

# Hearings Division Statistical Report Calendar Year 2002



Research & Analysis Section  
Oregon Department of  
Consumer & Business Services



January 2004

# Hearings Division Statistical Report Calendar Year 2002

## Department of Consumer & Business Services

Director, Cory Streisinger

### Information Management Division

Administrator, Dan Adelman

### Research & Analysis Section

Manager, Ed Bissell

Research Team Supervisor, Pamela Lundsten

Research Analyst, Russ Reed

### Workers' Compensation Board

Chair, Maureen Bock

Central Support Manager, Julie Hansen

### Coders:

Terrie Smith

Bruce Hammond

Sarah Smith

January 2004

In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling (503) 378-4100 (V/TTY).

*The information in this report is in the public domain and may be reprinted without permission. Visit the DCBS Web site at: <http://www.cbs.state.or.us> or call (503) 378-8254*

*To receive publications in an electronic format, see the Information Management WebBoard at: <http://www.cbs.state.or.us/imd/notify.html>*



Information Management Division  
350 Winter St. NE, Room 300  
PO Box 14480  
Salem, OR 97309-0405  
(503) 378-8254

## Table of Contents

Introduction .....	1
Highlights and Major Trends .....	2
Requests for Hearing .....	3
Cases Closed .....	3
Mediations .....	5
Issues .....	5
Opinion and Orders .....	7
Stipulations .....	10
Disputed claim settlements .....	10
Permanent Disability .....	12
Permanent partial disability .....	12
Permanent total disability .....	13
Time Lags .....	14
Claimant Attorney Fees .....	15

### Tables

1. Hearing compensation cases closed by order type, Oregon, 2002 .....	4
2. Hearing compensation cases by requester and order type, Oregon, 2002 .....	4
3. Hearing compensation cases by insurer and order type, Oregon, 2002 .....	5
4. Mediations, Oregon, 1996-2002 .....	6
5. Number of issues per hearing compensation case, Oregon, 2002 .....	7
6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1993-2002 .....	7
7. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2002 .....	8
8. Hearing disputed claim settlements by principal issue, Oregon, 2002 .....	10
9. Stipulation cases by issue, disposition, and insurer class, Oregon, 2002 .....	11
10. Hearing PPD award increases over previous award, by order type, Oregon, 2002 .....	12
11. Hearing PPD awards, no previous award, by order type, Oregon, 2002 .....	12
12. Disposition of hearing PPD cases by order type and prior award, Oregon, 2002 .....	13
13. Median hearing time lags by order type, Oregon, 2002 .....	14
14. Claimant attorney fees by order type and source, Oregon, 2002 .....	15

### Figures

1. Requests for hearing, Oregon, 1993-2002 .....	3
2. Hearing cases closed, all orders, Oregon, 1993-2002 .....	3
3. Distribution of hearing cases closed by order type, Oregon, 1993-2002 .....	4
4. Distribution of hearing cases by insurer, Oregon, 1993-2002 .....	5
5. Disability issues and award increases, hearing opinion and order, Oregon, 1993-2002 .....	7
6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1993-2002 .....	9
7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1993-2002 .....	9
8. Set-aside-denial rates for compensability cases, hearing opinion and order, Oregon, 1993-2002 .....	9
9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1993-2002 .....	9
10. Hearing disputed claim settlement amounts, Oregon, 1993-2002 .....	10
11. Net hearing PPD awards by order type, Oregon, 1993-2002 .....	13
12. PTD awards granted at hearing, Oregon, 1993-2002 .....	14
13. Median time lags, hearing request to order, opinion and order cases, Oregon, 1993-2002 .....	15
14. Average claimant attorney fees by source, Oregon, 1993-2002 .....	16
15. Total hearing claimant attorney fees, Oregon, 1993-2002 .....	16

## 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 (ALJs, or 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 2002, 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 data that were inconsistent or otherwise questionable.

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

## Highlights and Major Trends

In 2002 the Hearings Division of the Oregon Workers' Compensation Board received 10,679 **requests for hearing**, 3.6 percent fewer than in 2001.

There were 10,830 closing **orders** issued by the Hearings Division in 2002, 5.5 percent more than during the previous year.

The percentage of cases **closed by** opinion and order, 20.8 percent, was the second-smallest percentage on record, while the percentage closed by dismissal was a near-record 29.6 percent.

SAIF was the **insurer** in 31.9 percent of the cases.

Administrative law judges completed a record-high 285 **mediations** during the year.

Claim denial was the most frequent **issue**, with 39.7 percent of the cases, and partial denial was a close second with a record-high 38.9 percent. Extent of temporary disability was an issue in 3.7 percent of all cases. The percentage of cases with the issue of insurer penalty was a near-record low 6.6 percent, while aggravation was a record-low 4.3 percent.

The O&O **set-aside-denial rate** for claim denial (39.5 percent) was the lowest on record. This rate for partial denial was 47.6 percent. For aggravation, it was 24.4 percent. The "yes" rates for premature closure (26.2 percent) and insurer penalty (33.1 percent) were record-low values.

The O&O "increase" rate for permanent disability (19.7 percent) was almost 5 percentage points below 2001, while the "decrease" rate (21.8 percent) was the highest ever. For temporary disability, the "increase" rate (43.2 percent) was 5 percentage points below 2001's near-record low value, while the "decrease" rate (6.1 percent) was the highest on record.

The percentage of O&O cases decided in favor of the claimant for permanent and temporary disability (31.2 and 44.7 percent, respectively) were the lowest on record.

Five cases included requests for attorney **sanctions**. Sanctions were awarded in only one case: \$600 against the claimant's attorney.

In 2002 insurers paid to workers almost \$23.1 million in 3,931 **disputed claim settlements**. The average payment was \$5,864. Partial denial was the most frequent issue. DCSs accounted for 73.5 percent of all stipulations and 36.4 percent of all closing hearing orders.

There were 484 cases involving extent of **permanent disability** in 2002, a near-record-low 6.4 percent of hearing cases. Dispositions were as follows: increase the award, 26.2 percent (a record-low value); decrease the award, 22.5 percent; and no change in the award, 51.2 percent.

