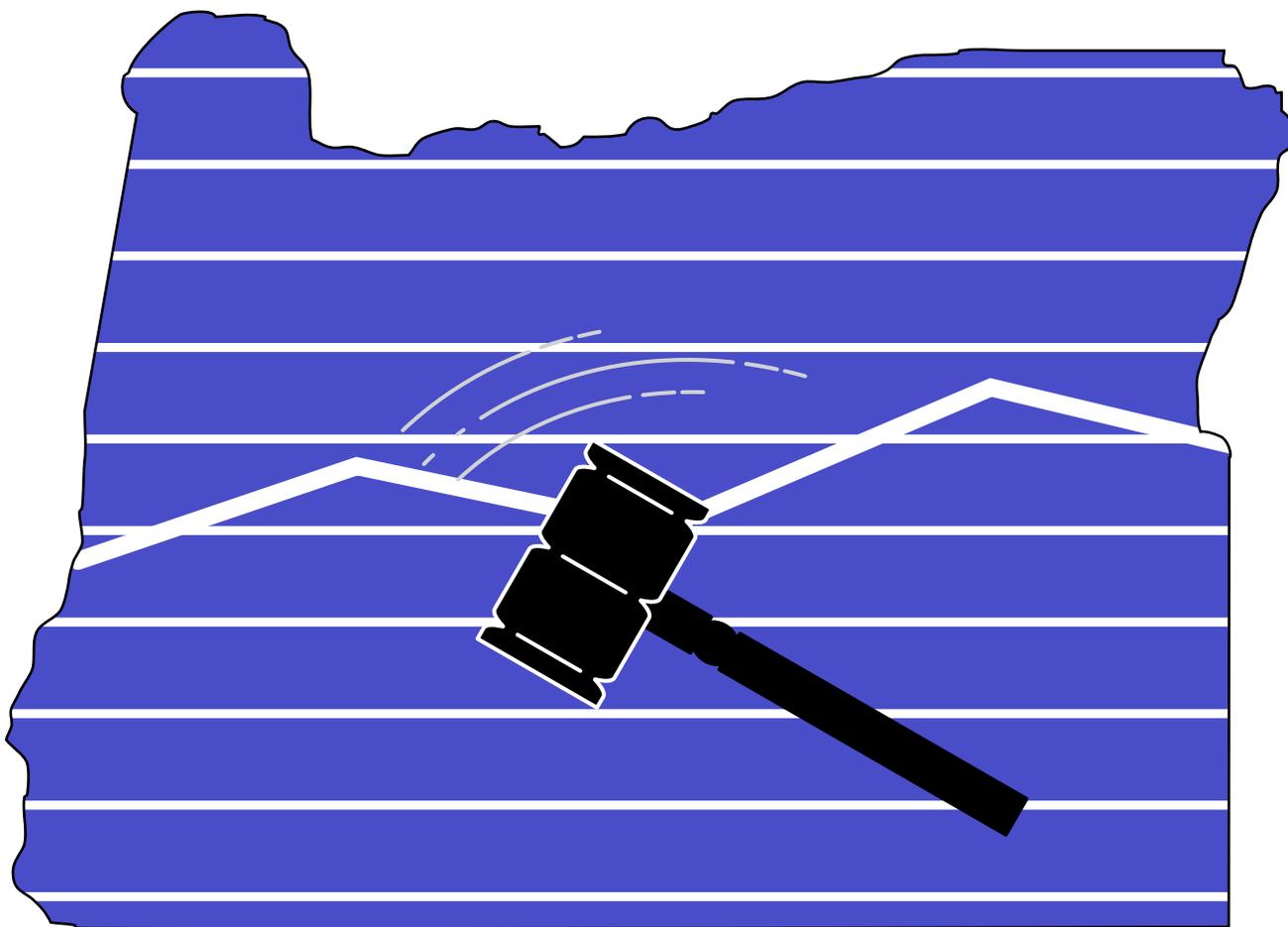


Hearings Division Statistical Report Calendar Year 2001



Research & Analysis Section
Oregon Department of
Consumer & Business Services



December 2002

Hearings Division Statistical Report Calendar Year 2001

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Introduction

The Hearings Division of the Oregon Workers' Compensation Board provides a forum for appeal in the Oregon workers' compensation system. Hearings administrative law judges (judges) carry out this function. Parties who are dissatisfied with a decision of an insurer or the Workers' Compensation Division (of the Department of Consumer and Business Services, for some issues) may appeal to the Hearings Division.

This report covers cases for which hearing orders were written during 2001, regardless of the date the hearing was requested or held. The basic unit of data is the case, not the written order. (A case is established and assigned a case number at the time of the hearing request. Sometimes an order may close more than one case.)

Excluded from this report are (1) safety cases, per Oregon Revised Statutes Chapter 654; (2) inmate injury fund cases; (3) cases not dealing with workers' compensation

claims, such as those dealing only with non-complying employer status or civil penalty assessment [exception: these cases are included in hearing request and order counts, including Figures 1 and 2]; and (4) non-closing orders, such as interim orders and orders of abatement.

Data for this report were collected by Workers' Compensation Board staff from various source documents, but primarily from the hearing order itself. Data were written to data sheets and then entered into the board's data system. Computer edits were performed in order to identify and correct inconsistent or otherwise questionable data.

Generally, 1978 is the first year with detailed statistical records. Unless otherwise indicated, record-high or record-low values are for the period 1978-2001.

Highlights and Major Trends

In 2001 the Hearings Division of the Oregon Workers' Compensation Board received 11,047 **requests** for hearing, 3.9 percent more than in 2000.

There were 10,269 closing **orders** issued by the Hearings Division in 2001, 6.1 percent fewer than in 2000.

The percentage of cases **closed by** opinion and order, 21.6 percent, was the smallest percentage since 1990's record-low 20.6 percent.

SAIF was the **insurer** in just 32.7 percent of the cases, reversing the trend of ten successive annual decreases in this percentage.

Administrative law judges completed 248 **mediations** during the year. Over 85 percent resulted in settlement, of which some 92 percent were in the form of a disputed claim settlement.

Extent of temporary disability was an **issue** in a near-record-low 3.9 percent of all cases. Claim denial was the most frequent issue (as it's been every year since 1988), with 39.7 percent of the cases. Partial denial was an issue in a record-high 38.7 percent.

In terms of the **disposition** for issues in O&Os, the "acceptance" rate for claim denial, 41.8 percent, was the second lowest on record, while that for partial denial was 52.0 percent, the third highest ever. The "yes" rates for premature closure and insurer penalty were well above their 2000 record- or near-record-low values of about one third.

The 24.6 percent "increase" rate for permanent disability in O&Os was a record low value, while the 19.1 percent "decrease" rate was the highest ever. For temporary disability, the 48.2 percent "increase" rate was close to 1999's record-low 48.1 percent. The percentage of O&O cases decided in favor of the claimant for permanent and temporary disability were 39.0 (the lowest on record) and 53.3 percent, respectively.

Four cases included requests for **sanctions** against an attorney for a hearing request that is frivolous, made in bad faith, or for the purpose of harassment. All four requests were denied by the judge.

