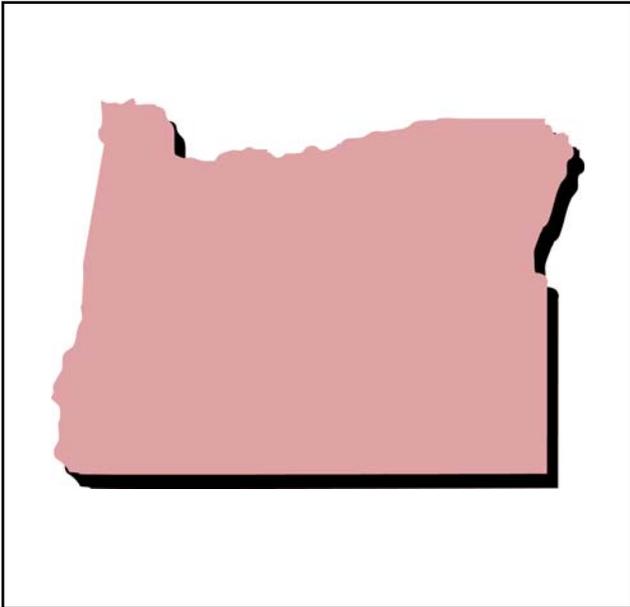




Hearings Division Statistical Report



Calendar Year 2003

*Information Management
Division*

*Oregon Dept. of Consumer
& Business Services*



April 2005



Hearings Division Statistical Report Calendar Year 2003

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Hearing requests, cases closed

In 2003 the Hearings Division of the Oregon Workers' Compensation Board received 10,177 requests for hearing, 4.7 percent fewer than in 2002. See Figure 1.

In 2003, there were 10,429 closing orders issued by the Hearings Division, 3.7 percent fewer than the previous year. See Figure 2. Request and order counts include cases solely about non-complying employer or civil penalty assessment; most analyses below exclude these case types.

Table 1 provides data on cases closed, by [order type](#). The percentage of cases with order type

opinion and order, 23.0 percent, was above 2002's near-record-low 20.8 percent. The percentage closed by dismissal was a near-record-high 29.0 percent. See Figure 3. About 70.6 percent of the dismissals were issued because the requester withdrew the hearing request.

The breakout of closed cases by requester is given in Table 2. The worker filed the request in 87.5 percent of the cases, about the same as in 2001 and 2002.

The breakout of cases by [insurer class](#) is depicted in Table 3 and Figure 4.