The average **permanent partial disability** award increases were 9.2 scheduled degrees and 22.6 unscheduled degrees, record-low and near-record-low values, respectively. Average award decreases were 17.6 scheduled degrees and 32.9 unscheduled degrees. The net amount awarded for PPD at hearing in 2002 was -\$445 thousand, the first time that more disability has been taken away than granted at hearing.

There were six **permanent total disability** grants in 2002, all reinstatements of rescinded awards. There were no rescissions, so the net number of PTD awards was six. Three of the grants were by stipulation following judge-conducted mediations.

For opinion and order cases, the **median time** from hearing request to order was 204 days (6.7 months). For O&O cases *without a postponement*, this time lag was only 138 days (4.5 months). The percentage of O&Os with at least one postponement was 35.5 percent.

Claimant **attorney fees** totaling over \$8.9 million were approved for payment out of worker compensation or assessed against insurers in 2002 hearing orders, 4.4 percent more than in 2001.

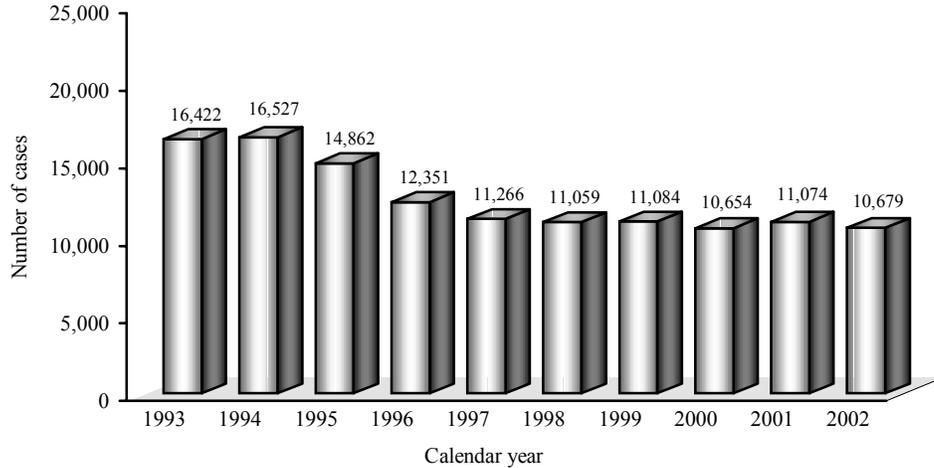
About 52.4 percent of the fees were paid out of compensation or DCS consideration, the highest percentage since 1991. The average fee was \$1,688.

## Requests for Hearing

In 2002 the Hearings Division of the Oregon Workers' Compensation Board received 10,679 requests for hearing, 3.6 percent fewer than in 2001. See Figure 1. (Hearing requests peaked in 1989 with 27,549 requests.)

The number of requests in 2002 includes 968 "received stipulations," settlements that were received without a prior hearing request.

**Figure 1. Requests for hearing, Oregon, 1993 - 2002**



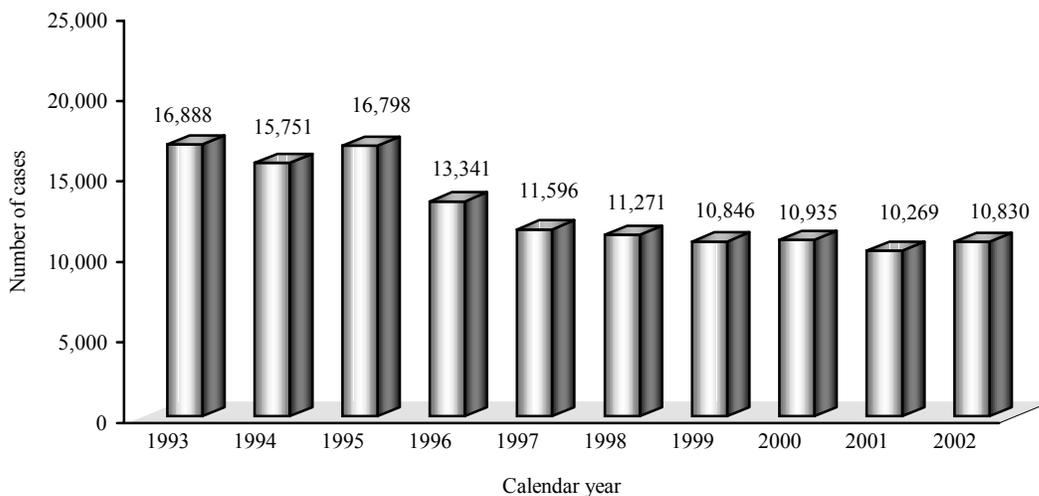
## Cases Closed

There were 10,830 closing orders issued by the Hearings Division in 2002, 5.5 percent more than during the previous year. 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, 1993- 2002**



The percentage of cases with **order type** opinion and order, 20.8 percent, was the second-smallest percentage on record (after 1990's 20.6 percent). The percentage closed by dismissal was a near-record-high 29.6 percent. See Figure 3. About 73.3 percent of the dismissals were issued because the requester withdrew the hearing request, about the same percentage as in 2001.

The breakout of cases by **requester** is given in Table 2. The worker filed the request in 87.3 percent of the cases, just below 2001's 87.5 percent. Received stipulations are classified as "joint" requests.

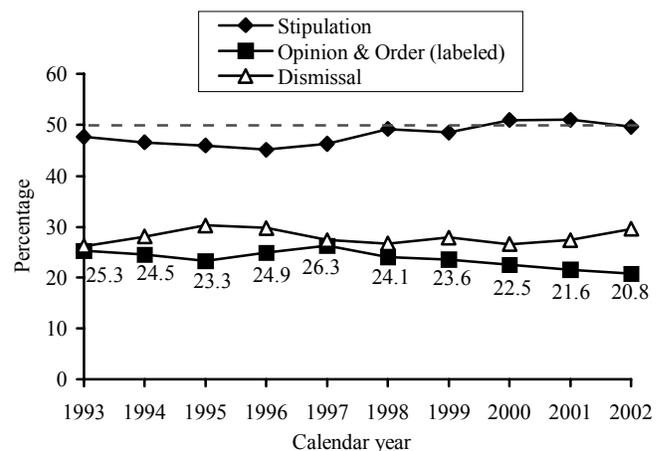
SAIF was the **insurer** in 31.9 percent of the cases. See Table 3 and Figure 4. (The values reported for private insurer and self-insured employer for 1998 were inaccurate due to errors in insurer classification in some cases.) Responsibility disputes are treated as multiple cases, each with its own 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, 2002**