In 2001 insurers paid to workers, as consideration for no longer contesting a denial, almost \$21.2 million in 3,899 **disputed claim settlements**. The average payment was \$5,435. DCSs accounted for 74.8 percent of all stipulations, 38.2 percent of all closing hearing orders, and 80.5 percent of all claims denied at hearing. DCSs accounted for claimant attorney fees of almost \$4.2 million, a record-high 49.1 percent of all fees at hearing.

There were 456 cases involving extent of **permanent disability** in 2001, 6.1 percent of all cases. Case dispositions were as follows: increase the award, 31.4 percent; decrease the award, 19.3 percent; and no change in the award, 49.3 percent. The average scheduled award increases were 12.7 scheduled degrees and 26.3 unscheduled degrees. Average award decreases were 19.0 scheduled degrees and 37.7 unscheduled degrees. The net amount awarded for PPD at hearing in 2001 was \$87.9 thousand, less than half of 2000's total.

There was just one **permanent total disability** grant in 2001; it was by stipulation. There were no affirmations of PTD awards, and one rescission, so the net number of PTD awards was zero.

For opinion and order cases, the **median time** from hearing request to order was 188 days (6.2 months), the same as in 2000. For O&O cases *without a postponement*, the median request-to-order time was only 138 days (4.5 months).

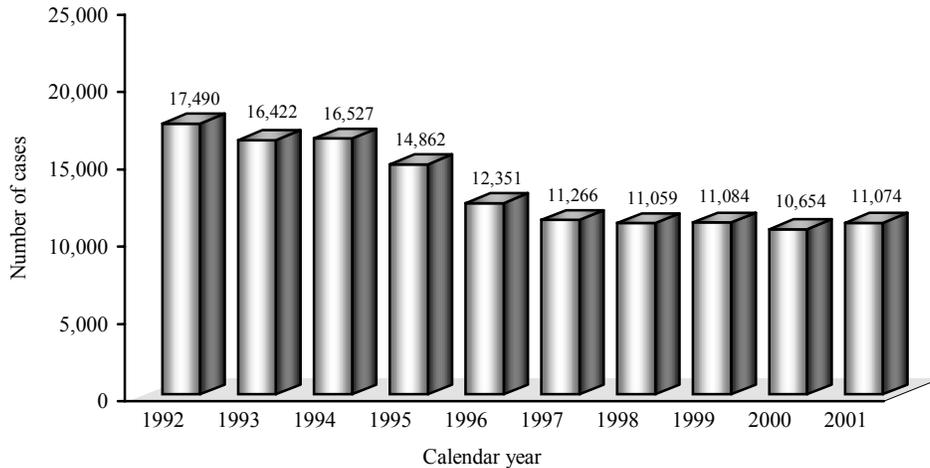
Claimant **attorney fees** totaling over \$8.5 million were approved for payment out of worker compensation or assessed against insurers in 2001 hearing orders, 6.4 percent less than in 2000. About 51.8 percent of the fees were paid out of compensation or DCS consideration, the highest percentage since 1991.

Requests for Hearing

In 2001 the Hearings Division of the Oregon Workers' Compensation Board received 11,074 requests for hearing, 3.9 percent more than in 2000. See Figure 1. (Hearing requests peaked in 1989 with 27,549 requests.)

The number of requests in 2001 includes 939 "received stipulations," stipulations that were received without a prior hearing request.

Figure 1. Requests for hearing, Oregon, 1992 - 2001



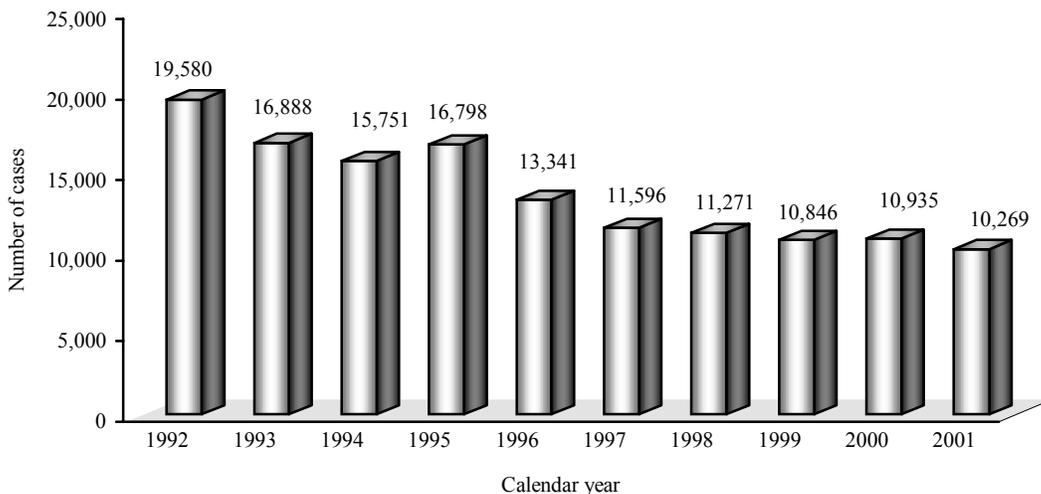
Cases Closed

There were 10,269 closing orders issued by the Hearings Division in 2001, 6.1 percent fewer than during the previous year and the fewest since 1979. See Figure 2. (Cases closed peaked in 1988 at 26,386 cases.)

include disputed claim settlements. In a **dismissal**, the judge dismisses the hearing request and there generally is no hearing. Dismissals are written when (1) the hearing requester withdraws the request; (2) the judge rules to dismiss for untimely filing, lack of jurisdiction, or other legal basis; (3) the Workers' Compensation Board approves a claim disposition agreement that disposes of all contested issues; and (4) a judge determines that there is no substantial evidence to support a responsibility finding against a particular insurer, per ORS 656.308(2)(c).

Table 1 provides data on cases closed, by order type. An **opinion and order** is written when a hearing is conducted and the administrative law judge decides the issues. (A judge may, on occasion, decide the case on the written record, alone.) A **stipulation** is an order written to record and approve an agreement of the parties. Stipulations

Figure 2. Hearing cases closed, all orders, Oregon, 1992- 2001



The percentage of cases with **order type** opinion and order, 21.6 percent, was the second-smallest percentage on record (after 1990's 20.6 percent). The percentage closed by stipulation (51.0 percent) was the highest since 1991. See Figure 3. About 73.7 percent of the dismissals were issued because the requester withdrew the hearing request.

The breakout of cases by **requester** is given in Table 2. The worker filed the request in 87.5 percent of the cases, just below 2000's 87.6 percent. Received stipulations are classified as "joint" requests.

SAIF was the **insurer** in 32.7 percent of the cases, reversing the trend of ten successive decreases in this percentage. The percentage for private insurers was 51.2 percent. (The values reported for private insurer and self-insured employer for 1998 were inaccurate due to errors in insurer classification in some cases.) See Table 3 and Figure 4. Responsibility disputes are treated as multiple cases, each with its own insurer. Some of the cases with an "unknown" insurer are appeals of department non-subjectivity determinations (disputes about whether the worker, or the employer, is subject to workers' compensation law).