Figure 1. Requests for hearing, Oregon, 1994-2003

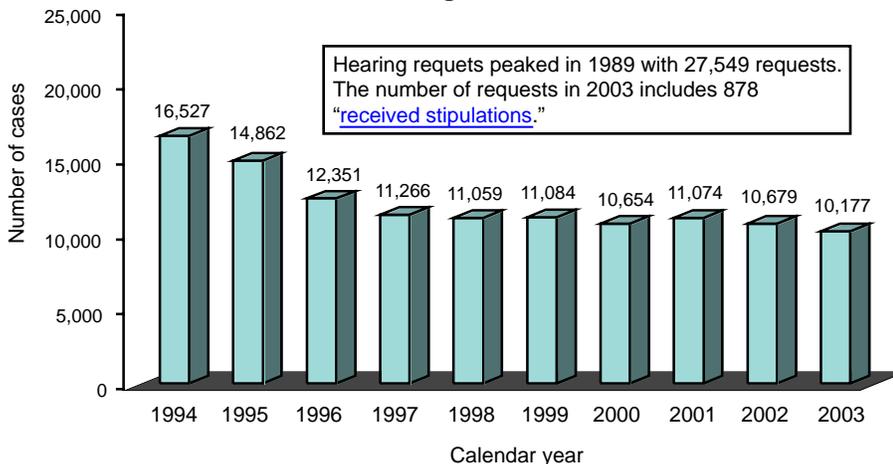


Figure 2. Hearing cases closed, all orders, Oregon, 1994-2003

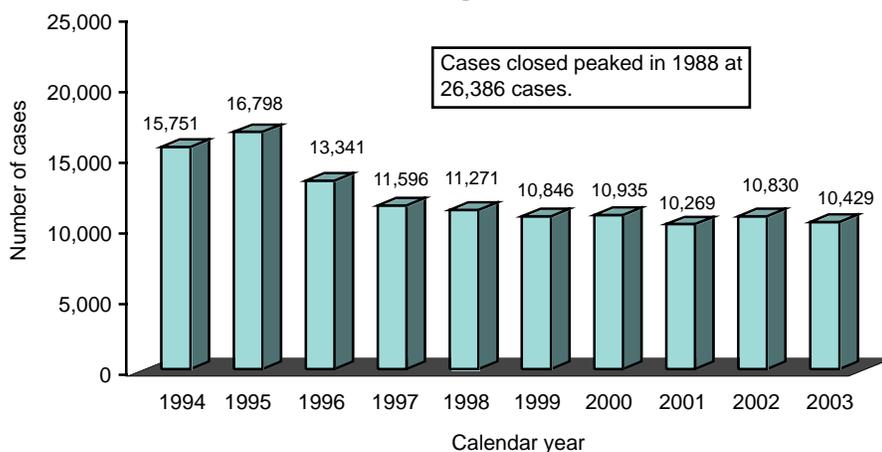


Table 1. Hearing compensation cases closed by order type, Oregon, 2003

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
Opinion and order	2,387	23.0%	
Stipulation	1,265	12.2%	25.4%
DCS	3,703	35.7%	74.4%
Order on stipulation	11	0.1%	0.2%
All stipulations	4,979	48.0%	100.0%
Dismissal	553	5.3%	18.4%
Dismiss for CDA	330	3.2%	11.0%
Withdrawal	2,125	20.5%	70.6%
All dismissals	3,008	29.0%	100.0%
Total orders	10,374	100.0%	

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

Figure 3. Distribution of hearing cases closed by order type, Oregon, 1994-2003

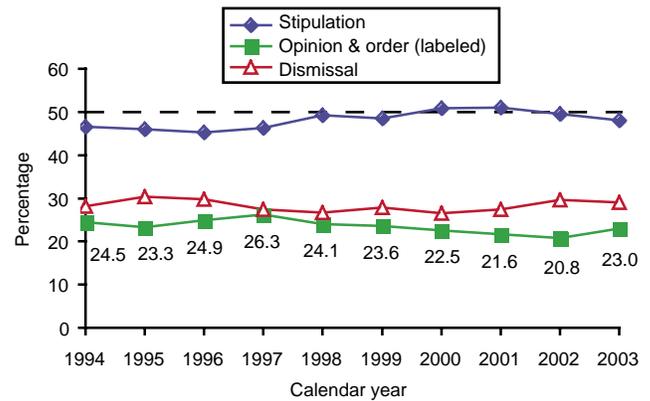


Table 2. Hearing compensation cases by requester and order type, Oregon, 2003

Requester	Opinion and order		Stipulation		Dismissal		Withdrawal		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Claimant	2,224	93.2%	3,978	79.9%	817	92.5%	2,060	96.9%	9,079	87.5%
Employer	8	0.3%	13	0.3%	2	0.2%	4	0.2%	27	0.3%
Joint	-	-	898	18.0%	1	0.1%	-	-	899	8.7%
Insurer	153	6.4%	86	1.7%	63	7.1%	59	2.8%	361	3.5%
Other	2	0.1%	4	0.1%	-	-	2	0.1%	8	0.1%
Total	2,387	100.0%	4,979	100.0%	883	100.0%	2,125	100.0%	10,374	100.0%

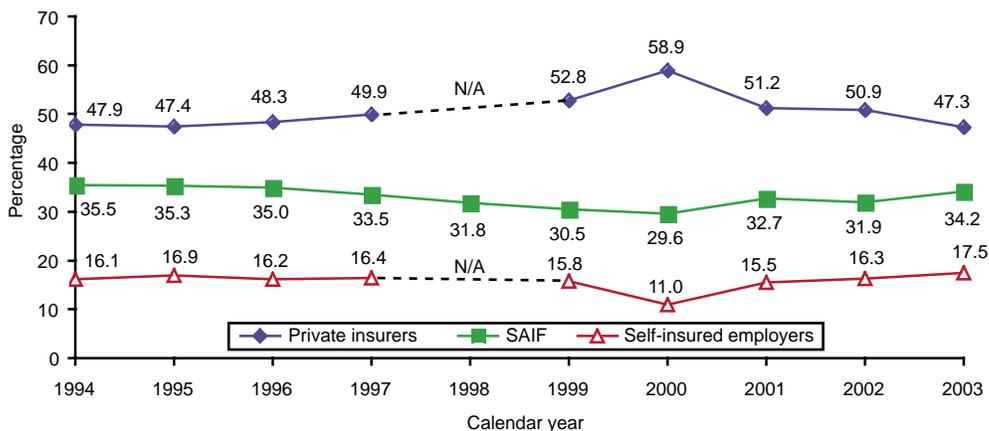
Note: Due to rounding, the sum of percentages may not equal 100.