Type of Order	Number of orders	Percentage of all orders	Percentage of sub-type*
Opinion and order	2,245	20.8%	
Stipulation	1,403	13.0%	26.2%
DCS	3,931	36.4%	73.5%
Order on stipulation	13	0.1%	0.2%
<b>All stipulations</b>	<b>5,347</b>	<b>49.6%</b>	<b>100.0%</b>
Dismissal	530	4.9%	16.6%
Dismiss for CDA	324	3.0%	10.1%
Withdrawal	2,345	21.7%	73.3%
<b>All dismissals</b>	<b>3,199</b>	<b>29.6%</b>	<b>100.0%</b>
<b>Total orders</b>	<b>10,791</b>	<b>100.0%</b>	

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

**Figure 3. Distribution of hearing cases closed by order type, Oregon, 1993 - 2002**



**Table 2. Hearing compensation cases by requester and order type, Oregon, 2002**

Requester	Opinion & Order		Stipulation		Dismissal		Withdrawal		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Claimant	2,073	92.3%	4,281	80.1%	777	91.0%	2,289	97.6%	9,420	87.3%
Employer	16	0.7%	21	0.4%	9	1.1%	7	0.3%	53	0.5%
Joint	-	-	946	17.7%	2	0.2%	2	0.1%	950	8.8%
Insurer	151	6.7%	96	1.8%	65	7.6%	44	1.9%	356	3.3%
Other	5	0.2%	3	0.1%	1	0.1%	3	0.1%	12	0.1%
<b>Total</b>	<b>2,245</b>	<b>100.0%</b>	<b>5,347</b>	<b>100.0%</b>	<b>854</b>	<b>100.0%</b>	<b>2,345</b>	<b>100.0%</b>	<b>10,791</b>	<b>100.0%</b>

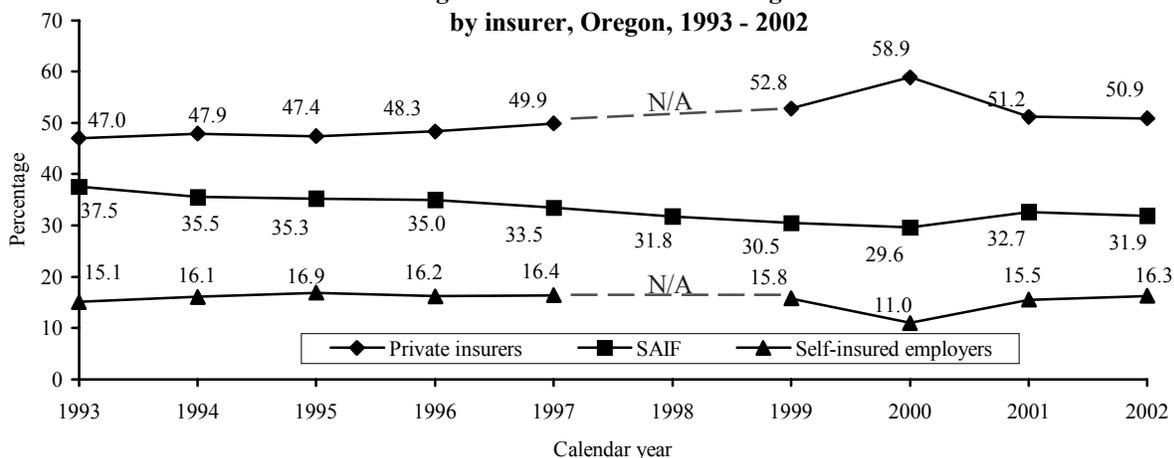
Note: Due to rounding, the sum of percentages may not equal 100.

**Table 3. Hearing compensation cases by insurer and order type, Oregon, 2002**

Insurer	Opinion & Order		Stipulation		Dismissal		Withdrawal		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
SAIF	762	33.9%	1,574	29.4%	325	38.1%	784	33.4%	3,445	31.9%
Private	1,012	45.1%	2,926	54.7%	420	49.2%	1,136	48.4%	5,494	50.9%
Self-Insured	447	19.9%	804	15.0%	95	11.1%	409	17.4%	1,755	16.3%
Unknown	24	1.1%	43	0.8%	14	1.6%	16	0.7%	97	0.9%
Total	2,245	100.0%	5,347	100.0%	854	100.0%	2,345	100.0%	10,791	100.0%

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

**Figure 4. Distribution of hearing cases by insurer, Oregon, 1993 - 2002**



Note: 1998 data for Private & Self-insured unavailable. Percentages may not add to 100 due to cases with no or unknown insurer.

## Mediations

To help settle disputes without formal litigation, administrative law judges completed a record-high 285 mediations during the year. Data about them is included in Table 4. Four of the 2002 mediations resulted in

agreements to reinstate or affirm an award of permanent total disability. The average dollar amount for a disputed claim settlement resulting from a mediation was 1.76 times larger than the average value for all DCSs.

## Issues

These **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;

**Table 4. Mediations, Oregon, 1996-2002**

	1996	1997	1998	1999	2000	2001	2002	Average
Mediations completed *	219	250	233	216	280	248	285	247
Settlement resulted (%) *	84.4	91.6	90.1	89.8	89.3	85.5	86.3	88.1
Settled by DCS (%) **	81	82	87	84	87	92	85	85.4
Mean DCS amount (\$k/case)	8.0	10.5	10.7	10.7	16.7	14.2	10.3	11.6
Disease claims (%) ***	50	50	44	63	41	49	42	48.4
Mental disease (%) ***	31	30	30	37	32	36	27	31.8
Claim denial issue (%) ***	50	50	47	47	40	39	43	45.1
Partial denial issue (%) ***	47	—	49	54	64	70	65	58.2
Compensability issue (%) ***	—	90	98	—	97	99	95	95.7
Non-WC issue (%) ***	—	40	47	46	43	51	55	46.9
Mean ALJ work-hours (includes travel)	—	12	13.8	13	13.5	13.1	14.7	13.4
Mean request-mediation lag (days)	21	25	50	64	77	73	80	55.7
Mean mediation-order lag (days)	46	31	34	43	42	33	37	38.0

Notes: Percentages, except “settlement resulted,” tell share of *all cases settled by mediation*.