Table 1. Hearing compensation cases closed by order type, Oregon, 2001

Type of Order	Number of orders	Percentage of all orders	Percentage of sub-type*
Opinion and order	2,212	21.6%	
Stipulation	1,303	12.7%	25.0%
DCS	3,899	38.2%	74.8%
Order on stipulation	8	0.1%	0.2%
All stipulations	5,210	51.0%	100.0%
Dismissal	450	4.4%	16.1%
Dismiss for CDA	286	2.8%	10.2%
Withdrawal	2,062	20.2%	73.7%
All dismissals	2,798	27.4%	100.0%
Total orders	10,220	100.0%	

* Percentage of "all stipulations" and of "all dismissals," respectively.

Figure 3. Distribution of hearing cases closed by order type, Oregon, 1992 - 2001

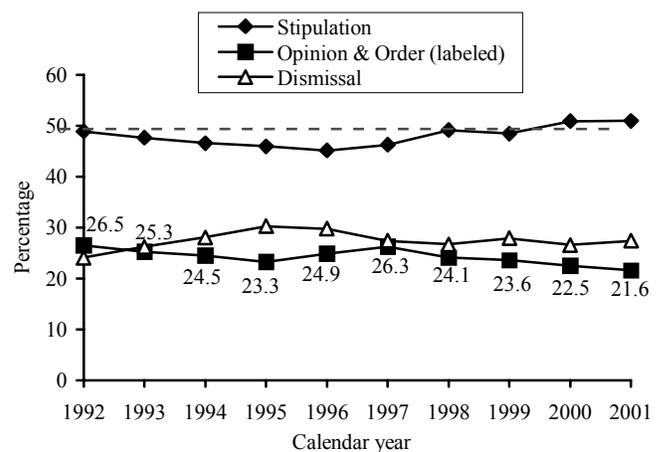


Table 2. Hearing compensation cases by requester and order type, Oregon, 2001

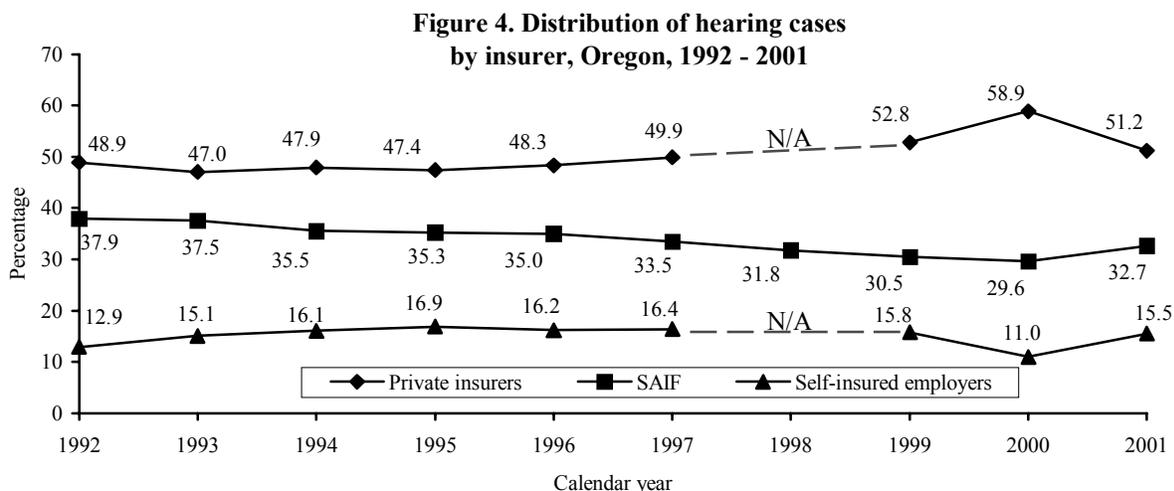
Requester	Opinion & Order		Stipulation		Dismissal		Withdrawal		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Claimant	2,040	92.2	4,180	80.2	698	94.8	2,021	98.0	8,939	87.5
Employer	33	1.5	23	0.4	7	1.0	7	0.3	70	0.7
Joint	-	0.0	939	18.0	1	0.1	-	0.0	940	9.2
Insurer	138	6.2	67	1.3	29	3.9	31	1.5	265	2.6
Other	1	0.0	1	0.0	1	0.1	3	0.1	6	0.1
Total	2,212	100.0	5,210	100.0	736	100.0	2,062	100.0	10,220	100.0

Note: Due to rounding, the sum of percentages may not equal 100.

Table 3. Hearing compensation cases by insurer and order type, Oregon, 2001

Insurer	Opinion & Order		Stipulation		Dismissal		Withdrawal		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
SAIF	741	33.5	1,644	31.6	240	32.6	712	34.5	3,337	32.7
Private	1,109	50.1	2,741	52.6	403	54.8	978	47.4	5,231	51.2
Self-Insured	332	15.0	799	15.3	89	12.1	361	17.5	1,581	15.5
Unknown	30	1.4	26	0.5	4	0.5	11	0.5	71	0.7
Total	2,212	100.0	5,210	100.0	736	100.0	2,062	100.0	10,220	100.0

Note: Due to rounding, the sum of percentages may not equal 100.



Note: 1998 data for Private & Self-insured unavailable.

Mediations

To help settle disputes without formal litigation, administrative law judges completed 248 mediations during the year. Over 85 percent resulted in settlement, of which some 92 percent were in the form of a disputed claim settlement. The average mediated DCS consideration was about \$14,200 (per case, not per mediation), over two and a half times the average for *all* DCSs.

A record-high 70 percent of successfully mediated cases had the issue of partial denial, and most of the rest were about whole-claim denial. About 49 percent (near average) were about disease claims, and 36 percent included mental disease (the second-highest percentage since 1996, when data were first collected).

About 51 percent of the mediations included issues in addition to workers' compensation issues (employment rights, Americans with Disability Act, tort, etc.), the highest percentage on record. The average mediation required 13.1 work-hours on the part of the judge.

The median time from mediation request to the date of the mediation was 73 days, down from 2000's record-high 77 days), and the median time from the mediation to the order (for cases where the mediation resulted in settlement) was just 33 days, the second-shortest time on record.

Issues

These **11 issues** are recorded for hearing opinion and order and stipulation cases:

- (1) extent of permanent disability – the number of degrees of permanent partial disability or whether the worker is permanently and totally disabled;
- (2) extent of temporary disability – eligibility for, or duration of, temporary disability (often called “time loss”), including interim compensation awarded pending an insurer decision to accept or deny a claim;
- (3) claim denial – denial of a new claim, denial of the whole claim;
- (4) partial denial – denial of part of a claim, denial of a new condition in an accepted claim;
- (5) aggravation – worsening after the latest compensation award, whether the claim should be reopened;
- (6) responsibility – which insurer should accept a claim and pay benefits;
- (7) premature closure – whether the claim was closed before worker was medically stationary;
- (8) penalties – “additional amounts” paid by the insurer to the worker and/or worker’s attorney, usually for unreasonable claims processing conduct;
- (9) attorney fees – whether claimant’s attorney should be awarded fees, and how much, for efforts or results achieved *outside* of hearings;
- (10) subjectivity – whether the worker or employer are subject to Oregon workers’ compensation law (ORS 656.027);
- (11) other issue — any issue not specified above.