Table 3. Hearing compensation cases by insurer and order type, Oregon, 2003

Insurer	Opinion and order		Stipulation		Dismissal		Withdrawal		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
SAIF	870	36.4%	1,556	31.3%	319	36.1%	808	38.0%	3,553	34.2%
Private	1,045	43.8%	2,571	51.6%	413	46.8%	881	41.5%	4,910	47.3%
Self-Insured	457	19.1%	801	16.1%	137	15.5%	419	19.7%	1,814	17.5%
Unknown	15	0.6%	51	1.0%	14	1.6%	17	0.8%	97	0.9%
Total	2,387	100.0%	4,979	100.0%	883	100.0%	2,125	100.0%	10,374	100.0%

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

Figure 4. Distribution of hearing cases by insurer, Oregon, 1994-2003



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

Table 4. Mediations, Oregon, 1996-2003

	1996	1997	1998	1999	2000	2001	2002	2003	Average
Mediations completed*	219	250	233	216	280	248	285	241	247
Settlement resulted (%)*	84.4	91.6	90.1	89.8	89.3	85.5	86.3	86.3	87.9
Settled by DCS (%)**	81	82	87	84	87	92	85	88	85.8
Mean DCS amount (\$k/case)	8	10.5	10.7	10.7	16.7	14.2	10.3	11.2	11.5
Disease claims (%)***	50	50	44	63	41	49	42	41	47.5
Mental disease (%)***	31	30	30	37	32	36	27	20	30.4
Claim denial issue (%)***	50	50	47	47	40	39	43	41	44.6
Partial denial issue (%)***	47	—	49	54	64	70	65	66	59.3
Compensability issue (%)***	—	90	98	—	97	99	95	99	96.3
Non-WC issue (%)***	—	40	47	46	43	51	55	45	46.6
ALJ work-hours (mean)****	—	12	13.8	13	13.5	13.1	14.7	14.6	13.5
Request to mediation lag (days)	21	25	50	64	77	73	80	82	59.0
Mediation to order lag (days)	46	31	34	43	42	33	37	57	40.4

Notes: Percentages, except "settlement resulted," indicate share of all *settled* mediations.

* 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.

**** Work-hours per mediation includes travel time. Value is for all *completed* mediations.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 241 [mediations](#) during the year. Data about mediations are in Table 4. Two of the mediations resulted in agreements to reinstate awards of permanent total disability. The average dollar amount for a disputed claim settlement resulting from a mediation was 1.88 times larger than the average amount for all DCSs.

Issues

The 7,366 opinion and order and stipulation cases in 2003 included a total of 8,119 [issues](#), or 1.10 issues per case. See Table 5 for numbers of issues in cases.

Claim denial was the most frequent issue (as it's been every year beginning in 1989), with 40.7 percent of the cases. Partial denial was a close second, with a near-record-high 38.0 percent. The percentage of cases with the issue of aggravation (3.7 percent) and extent of temporary disability (3.3 percent) were record-low values. Insurer penalty was an issue in 7.2 percent of cases, while responsibility was an issue in 2.2 percent. Permanent disability is discussed in another section of this report.

Table 5. Number of issues per hearing compensation case, Oregon, 2003

Number of issues	Number of cases
One	6,089
Two	839
Three	101
Four	11
Five	1
More than one issue	952
No issues	325
Total issues	8,119

Opinion and orders

Hearings judges in 2003 decided 2,966 issues in 2,387 cases, an average of 1.24 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 6. The percentage of cases about whole claim denial (37.4 percent) was the highest since 1998, the percentage about partial denial (25.6

percent) was the third highest on record, and the percentage about extent of permanent disability (15.1 percent) and aggravation (3.3 percent) were record-low values.