\* Excludes those cases settled after pre-mediation conference calls.

\*\* A mediation is classified as closed by disputed claim settlement if any included case is so closed.

\*\*\* A mediation is so classified if any case includes this condition or issue.

- (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 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 7,592 O&O and stipulation cases in 2002 included a total of 8,439 issues, or 1.11 issues per case. Only issues that are resolved (decided by the judge, or settled by the parties) are recorded for a case. See Table 5 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 3.7 percent of all cases, equalling 1999's record-low value. 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 38.9 percent. The percentage of cases with the issue of insurer penalty (6.6 percent) was second lowest to 1997's 5.9 percent, while aggravation (4.3 percent) was a record-low value. Responsibility was an issue in 152 O&O and stipulation cases (2.0 percent). Permanent disability is discussed in another section of this report.

**Table 5. Number of issues per hearing compensation case, Oregon, 2002**

Number of issues	Number of cases
One	6,322
Two	874
Three	108
Four	10
Five	1
More than one issue	993
No issues	227
<b>Total issues</b>	<b>8,439</b>

### Opinion and Orders

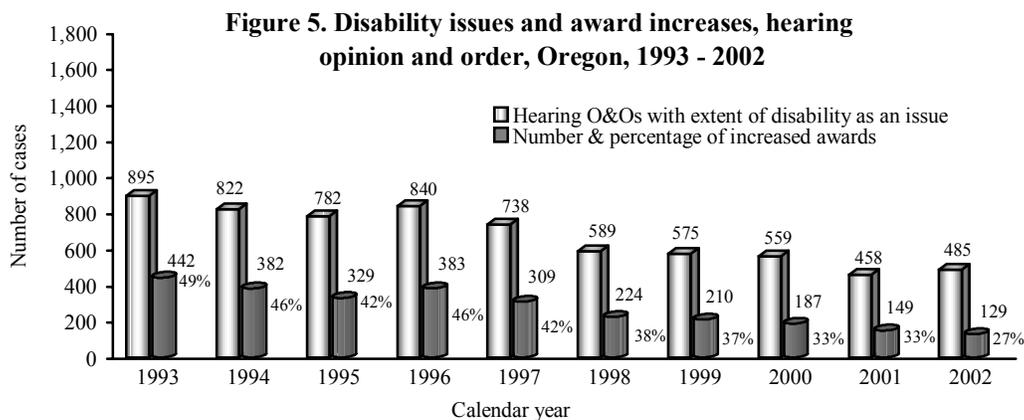
Hearings judges in 2002 decided 2,863 issues in 2,245 cases, an average of 1.28 issues per case. Information on the relative frequency of the various issues is given in the "percentage of cases" column of Table 7. The percentage of cases about whole claim denial (37.1 percent) was the highest since 1998, the percentage about partial denial (25.8 percent) was the second highest on

record, and the percentage about extent of permanent disability (17.1 percent) was up from 2001's record-low 15.6 percent.

Table 6 and Figure 5 provide information about the number of O&O cases with extent of disability (temporary, permanent, or both) at issue and the type of

**Table 6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1993-2002**

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
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
2002	485	55	20	1	53



**Table 7. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2002**

Issues & disposition	Insurer					Percentage of cases	Percentage disposition
	SAIF	Private	Self-insured	Other insurers	All insurers		
<b>Permanent disability</b>							
Affirm	80	99	45	1	225	-	58.4
Decrease	34	34	15	1	84	-	21.8
Increase	26	36	12	2	76	-	19.7
Total cases	140	169	72	4	385	17.1	
<b>Temporary disability</b>							
Affirm	26	34	7	0	67	-	50.8
Decrease	5	2	1	0	8	-	6.1
Increase	23	22	11	1	57	-	43.2
Total cases	54	58	19	1	132	5.9	
<b>Claim denial</b>							
Set aside denial	103	147	76	3	329	-	39.5
Affirm denial	166	221	113	4	504	-	60.5
Total cases	269	368	189	7	833	37.1	
<b>Partial denial</b>							
Set aside denial	89	134	51	2	276	-	47.6
Affirm denial	111	143	49	1	304	-	52.4
Total cases	200	277	100	3	580	25.8	
<b>Aggravation</b>							
Set aside denial	8	9	4	0	21	-	24.4
Affirm denial	10	41	14	0	65	-	75.6
Total cases	18	50	18	0	86	3.8	
<b>Responsibility</b>							
No	36	53	3	0	92	-	62.6
Yes	17	35	3	0	55	-	37.4
Total cases	53	88	6	0	147	6.5	
<b>Premature closure</b>							
No	15	28	5	0	48	-	73.8
Yes	0	14	3	0	17	-	26.3
Total cases	15	42	8	0	65	2.9	
<b>Penalty</b>							
No	65	103	35	1	204	-	66.9
Yes	31	49	19	2	101	-	33.1
Total cases	96	152	54	3	305	13.6	
<b>Attorney fee</b>							
No	1	12	0	0	13	-	23.6
Yes	15	21	4	2	42	-	76.4
Total cases	16	33	4	2	55	2.4	
<b>Subjectivity</b>							
No	2	4	0	3	9	-	75.0
Yes	1	0	0	2	3	-	25.0
Total cases	3	4	0	5	12	0.5	
<b>Other issue</b>							
No	67	88	37	3	195	-	74.1
Yes	21	35	9	3	68	-	25.9
Total cases	88	123	46	6	263	11.7	
No issues*	29	31	10	0	70	3.1	
Total issues	952	1,364	516	31	2,863		

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). "Other 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.

disability increase. In 2002 the worker's disability award was increased in 129 cases (the sum of the last four columns of Table 6), about 27 percent of the 485 disability-issue cases.

The right column of Table 7 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 "set-aside-denial" rate for claim denial (39.5 percent) was the lowest on record; historically, this rate has been consistent, ranging from 41 to 49 percent. The "set-aside" rate for partial denial (47.6 percent) was down from the near-record 52.0 percent of 2001. For aggravation, the "set-aside" rate (24.4 percent) increased from 2001's record-low 22.2 percent. The "yes" rates for premature closure (26.2 percent) and insurer penalty (33.1 percent) were record-low values.