Notes about issues:

- (1) **Claim denial** excludes claims denied for reasons other than work-relatedness (“course and scope”). Examples of *excluded* issues are denial because the worker failed to cooperate [ORS 656.262(15)], the worker or employer is not subject to workers’ compensation law (ORS 656.027), another insurer is responsible (ORS 656.307), the insurer didn’t provide coverage on the date of injury, and the claim was not timely. Flare-up of a preexisting condition due to *work activities* is included in this issue.
- (2) **Partial denial** includes consequential conditions, flare-up of a preexisting condition due to a *compensable injury*, scope of acceptance disputes in accordance with ORS 656.262(6)(d), current condition disputes, new medical condition claims, and disputes about whether there’s a causal relationship between medical services and a compensable injury.
- (3) The issue of **responsibility**, even though raised, is not recorded in a DCS (it’s really the compensability denial that is sustained). Also, it isn’t coded when the

claim is found not compensable (the responsibility issue is not reached).

- (4) The issue of claimant **attorney fees** is recorded when fees are requested for attorney efforts or results achieved outside of hearings, *not* when fees are requested for the hearing outcome.
- (5) The issue of **subjectivity** was first coded in 2000. Previously, it was coded as “other” issue.

The 7,422 O&O and stipulation cases in 2001 included a total of 8,338 issues, or 1.12 issues per case. Only issues that are resolved (decided by the judge, or settled by the parties) are recorded for a case. See Table 4 for numbers of issues in cases. **No issue** is recorded for a case when (1) all raised issues are “reserved” or “preserved” to be resolved later, (2) the hearing request is dismissed in an order captioned as an O&O, (3) all issues are withdrawn at hearing in an order *not* captioned as a dismissal, (4) the numbers of cases exceeds the number of distinct denials and (5) when both insurer and worker appeal a department reconsideration order and two cases are set up.

Extent of temporary disability was an issue in 3.9 percent of all cases, near 1999’s record-low 3.7 percent. Claim denial was the most frequent issue (as it’s been every year beginning in 1989), with 39.7 percent of the cases. Partial denial was a close second, with a record-high 38.7 percent. The percentage of cases with the issue of insurer penalty was 8.1 percent, while aggravation was a record-low 4.5 percent. Responsibility was an issue in 161 O&O and stipulation cases (2.2 percent). Permanent disability is discussed in another section of this report.

Table 4. Number of issues per hearing compensation case, Oregon, 2001

Number of issues	Cases
One	6,258
Two	845
Three	113
Four	9
Five	3
More than one issue	970
No issues	194
Total issues	8,338

Opinion and Orders

Hearings judges in 2001 decided 2,791 issues in 2,212 cases, an average of 1.26 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 6. The most frequent issues in O&Os were claim denial (34.6 percent), partial denial (a record-high 26.9 percent), penalty (16.9 percent), and permanent disability (a record-low 15.6 percent).

Table 5 and Figure 5 provide information about the number of O&O cases with extent of disability (temporary and/or permanent) at issue and the type of disability increase. In 2001 the worker’s disability award was increased in 149 cases (the sum of the last four columns of the table), about 33 percent of the 458 disability-issue cases.

The right column of Table 6 provides information about the disposition of issues in O&O cases. Figures 6 through 9 provide historical data on O&O dispositions for the various issues.

The “acceptance” rate for claim denial, 41.8 percent, was the second lowest on record; historically, this rate has been consistent, ranging from 41 to 49 percent. The “acceptance” rate for partial denial was 52.0 percent, the highest since 1993 and the third highest ever. For aggravation, the “acceptance” rate was a record-low 22.2 percent. The “yes” rates for premature closure and

insurer penalty were well above their 2000 record- or near-record-low values of about one third.

The 24.6 percent “increase” rate for permanent disability was about a percentage point below 2000’s record-low value, the 19.1 percent “decrease” rate was the highest ever, and the “affirm” rate of 56.4 percent was the third-highest on record. For temporary disability, the 48.2 percent “increase” rate was close to 1999’s record-low 48.1 percent, while the 47.4 percent “affirm” rate tied the 1999 and 2000 record-high values.

The percentage of O&O cases decided in favor of the claimant for permanent and temporary disability were 39.0 (the lowest on record) and 53.3 percent, respectively. (In 2000 these percentages were 42.0 and 52.6 percent, respectively.) These “favorable” rates reflect award increases plus cases with no change in the award when the insurer or employer requested the hearing.

ORS 656.390 allows a judge to impose **sanctions** against an attorney for a hearing request that is frivolous, made in bad faith, or for the purpose of harassment. Data are not collected automatically about the sanctions issue, but four cases are known. In three of the cases, sanctions were requested by the employer, against claimant’s attorney. All four requests were denied by the judge.

Table 5. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1992-2001

Calendar year	Extent of disability as an issue	PPD awards increased over previous award	PPD awards no previous PPD award	PTDs awarded	TTD award increase and no increased PPD award
1992	1,237	391	103	23	257
1993	895	228	58	7	149
1994	822	167	61	11	143
1995	782	169	46	6	108
1996	840	217	59	7	100
1997	738	155	70	4	80
1998	589	100	38	4	82
1999	575	99	49	2	60
2000	559	82	28	2	75
2001	458	64	21	0	64