Table 7 and Figure 5 provide information about the number of opinion and order cases with extent of disability (temporary, permanent, or both)

Table 6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2003

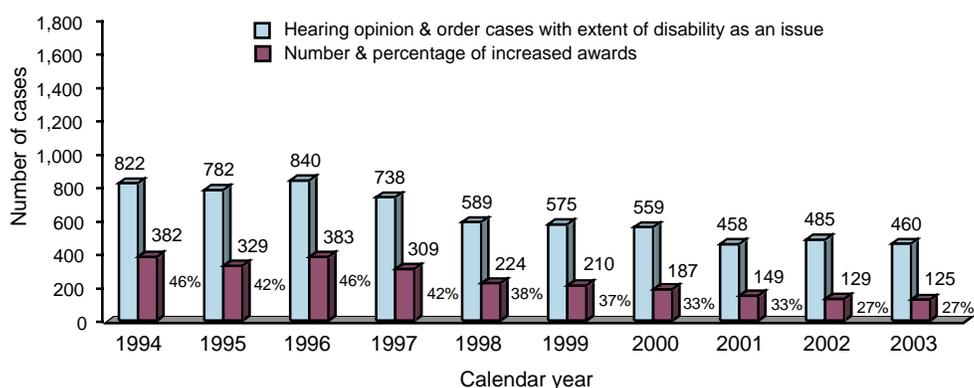
Issue & disposition		Insurer					Percentage of cases	Percentage disposition
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	87	95	32	2	216	-	60.0
	Decrease	26	25	19	0	70	-	19.4
	Increase	34	27	13	0	74	-	20.6
	Total cases	147	147	64	2	360	15.1	
Temporary disability	Affirm	21	36	9	0	66	-	53.2
	Decrease	3	1	1	0	5	-	4.0
	Increase	18	29	6	0	53	-	42.7
	Total cases	42	66	16	0	124	5.2	
Claim denial	Set aside denial	148	153	80	2	383	-	42.9
	Affirm denial	177	220	111	1	509	-	57.1
	Total cases	325	373	191	3	892	37.4	
Partial denial	Set aside denial	75	118	42	0	235	-	38.5
	Affirm denial	123	167	82	3	375	-	61.5
	Total cases	198	285	124	3	610	25.6	
Aggravation	Set aside denial	5	11	5	0	21	-	26.9
	Affirm denial	7	36	14	0	57	-	73.1
	Total cases	12	47	19	0	78	3.3	
Responsibility	No	40	54	5	0	99	-	62.3
	Yes	20	37	3	0	60	-	37.7
	Total cases	60	91	8	0	159	6.7	
Premature closure	No	10	18	7	0	35	-	63.6
	Yes	6	12	1	1	20	-	36.4
	Total cases	16	30	8	1	55	2.3	
Insurer penalty	No	87	106	43	2	238	-	67.4
	Yes	30	61	23	1	115	-	32.6
	Total cases	117	167	66	3	353	14.8	
Attorney fee	No	2	19	4	0	25	-	36.2
	Yes	10	25	9	0	44	-	63.8
	Total cases	12	44	13	0	69	2.9	
Subjectivity	No	3	1	1	1	6	-	85.7
	Yes	0	1	0	0	1	-	14.3
	Total cases	3	2	1	1	7	0.3	
Other issue	No	72	77	26	1	176	-	68.0
	Yes	33	37	11	2	83	-	32.0
	Total cases	105	114	37	3	259	10.9	
No issues*	Total cases	50	53	17	2	122	5.1	
Total issues		1,037	1,366	547	16	2,966		

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 [appendix](#) for situations where no issues are recorded for an order.

Table 7. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1994-2003

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
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
2003	460	48	25	1	51

Figure 5. Disability issues and award increases, hearing opinion and order, Oregon, 1994-2003



at issue and the type of disability increase. In 2003, worker’s disability awards were increased in 125 cases (the sum of the last four columns of the table), about 27 percent of the 460 disability-issue cases.

The “percentage disposition” column of Table 6 provides information about the disposition of issues in opinion and order cases. Figures 6 through 9 provide historical data on opinion and order dispositions for various issues.

The “set-aside-denial” rate for claim denial (42.9 percent) was up from 2002’s record-low 39.5 percent; historically, this rate has been consistent, ranging from 41 to 49 percent. The “set-aside” rate for partial denial (38.5 percent) was the second-lowest value on record, down from the near-record-high 52.0 percent of 2001. For aggravation, the “set-aside” rate (26.9 percent) increased from the 2001 and 2002 record- and near-record-low values. The “yes” rate for premature closure (36.4 percent) was up from 2002’s record-low value; for insurer penalty (32.6 percent) it was a record-low value.

