%	
Yes	14		66.7%
No	7		33.3%
Temp. disab. Rate	2	0.5%	
Increase*	0		0.0%
Decrease*	0		0.0%
Affirm*	2		100.0%

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 (9/12/COM)

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