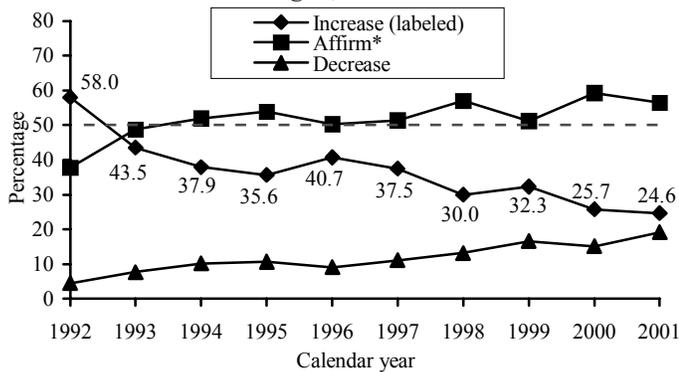


Table 6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2001

Issues & disposition	Insurer				Percentage of cases	Percentage disposition
	SAIF	Private	Self-insured	All insurers		
Permanent disability						
Affirm	66	105	24	195	-	56.4
Decrease	33	22	11	66	-	19.1
Increase	21	47	17	85	-	24.6
Total cases	120	174	52	346	15.6	
Temporary disability						
Affirm	22	38	4	65	-	47.4
Decrease	3	2	1	6	-	4.4
Increase	21	39	6	66	-	48.2
Total cases	46	79	11	137	6.2	
Claim denial						
Set aside denial	99	182	35	320	-	41.8
Affirm denial	156	233	51	445	-	58.2
Total cases	255	415	86	765	34.6	
Partial denial						
Set aside denial	91	170	48	309	-	52.0
Affirm denial	105	143	36	285	-	48.0
Total cases	196	313	84	594	26.9	
Aggravation						
Set aside denial	6	10	2	18	-	22.2
Affirm denial	16	36	11	63	-	77.8
Total cases	22	46	13	81	3.7	
Responsibility						
No	38	39	9	87	-	56.1
Yes	22	42	4	68	-	43.9
Total cases	60	81	13	155	7.0	
Premature closure						
No	9	30	8	47	-	61.0
Yes	4	25	1	30	-	39.0
Total cases	13	55	9	77	3.5	
Penalty						
No	86	127	20	236	-	63.3
Yes	40	85	12	137	-	36.7
Total cases	126	212	32	373	16.9	
Attorney fee						
No	4	8	3	16	-	29.1
Yes	15	21	3	39	-	70.9
Total cases	19	29	6	55	2.5	
Subjectivity						
No	5	9	0	16	-	84.2
Yes	0	3	0	3	-	15.8
Total cases	5	12	0	19	0.9	
Other issue						
No	41	51	15	110	-	58.2
Yes	36	38	4	79	-	41.8
Total cases	77	89	19	189	8.5	
No issues*	16	39	4	60	2.7	
Total issues	939	1,505	325	2,791		

Notes: "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages will exceed 100. "Percentage disposition" gives the breakout of how the issues were decided; for each issue, the sum of these percentages will equal 100 (except for rounding). "All insurers" includes cases with multiple insurers, no insurer, or unknown insurer. Cases remanded to the director on extent of permanent disability are coded as "affirm." * See the *Issues* section for situations where no issues are recorded for an order.

Figure 6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1992 - 2001



* Remands are coded as "Affirm"

Figure 7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1992 - 2001

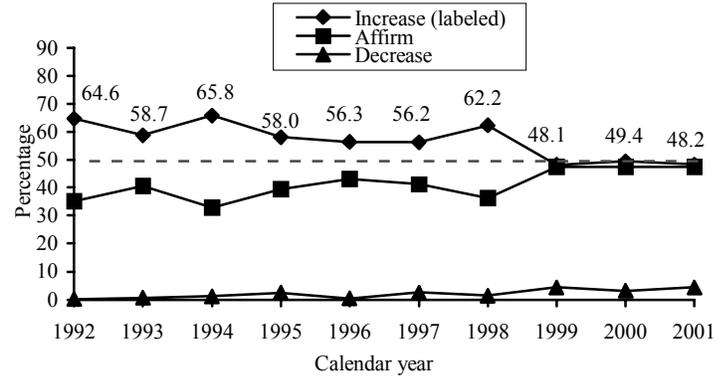


Figure 8. Acceptance rates for compensability cases, hearing opinion and order, Oregon, 1992 - 2001

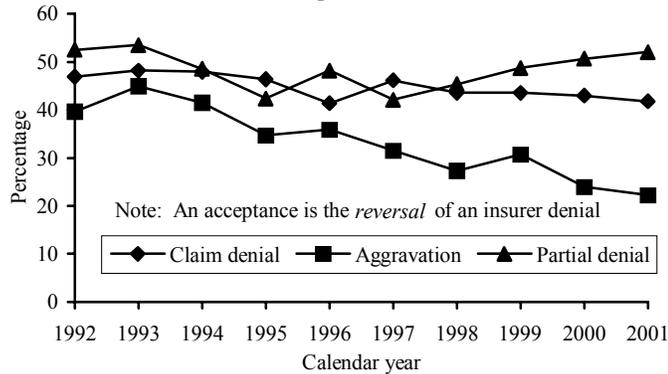
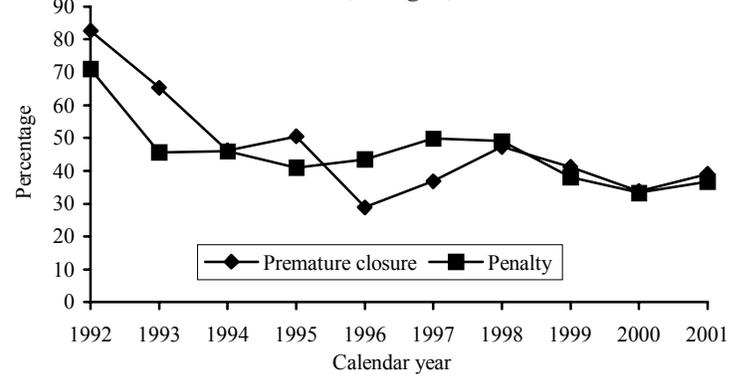


Figure 9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1992 - 2001



Stipulations

In 2001, disputing parties settled 5,547 issues in 5,210 stipulated cases. Table 7 gives information about issue relative frequency and disposition. Claim denial and partial denial were by far the most frequent issues, which is typical. Dispositions of “accept” for the compensability issues are always low because stipulations include DCSs, where the denial is sustained.

Disputed claim settlements

In 2001 insurers paid to workers, as consideration for no longer contesting a denial, almost \$21.2 million in 3,899 DCSs. This dollar amount is 6.9 percent less than was paid in 2000. See Table 8. For all issues, the average payment was \$5,435. The largest amount paid in a single settlement was \$550,000. The DCS amount was unspecified in 13 cases (usually, this happens when the insurer is to pay medical bills and the amount was not mentioned in the order). In one such case, the parties agreed to a “total settlement” of over \$269,000 that included denied conditions and a claim disposition

agreement; for technical reasons, the entire amount was attributed to the CDA.

The issues in the DCS cases were claim denial (47.5 percent, the second lowest on record), partial denial (51.2 percent, the highest on record), and aggravation (1.3 percent, the lowest on record).

DCSs accounted for 74.8 percent of all stipulations, 38.2 percent of all closing hearing orders, and 80.5 percent of all claims denied at hearing (excludes aggravations); these are all record-high percentages. Figure 10 provides historical information on DCS counts and amounts.

DCSs accounted for claimant attorney fees of almost \$4.2 million, a record-high 49.1 percent of all fees at hearing. The average DCS fee was \$1,239 (considering only cases with non-zero fees). About 98.8 percent of DCS fees were paid out of the DCS consideration.

Table 7. Stipulation cases by issue, disposition, and insurer class, Oregon, 2001

Issue & disposition	Insurer				Percentage of cases	Percentage disposition
	SAIF	Private	Self-insured	All insurers		
Permanent disability						
Affirm	5	21	4	30	-	27.3
Decrease	6	14	2	22	-	20.0
Increase	22	24	12	58	-	52.7
Total cases	33	59	18	110	2.1	
Temporary disability						
Affirm	1	11	3	15	-	9.9
Decrease	0	2	0	2	-	1.3
Increase	36	81	17	135	-	88.8
Total cases	37	94	20	152	2.9	
Claim denial						
Set aside denial (accept)	103	174	48	327	-	15.0
Affirm denial	645	1,005	192	1,853	-	85.0
Total cases	748	1,179	240	2,180	41.8	
Partial denial						
Set aside denial (accept)	79	155	40	274	-	12.0
Affirm denial	632	1,099	267	2,004	-	88.0
Total cases	711	1,254	307	2,278	43.7	
Aggravation						
Set aside denial (accept)	5	16	3	24	-	9.4
Affirm denial	46	145	40	231	-	90.6
Total cases	51	161	43	255	4.9	
Responsibility						
No	1	2	0	3	-	50.0
Yes	1	2	0	3	-	50.0
Total cases	2	4	0	6	0.1	
Premature closure						
No	3	8	0	11	-	78.6
Yes	0	3	0	3	-	21.4
Total cases	3	11	0	14	0.3	
Penalty						
No	1	2	0	3	-	1.3
Yes	46	146	34	226	-	98.7
Total cases	47	148	34	229	4.4	
Attorney fee						
No	0	0	0	0	-	0.0
Yes	18	78	16	113	-	100.0
Total cases	18	78	16	113	2.2	
Subjectivity						
No	0	0	0	1	-	100.0
Yes	0	0	0	0	-	0.0
Total cases	0	0	0	1	0.0	
Other issue						
No	8	8	0	16	-	7.7
Yes	48	124	19	193	-	92.3
Total cases	56	132	19	209	4.0	
No issues*	41	70	18	134	2.6	
Total issues	1,706	3,120	697	5,547		

