

Oregon Supreme Court Workers' Compensation Summary, 2003-2005

Information Management Division

Department of Consumer & Business Services

April 2006

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Requests and decisions

There were 50 **petitions** for Oregon Supreme Court review of Court of Appeals decisions on Workers' Compensation Board cases during calendar years 2003-2005. That's 16.7 requests per year, compared with 30.3 per year for 1997-2002. The appeal rate for Court of Appeals WCB cases was 19.4 percent, compared with 25 percent for 1997-2002.

The higher court wrote **decisions** (including remands) on nine Court of Appeals WCB cases. Thus 18 percent of petitioned lower court decisions were selected for review, compared with 13.7 percent for 1997-2002. The percentage of Court of Appeals decisions that were reviewed by the higher court was 3.5 percent; in 1997-2002, it was 3.4 percent. See the graph below.

The **petitioner** was the worker in eight of the nine Supreme Court cases.

Issues

Permanent disability and worker noncooperation denial each were issues in two cases. See the table on the reverse.

Affirmation rates

The Oregon Supreme Court affirmed the **Court of Appeals** in two of nine cases. The high court affirmed the **Workers' Compensation Board** in three cases. (Because "whether the Court of Appeals decision appears to be wrong" is a criterion for granting review, these figures should be used for information only, and not to rate the court or board.)

Time lags

The median time lag from **petition** to court decision (slip opinion published) was 602 days (20 months), slightly shorter than the 609 days for 1997-2002. The median lag from **hearing request** to court decision was 5.3 years. The median time from **injury** to decision was 8.1 years.

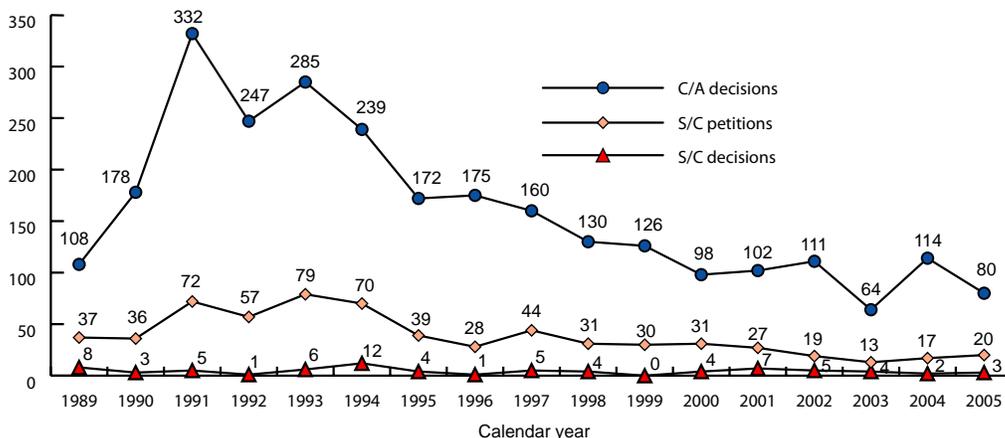
Summary of significant WCB cases:

In *SAIF Corp. v. Dubose*, 335 Or 579 (2003), SAIF denied a claim for worker noncooperation, the board set aside the denial, and the Court of Appeals reversed the board because the worker had not requested an *expedited* hearing. The Oregon Supreme Court reversed the lower court, ruling that in ORS 656.291 the Legislature did not intend — in requiring an *expedited* hearing on a noncooperation denial — to impose a burden on the worker, but instead to direct how the board should handle the case.

In *Vsetecka v. Safeway Stores Inc.*, 337 Or 502 (2004), the court found that ORS 656.265 explicitly does not require a formalistic injury notice, but rather requires injured workers to include enough information for the employer to know that there may be a compensable injury. Claimant's three written entries in the injury log were sufficient.

In *Lewis v. Cigna*, 339 Or 342 (2005), the high court ruled that a claim could not be denied for worker refusal to submit to an insurer-requested medical exam. The Legislature intended to limit sanctions in such cases to suspension of benefits.

Oregon Supreme Court on workers' compensation (WCB)



In *Morales v. SAIF Corp.*, 339 Or 574 (2005), the court determined that SAIF could reduce the time-loss rate because the worker was released to modified work, though he couldn't actually return because he had been terminated for violating work rules. The employer had satisfied the requirements of ORS 656.325(5) by creating a modified job to accommodate the worker and implementing a written policy of offering modified jobs.

Non-WCB cases:

In *Kahn v. Providence Health Plan*, 335 Or 460 (2003), the court stated that ORS 656.260(8) appears to preclude an injured worker from bringing an action for damages arising out of a managed care organization's conclusion that a proposed medical treatment is unnecessary. The circuit court did not decide on that ground, so the high

court remanded. The MCO's conclusion had come out of its "utilization review" process.

In *Day v. Advanced M&D Sales*, 336 Or 511 (2004), the court found that a worker, after filing a workers' compensation claim and receiving benefits, is not barred from later alleging that he is not a worker subject to workers' compensation law.

In *Managed Healthcare Northwest v. Department of Consumer and Business Services*, 338 Or 92 (2005), the issue was a rule prohibiting managed care organizations from using "past practices" as a basis to deny authorization of nonmember physicians from treating subject workers. The court found that the rule did not exceed agency authority, nor did it conflict with other statute or policy.

Oregon Supreme Court workers' compensation cases and issues, 2003-2005

Year	Case reference	Issue (comments or sub-issue)	Petitioner	Disposition	WCB ¹
2003					
	Gode v. SAIF Corp.	Permanent disability (objective findings)	Claimant	Vacate/remand per Lewis ²	
	Northwest Spas v. Huff	Compensability (objective findings)	Employer	Vacate/remand per Lewis ²	
	SAIF Corp. v. Dubose	Noncooperation denial (required to request <i>expedited</i> hearing?)	Claimant	Reverse	Affirmed
	Lewis v. Cigna	Noncooperation denial (required to request <i>expedited</i> hearing?)	Claimant	Vacate/remand per Dubose, above	
2004					
	Trujillo, Logsdon, Mount v. SAIF Corp. ³	Permanent disability (right to present new evidence at hearing, per Koskela)	Claimants	Affirmed	Affirmed
	Vsetecka v. Safeway Stores Inc.	Notice of workplace injury (must notice be in writing?)	Claimant	Reversed	Reversed
2005					
	Dougan v. SAIF Corp.	Board "own motion" order (no permanent disability award). Not appealable under prior statute.	Claimant	Vacate/dismiss for jurisdiction	
	Lewis v. Cigna ⁴	Sanctions for worker noncooperation (deny claim or merely suspend?)	Claimant	Reverse	Reversed
	Morales v. SAIF Corp.	Time-loss (reduce rate on release for modified job, ⁵ but terminated)	Claimant	Affirmed	Affirmed

¹Disposition with respect to WCB.

²SAIF Corp. v. Lewis, 335 Or 92 (2002).

³Three cases consolidated for review; Koskela v. Willamette Industries, 331 Or 362 (2000).

⁴This is the same case as in 2003.

⁵The job to which the worker would have been released had he not been terminated.

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