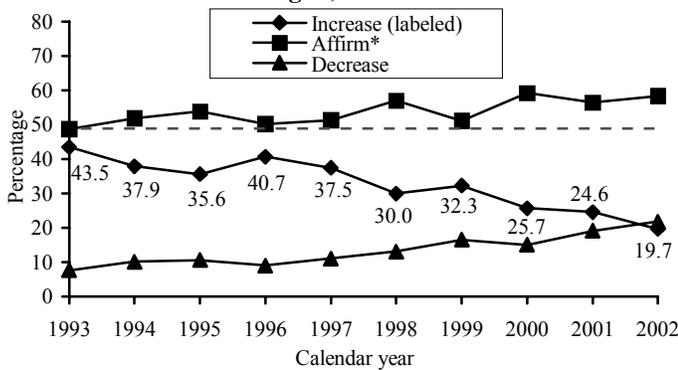
The "increase" rate for permanent disability (19.7 percent) was almost 5 percentage points below 2001's record-low

24.6 percent, the "decrease" rate (21.8 percent) was the highest ever, and the "affirm" rate (58.4 percent) was the second-highest on record. For temporary disability, the "increase" rate (43.2 percent) was 5 percentage points below 2001's near-record-low 48.2 percent, while the "affirm" rate (50.8 percent) was the highest on record.

The percentage of O&O cases decided in favor of the claimant for permanent and temporary disability (31.2 and 44.7 percent, respectively) were the lowest on record (going back to 1994). In 2001 these percentages were 39.0 and 53.3 percent, respectively. These "favorable" rates reflect award increases plus affirmations when the insurer or employer requested the hearing.

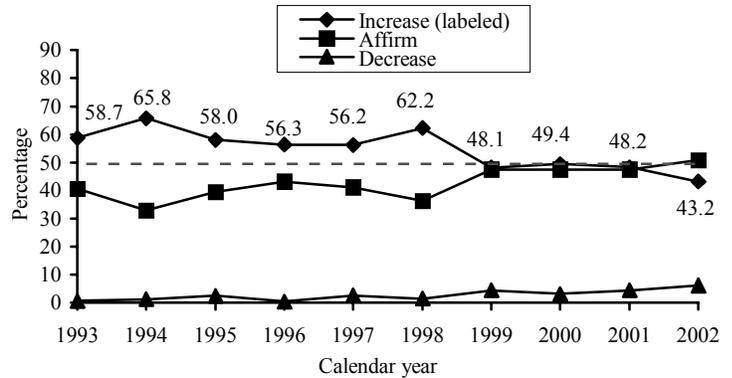
ORS 656.390 allows a judge to impose **sanctions** against an attorney for a hearing request that is frivolous, made in bad faith, or for harassment purposes. Data are not collected automatically about the sanctions issue, but five cases are known. In four of the cases, sanctions were requested against claimant attorneys. Judges awarded sanctions in only one case: \$600 against the claimant's attorney

**Figure 6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1993 - 2002**

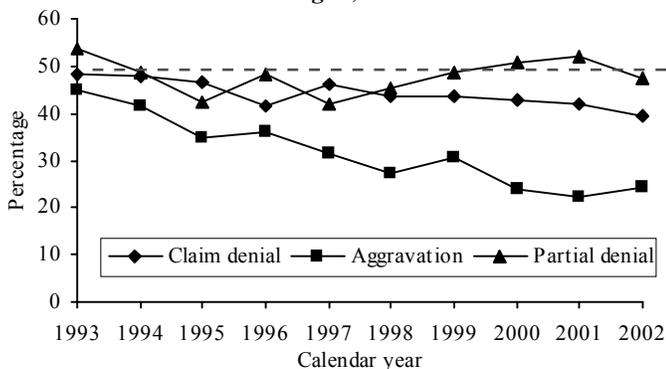


\* Remands are coded as "Affirm"

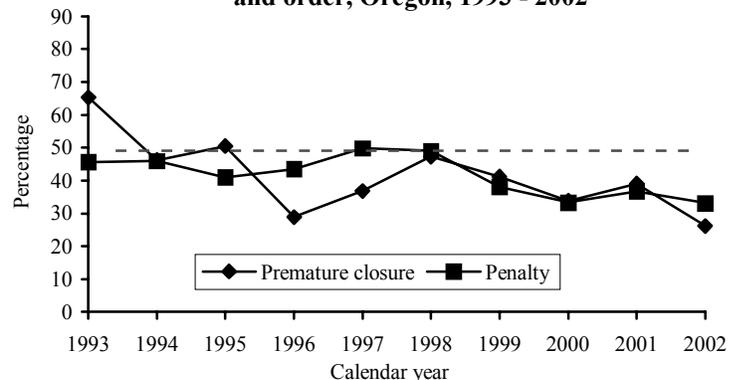
**Figure 7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1993 - 2002**



**Figure 8. Set-aside-denial rates for compensability cases, hearing opinion and order, Oregon, 1993 - 2002**



**Figure 9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1993 - 2002**



## Stipulations

In 2002, disputing parties settled 5,576 issues in 5,347 stipulated cases. Table 9 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 “set aside denial” for the compensability issues are always low because stipulations include DCSs, where the denial is sustained.

### Disputed claim settlements

In 2002 insurers paid to workers, as consideration for no longer contesting a denial, almost \$23.1 million, 8.8 percent more than was paid in 2001. See Table 8. The average payment was \$5,864 and the largest amount paid in a single settlement was \$675,000. The DCS amount was unspecified in nine cases (usually, this happens when the only consideration is the payment of medical bills and the amount was not mentioned in the order).

The percentage of cases about claim denial (46.6 percent) and aggravation (1.0 percent) were the lowest on record, while the percentage about partial denial (52.3 percent) was the highest on record.

DCSs accounted for 73.5 percent of all stipulations, 36.4 percent of all closing hearing orders, and 77.8 percent of all claims denied at hearing (excludes aggravations); these percentages are all down from the 2001 record-high values. Figure 10 provides historical information on DCSs.