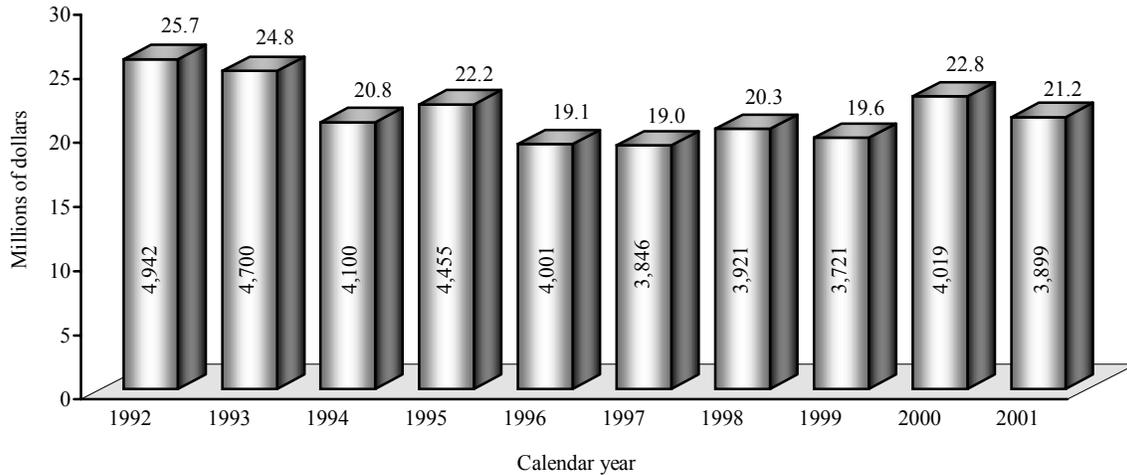
Notes: "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages will exceed 100. "Percentage disposition" gives the breakout of how the issues were decided; for each issue, the sum of these percentages will equal 100 (except for rounding). "All insurers" includes cases with multiple insurers, no insurer, or unknown insurer. * See the *Issues* section for situations where no issues are recorded for an order.

Table 8. Hearing disputed claim settlements by principal issue, Oregon, 2001

Principal issue*	Number of cases	Percentage of cases	Total amount	Average amount	Total fees
Claim denial	1,851	47.5	\$10,606,000	\$5,730	\$2,109,000
Partial denial	1,997	51.2	10,439,000	5,227	2,052,000
Aggravation	50	1.3	122,000	2,438	28,000
All other issues	1	0.0	25,000	25,000	5,000
All issues	3,899	100.0	\$21,191,000	\$5,435	\$4,195,000

*Only the highest-ranking issue is identified with each case. Values may not add to all issues totals due to rounding.

Figure 10. Hearing disputed claim settlement amounts, Oregon, 1992 - 2001



Note: Numbers within bars are case counts

Permanent Disability

There were 456 cases involving extent of permanent disability in 2001, 24.0 percent fewer than in 2000. The 6.1 percent relative frequency was also a record-low percentage. Case dispositions were as follows: increase the award, 31.4 percent (up from 2000's record-low 28.8 percent); decrease the award, 19.3 percent; and no change in the award, 49.3 percent (these figures include stipulations).

The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past 14 years. There seem to be three primary reasons for this change. First, the number of accepted disabling claims has been decreasing. Second,

law changes enacted in May 1990 by Senate Bill 1197: required reconsideration, medical arbiters for impairment disputes, "tighter" disability standards, and claim disposition agreements. Finally, law changes enacted in June 1995 by Senate Bill 369: limitation of evidence at hearing, prohibition of issues that were not raised at nor arose out of the reconsideration, and the limitation on disability when a worker returns to work.

Permanent partial disability

Information about cases where PPD awards were increased is provided in Tables 9 and 10 for cases with and without a prior award, respectively. "No prior award" means that there had been no previous award of PPD,

either scheduled or unscheduled, at the time of the hearing award. The average scheduled award **increases** were 12.7 scheduled degrees and 26.3 unscheduled degrees. Combining scheduled and unscheduled disability awards, the average award increase was 19.0 degrees.

There were 43 and 48 cases where scheduled and unscheduled awards, respectively, were decreased. Average award **decreases** were 19.0 scheduled degrees and 37.7 unscheduled degrees.

The net amount awarded for PPD at hearing in 2001 was \$87.9 thousand, the 14th consecutive decrease in that total and less than half 2000's total. See Figure 11. Decreases in the dollar-value of net PPD have been primarily due to decreases in the number of PPD cases, but are also due to decreases in the percentage of cases granting a PPD increase and (to a smaller degree) to decreases in the average size of PPD increases. The value of each degree of disability is based on the date of injury.

Stipulations in 2001 resulted in a net decrease in PPD amount of about \$5,000. There were more with PPD increases than with decreases, but the average PPD decrease was about 2.8 times greater than the average increase. Five of these cases were DCSs. Of the 22 cases, 17 (77.3 percent) were associated with a claim disposition agreement, so these workers' disability may be reflected in a cash award to the worker.

Table 11 depicts the overall disposition of hearing PPD cases. Here, the dollar value of scheduled and unscheduled awards are considered in determining whether the case is classified as an increase or decrease when there's an increase in one award type and a decrease in the other.

Permanent total disability

There was just one PTD grant in 2001, as shown in Figure 12. It was by stipulation. There were no affirmations of PTD awards, and one rescission, so the net number of PTD awards was zero. The previous PPD award for the PTD grant was 198 degrees, unscheduled.

Table 9. Hearing PPD award increases over previous award, by order type, Oregon, 2001

Type of order	Scheduled disability				Unscheduled disability				Total hearing \$ increases
	Number of cases	Average prior award	Average hearing award	Total hearing \$ increases	Number of cases	Average prior award	Average hearing award	Total hearing \$ increases	
Opinion & order	40	14.4	14.8	\$266,000	27	51.0	30.5	\$187,000	\$453,000
Stipulation	24	29.4	7.9	87,000	25	53.3	14.2	83,000	170,000
All orders	64	20.0	12.2	\$353,000	52	52.1	22.7	\$270,000	\$623,000

Note: Award units are degrees. Dollar increases are based on degree value for the date of injury. Dollar values may not add to totals due to rounding.