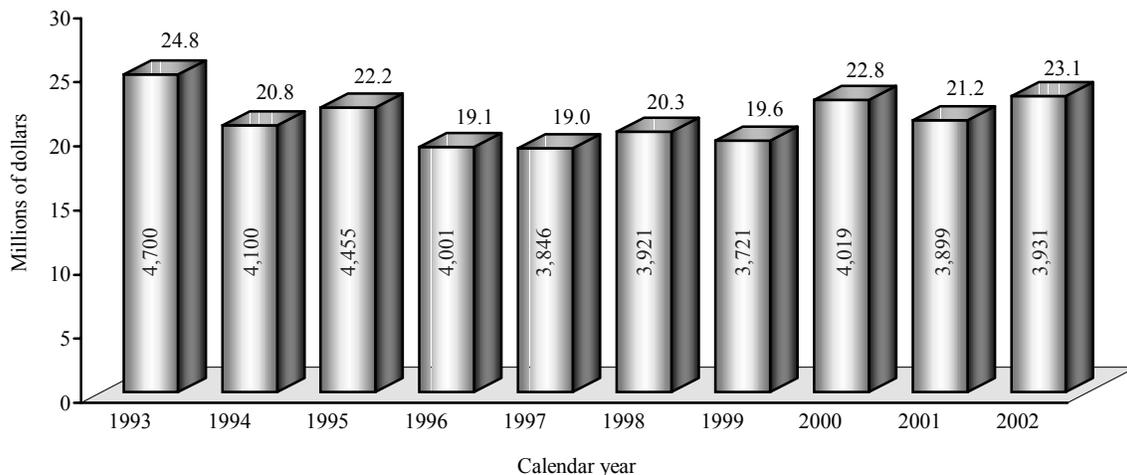
DCSs accounted for claimant attorney fees of almost \$4.5 million, a record-high 50.1 percent of all fees at hearing. The average DCS fee was \$1,292 (considering only cases with non-zero fees). About 98.7 percent of DCS fees were paid out of the DCS consideration.

**Table 8. Hearing disputed claim settlements by principal issue, Oregon, 2002**

Principal issue*	Number of cases	Percentage of cases	Total amount	Average amount	Total fees
Claim denial	1,832	46.6	\$10,504,000	\$5,733	\$2,068,000
Partial denial	2,057	52.3	12,382,000	6,019	2,362,000
Aggravation	39	1.0	158,000	4,062	36,000
All other issues	3	0.1	8,000	2,621	150
All issues	3,931	100.0	\$23,052,000	\$5,864	\$4,466,000

\*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, 1993 - 2002**



Note: Numbers within bars are case counts.

**Table 9. Stipulation cases by issue, disposition, and insurer class, Oregon, 2002**

Issue & disposition	Insurer					Percentage of cases	Percentage disposition
	SAIF	Private	Self-insured	Other insurers	All insurers		
<b>Permanent disability</b>							
Affirm	2	16	5	0	23	-	23.2
Decrease	6	13	6	0	25	-	25.3
Increase	14	27	10	0	51	-	51.5
Total cases	22	56	21	0	99	1.9	
<b>Temporary disability</b>							
Affirm	2	4	0	0	6	-	4.1
Decrease	1	1	0	0	2	-	1.4
Increase	41	81	15	2	139	-	94.6
Total cases	44	86	15	2	147	2.7	
<b>Claim denial</b>							
Set aside denial (accept)	107	177	47	0	331	-	15.2
Affirm denial	650	910	271	19	1,850	-	84.8
Total cases	757	1,087	318	19	2,181	40.8	
<b>Partial denial</b>							
Set aside denial (accept)	85	174	41	1	301	-	12.7
Affirm denial	568	1,212	284	12	2,076	-	87.3
Total cases	653	1,386	325	13	2,377	44.5	
<b>Aggravation</b>							
Set aside denial (accept)	6	20	3	0	29	-	12.1
Affirm denial	30	141	38	1	210	-	87.9
Total cases	36	161	41	1	239	4.5	
<b>Responsibility</b>							
No	0	3	0	0	3	-	60.0
Yes	0	1	1	0	2	-	40.0
Total cases	0	4	1	0	5	0.1	
<b>Premature closure</b>							
No	1	4	0	0	5	-	83.3
Yes	0	0	1	0	1	-	16.7
Total cases	1	4	1	0	6	0.1	
<b>Penalty</b>							
No	1	1	1	0	3	-	1.5
Yes	38	132	21	2	193	-	98.5
Total cases	39	133	22	2	196	3.7	
<b>Attorney fee</b>							
No	1	0	0	0	1	-	1.3
Yes	7	55	17	0	79	-	98.8
Total cases	8	55	17	0	80	1.5	
<b>Subjectivity</b>							
No	0	1	0	0	1	-	100.0
Yes	0	0	0	0	0	-	0.0
Total cases	0	1	0	0	1	0.0	
<b>Other issue</b>							
No	6	17	8	0	31	-	12.7
Yes	52	130	29	3	214	-	87.3
Total cases	58	147	37	3	245	4.6	
No issues*	49	126	29	3	207	3.9	
Total issues	1,618	3,120	798	40	5,576		

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). "Other 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.

## Permanent Disability

There were 484 cases involving extent of permanent disability in 2002, 6.1 percent more than in 2001. The relative frequency (6.4 percent) was up from 2001's record-low 6.1 percent. Case dispositions were as follows (these figures include stipulations): increase the award, 26.2 percent (a record-low value); decrease the award, 22.5 percent; and affirm the award, 51.2 percent.

The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past 15 years. There seem to be four primary reasons for this change. First, the number of accepted disabling claims has been decreasing. Second, law changes enacted in 1987 by House Bill 2900: primarily, disability standards. Third, law changes of May 1990 (Senate Bill 1197): required reconsideration, medical arbiters for impairment disputes, "tighter" disability standards, and claim disposition agreements. Finally, law changes of June 1995 (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 10 and 11 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 9.2 scheduled degrees and 22.6 unscheduled degrees. These are record-low and near-record-low values, respectively (going back to 1994). Combining scheduled and unscheduled disability awards, the average award increase was a record-low 16.3 degrees.

There were 54 and 63 cases where scheduled and unscheduled awards, respectively, were decreased. Average award **decreases** were 17.6 scheduled degrees and 32.9 unscheduled degrees.

The net amount awarded for PPD at hearing in 2002 was -\$445 thousand, the 15th consecutive decrease in that total and the first time that more disability has been taken away than granted. See Figure 11. The primary reason

**Table 10. Hearing PPD award increases over previous award, by order type, Oregon, 2002**

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	23	16.0	9.4	\$95,000	32	50.5	24.6	\$154,000	\$249,000
Stipulation	18	10.5	4.3	38,000	22	46.8	13.9	55,000	93,000
All orders	41	13.6	7.1	\$132,000	54	49.0	20.2	\$209,000	\$341,000

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. Hearing PPD awards, no previous award, by order type, Oregon, 2002**

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	12	16.8	\$96,000	9	40.9	\$59,000	\$155,000
Stipulation	5	7.7	17,000	3	10.1	4,000	21,000
All orders	17	14.1	\$113,000	12	33.2	\$63,000	\$176,000

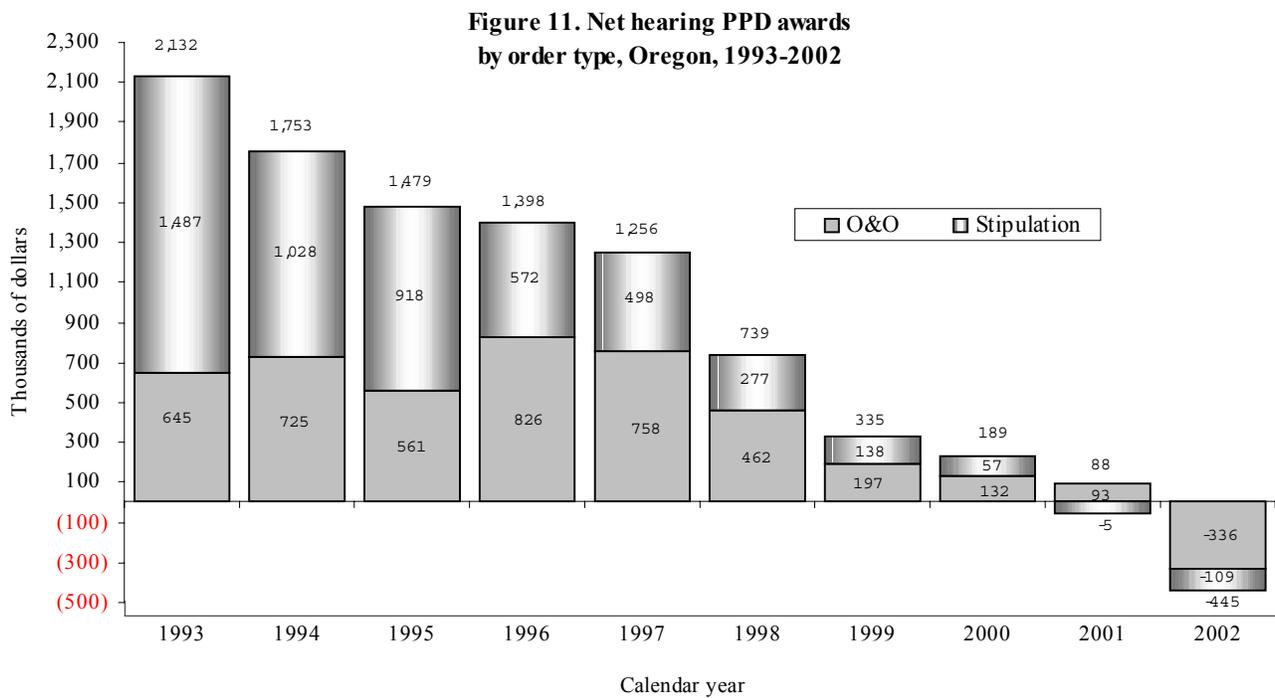
Note: Award units are degrees. Dollar increases are based on degree value for the date of injury. Dollar values may not add to totals due to rounding.

for the net decrease is that average decreases exceeded average increases (averages are given in the two paragraphs, above). The value of each degree of disability is based on the date of injury.

Table 12 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 were six hearing PTD grants in 2002, as shown in Figure 12. All six were reinstatements of rescinded awards. There was one affirmation of a PTD award, and no rescissions, so the net number of PTD awards was six. Five of the grants were by stipulation, three of which resulted from mediations conducted by hearings judges. For the PTD grants, the average previous PPD awarded (before PTD was reinstated at hearing) was 26.3 scheduled degrees and 127.5 unscheduled degrees (153.8 degrees combined).

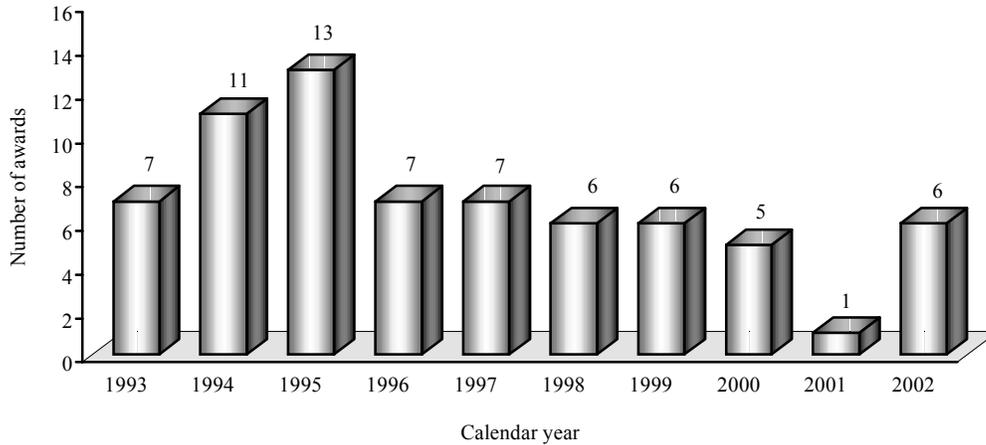


**Table 12. Disposition of hearing PPD cases by order type and prior award, Oregon, 2002**

Order type	No prior award		Prior award			All cases			All
	Increase	Affirm	Increase	Decrease	Affirm	Increase	Decrease	Affirm	
Opinion & order	20 17.9%	92 82.1%	55 20.3%	84 31.0%	132 48.7%	75 19.6%	84 21.9%	224 58.5%	383
Stipulation	7 43.8%	9 56.3%	39 50.7%	25 32.5%	13 16.9%	46 49.5%	25 26.9%	22 23.7%	93
All orders	27 21.1%	101 78.9%	94 27.0%	109 31.3%	145 41.7%	121 25.4%	109 22.9%	246 51.7%	476

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, 1993 - 2002**



Note: Counts for 1999 and 2000 are corrected. PTD reinstatements in disputed claim settlements (one in 1999, two in 2000) were not reflected in previous counts.