Table 10. Hearing PPD awards, no previous award, by order type, Oregon, 2001

Type of order	Scheduled disability			Unscheduled disability			Total dollar award
	Number of cases	Average hearing award	Total dollar award	Number of cases	Average hearing award	Total dollar award	
Opinion & order	11	16.8	\$85,000	10	40.0	\$67,000	\$152,000
Stipulation	4	9.1	16,000	7	33.8	30,000	47,000
All orders	15	14.8	\$101,000	17	37.5	\$97,000	\$198,000

Note: Award units are degrees. Dollar increases are based on degree value for the date of injury. Dollar values may not add to totals due to rounding.

Table 11. Disposition of hearing PPD cases by order type and prior award, Oregon, 2001

Order type	No prior award		Prior award			All cases			All
	Increase	Affirm	Increase	Decrease	Affirm	Increase	Decrease	Affirm	
Opinion & order	21 21.9%	75 78.1%	64 25.7%	65 26.1%	120 48.2%	85 24.6%	65 18.8%	195 56.5%	345
Stipulation	10 41.7%	14 58.3%	47 55.3%	22 25.9%	16 18.8%	57 52.3%	22 20.2%	30 27.5%	109
All orders	31 25.8%	89 74.2%	111 33.2%	87 26.1%	136 40.7%	142 31.3%	87 19.2%	225 49.6%	454

Note: Table entries are the number of cases (top number) and the percentage of each order type that has the given disposition (so percentages add to 100 in the horizontal, except for rounding).

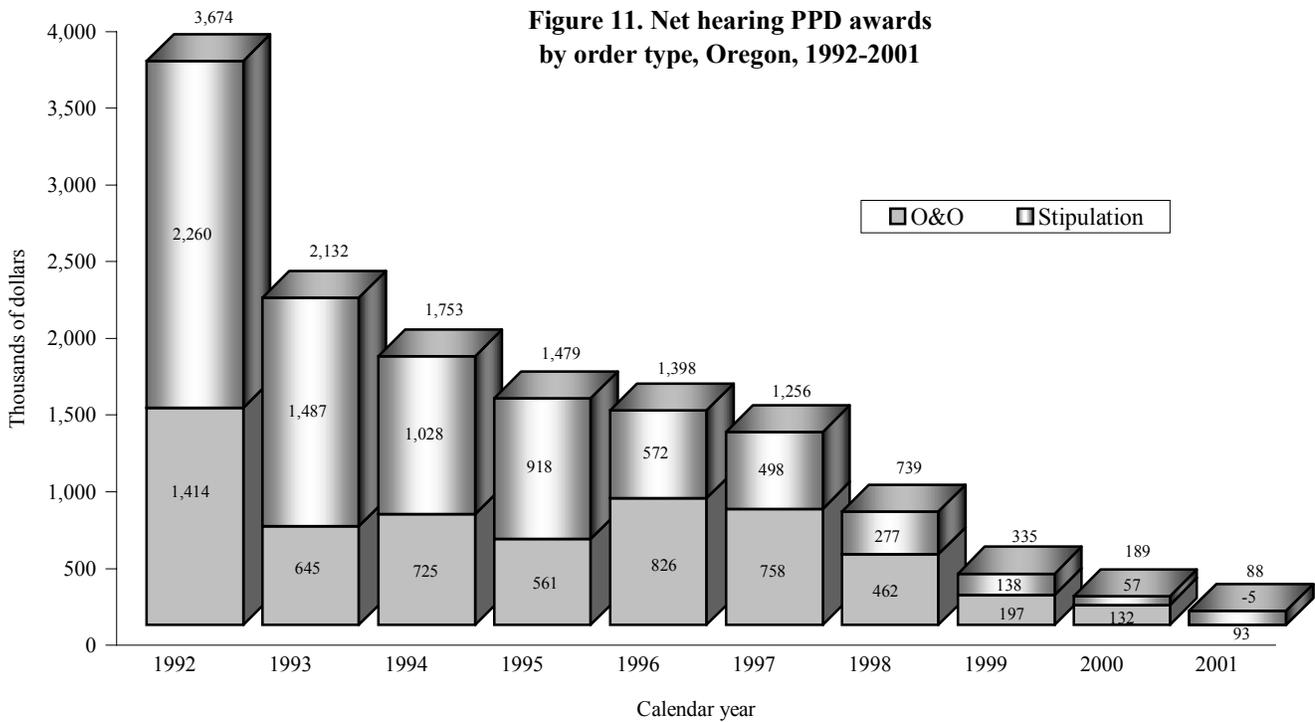
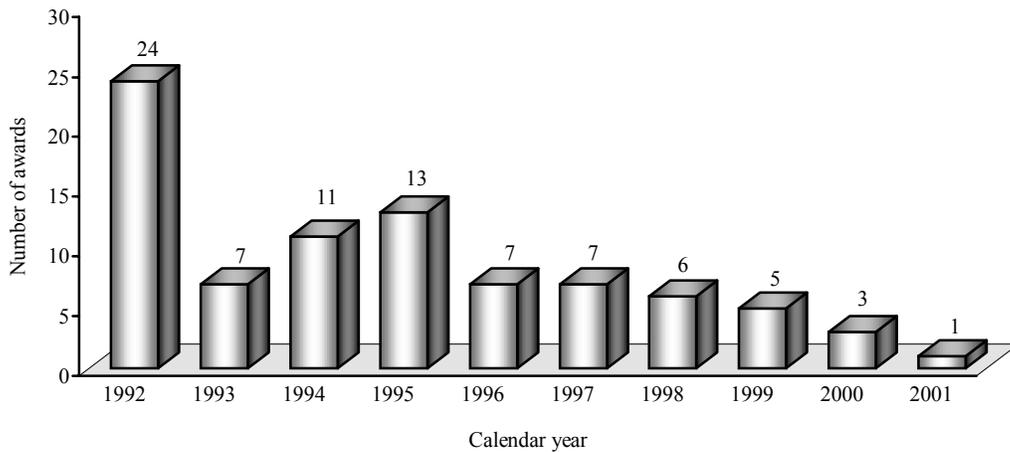


Figure 12. PTD awards granted at hearing, Oregon, 1992 - 2001



Time Lags

For all hearing orders in 2001, the median time from injury to hearing request was 308 days, about the same as for 1998-2000. The median request-to-order lag was 126 days, two days shorter than for 2000. Table 12 provides various time lags by order type.

For opinion and order cases, the median time from hearing request to order was 188 days (6.2 months), the same as in 2000. See Figure 13. These figures are for *all* O&O cases. For O&O cases *without* a postponement, the median request-to-order time was

only 138 days (4.5 months). The percentage of O&Os with at least one postponement was 36.1 percent, tying 1999's percentage as the second-lowest on record (going back to 1991).