### Time Lags

For all hearing orders in 2002, the median time from injury to hearing request was 348 days. The median request-to-order lag for all order types was 128 days, two days longer than for 2001. Table 13 provides various time lags by order type and insurer class.

*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 35.5 percent, the second-lowest on record (going back to 1991).

For opinion and order cases, the median time from hearing request to order was 204 days (6.7 months). See Figure 13. These figures are for *all* O&O cases. For O&O cases

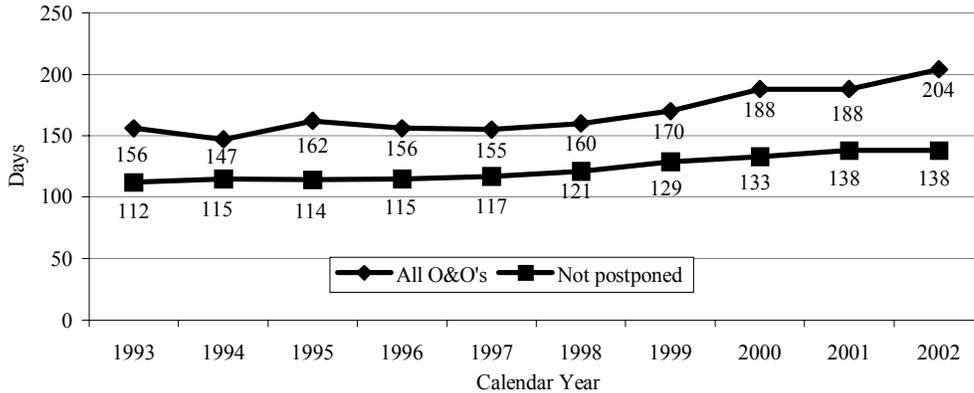
Note that request-to-order time lags include time that the record was kept open, after the hearing was concluded. Such lag times were most frequently 0 days, and the median was 12 days, but the lag may sometimes be several months.

**Table 13. Median hearing time lags by order type, Oregon, 2002**

Lag Periods	Opinion and order	Received stipulation*	Other stipulation*	Dismissal and withdrawal	All orders
Injury date to request date	353	547	291	381	348
Injury date to order date	614	550	504	559	549
Request date to order date	204	5	137	115	128
Request date to hearing date	91	--	--	--	--
Hearing date to closed date	12	--	--	--	--
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, 1993 - 2002**



### Claimant Attorney Fees

Claimant attorney fees totaling over \$8.9 million were approved for payment out of worker compensation or assessed against insurers in 2002 hearing orders. See Table 14. Total fees were 4.4 percent greater than in 2001.

About 52.4 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 \$1,688, about 4.4 percent more than in 2001. 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 93.2 percent for O&O cases and 88.8 percent for all cases.

Attorneys representing workers receive fees for getting a denial overturned, obtaining an increase in compensation, and 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 in the hearing request, and also fees decided in “order awarding attorney fee” (“AF” case number) cases.

**Table 14. Claimant attorney fees by order type and source, Oregon, 2002**

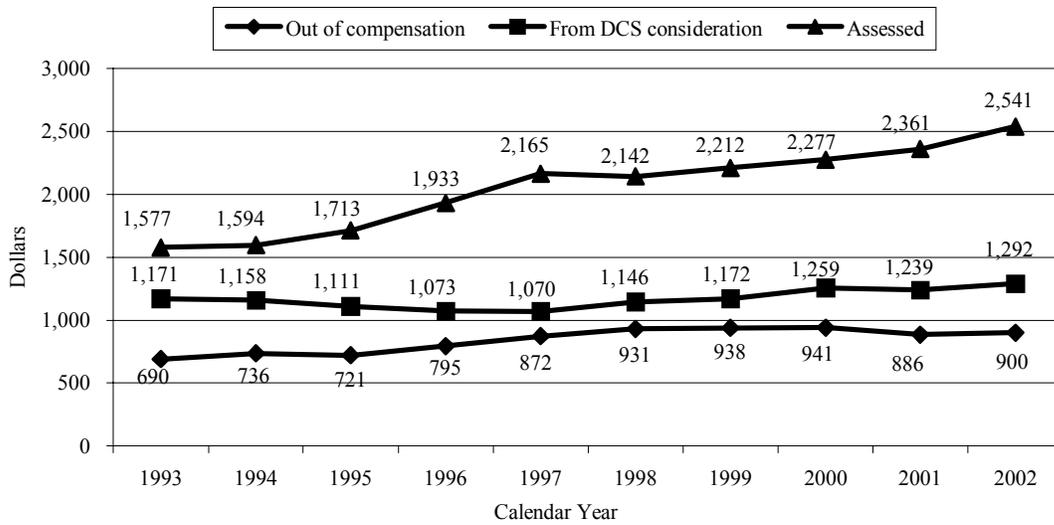
Source of fees	Opinion and order	Stipulation	Dismissal	Order awarding attorney fees	All orders
<b>Out of claimant compensation</b>					
Total fees	145,000	113,000	3,100	0	261,000
Average fee	1,238	661	1,558	0	900
Cases	117	171	2	0	290
<b>From DCS consideration</b>					
Total fees	0	4,407,000	0	0	4,407,000
Average fee	0	1,292	0	0	1,292
Cases	0	3,410	0	0	3,410
<b>Assessed against insurer</b>					
Total fees	2,735,000	1,507,000	250	3,500	4,246,000
Average fee	3,566	1,673	250	1,750	2,541
Cases	767	901	1	2	1,671
<b>From all sources</b>					
Total fees	2,880,000	6,027,000	3,400	3,500	8,914,000
Average fee	3,334	1,366	1,122	1,750	1,688
Cases	864	4,413	3	2	5,282

Notes: Fees may not add to totals due to rounding.

Attorney fees that are recorded for hearing cases are not necessarily the actual amounts paid. For example, in cases where the duration of time loss is increased 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 at least 35 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 14. Average claimant attorney fees by source, Oregon, 1993 - 2002**



**Figure 15. Total hearing claimant attorney fees, Oregon, 1993 - 2002**