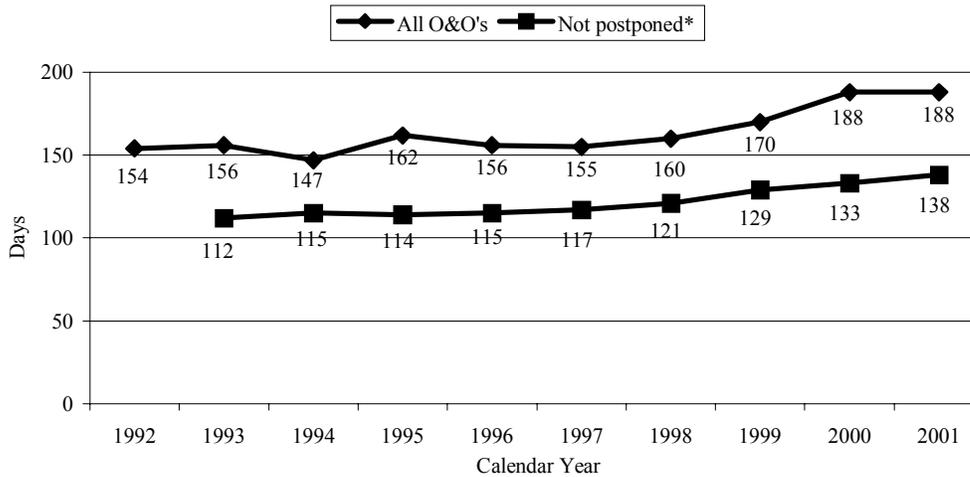
Note that request-to-order time lags include time that the record was kept open, after the hearing was concluded (usually awaiting additional evidence). Such lag times were most frequently 0 days, and the median was 0 days, but the lag may sometimes be 2 months or more.

Table 12. Median hearing time lags by order type, Oregon, 2001

Lag Periods	Opinion and order	Received stipulation*	Other stipulation*	Dismissal and withdrawal	All orders
Injury date to request date	324	427	258	340	308
Injury date to order date	567	432	456	510	496
Request date to order date	188	5	133	110	126
Request date to hearing date	91	--	--	--	--
Hearing date to closed date	0	--	--	--	--
Closed date to order date	28	--	--	--	--

Note: Units are days. Dashes indicate that data are not applicable. Lag time segments do not add to total lag times because figures are medians.
 * "Received stipulations" are settlements received without a prior hearing request; "other stipulation" includes all other settlements.

Figure 13. Median time lags, hearing request to order, opinion and order cases, Oregon, 1992 - 2001



*Note: These data are not available before 1993.

Claimant Attorney Fees

Claimant attorney fees totaling over \$8.5 million were approved for payment out of worker compensation or assessed against insurers in 2001 hearing orders. See Table 13. Total fees were 6.4 percent less than in 2000.

About 51.8 percent of the fees were paid out of compensation or DCS consideration, the highest percentage since 1991. In 1990, this figure was 65.0 percent, but fewer extent of disability cases and smaller

percentages of disability-increase dispositions have reduced this percentage. The average fee was \$1,617, about 0.3 percent less than in 2000. Figures 14 and 15 depict average and total fees (respectively), by type, for the past 10 years.

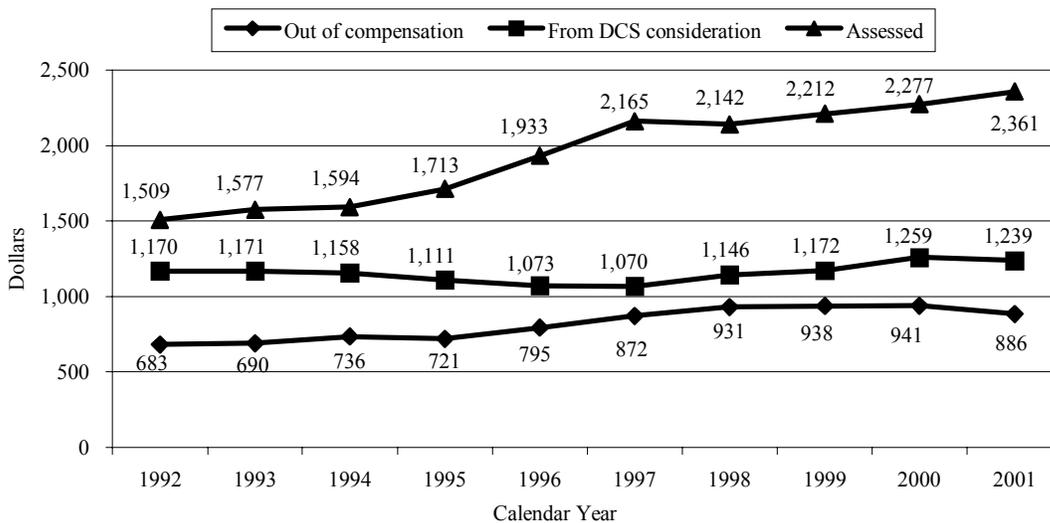
The percentage of claimants represented by counsel was about 93.4 percent for O&O cases and 88.3 percent for all cases.

Table 13. Claimant attorney fees by order type and source, Oregon, 2001

Source of fees	Opinion and order	Stipulation	Dismissal	Order awarding attorney fees	All orders
Out of claimant compensation					
Total fees	163,000	114,000	0	0	277,000
Average fee	1,225	635	0	0	886
Cases	133	180	0	0	313
From DCS consideration					
Total fees	0	4,145,000	0	0	4,145,000
Average fee	0	1,239	0	0	1,239
Cases	0	3,345	0	0	3,345
Assessed against insurer					
Total fees	2,706,000	1,399,000	0	14,000	4,118,000
Average fee	3,324	1,509	0	4,500	2,361
Cases	814	927	0	3	1,744
From all sources					
Total fees	2,869,000	5,657,000	0	14,000	8,540,000
Average fee	3,108	1,299	0	4,500	1,617
Cases	923	4,356	0	3	5,282

Notes: Fees were paid both out of compensation and assessed against the insurer in 85 cases, so the number cases for each source will not add to the number from both sources. Fees may not add to totals due to rounding.

Figure 14. Average claimant attorney fees by source, Oregon, 1992 - 2001



Attorneys representing workers receive fees for getting a denial overturned, obtaining an increase in compensation, and for preventing a decrease in compensation. Most fees are determined at hearing for attorney efforts and results on issues raised at hearing. Other fees are determined by hearings judges for attorney efforts and results achieved *outside* of hearings. They include cases where attorney fees was an issue at hearing, and also fees decided in “order awarding attorney fee” (“AF” case number) cases.

Attorney fees that are recorded for hearings case are not necessarily the actual amounts paid. For example, in cases where the duration of time loss is extended and the ending date is not specified, the fees recorded are the maximum

allowable amount (\$1,500). In other cases, the fees may be reversed (reduced or eliminated) when the judge’s decision in favor of the claimant is reversed or modified by the board or courts, or when the amount of the fee is successfully challenged.

Attorney fees are missing (could not be determined from information published in the order) in over 60 cases. In most of these cases, the fee was based, at least in part, on penalties against the insurer. (These figures exclude cases where *part* of a fee is missing, as with a denial reversal and an unknown penalty fee.) The total amount of these unknown fees of both types is probably well less than 1 percent of the total value of known fees.

Figure 15. Total hearing claimant attorney fees, Oregon, 1992 - 2001