The “increase” rate for permanent disability (20.6 percent) was up from 2002’s record-low 19.7 percent, the “decrease” rate (19.4 percent) was the second highest ever, and the “affirm” rate (60.0 percent) was the highest on record. For temporary disability, the “increase” rate (42.7 percent) was a record-low value, while the “affirm” rate (53.2 percent) was the highest on record for the second straight year.

The percentage of opinion and order cases decided in favor of the claimant for permanent and temporary disability (30.6 and 47.6 percent, respectively) were the lowest and second lowest on record (going back to 1994). In 2002, these percentages were 31.2 and 44.7 percent. Figures for 2002 and 2003 were all well below the 60-80 percent values of the 1980s and early 1990s.

In three opinion and order cases, sanctions were requested against claimant attorneys; all were denied.

Figure 6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1994-2003

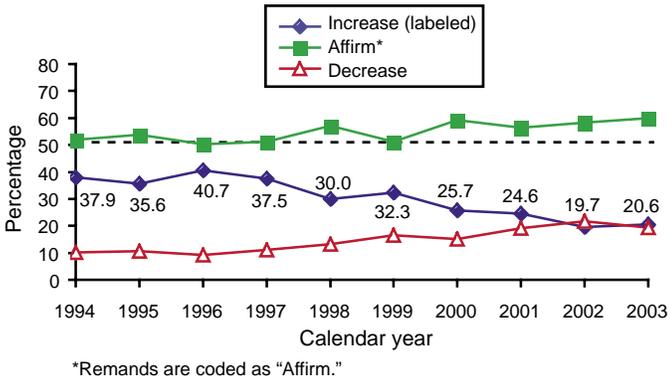


Figure 7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1994-2003

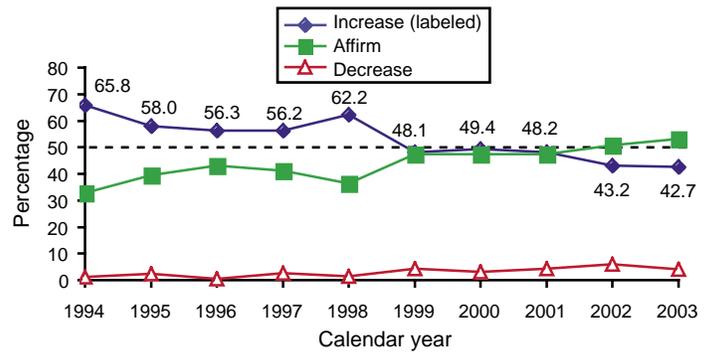


Figure 8. Set-aside-denial rates for compensability cases, hearing opinion and order, Oregon, 1994-2003

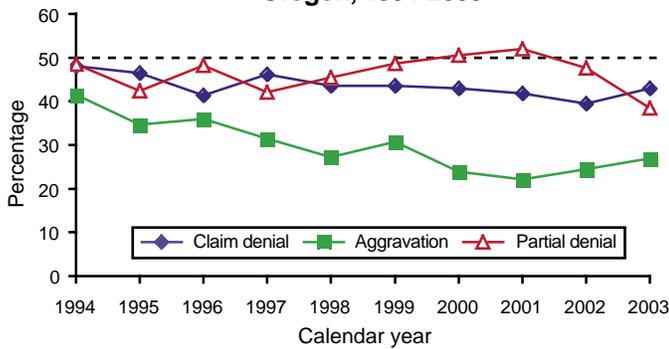
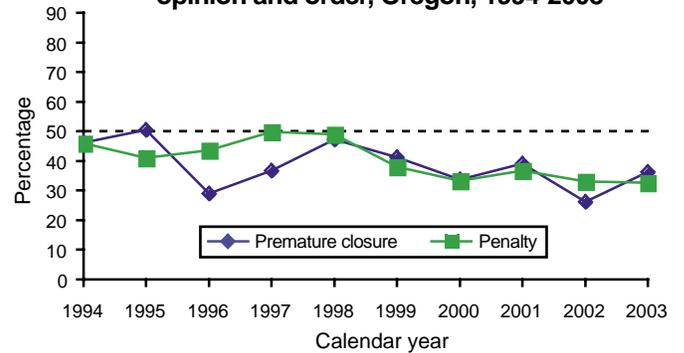


Figure 9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1994-2003



Stipulations, disputed claim settlements

In 2003, disputing parties settled 5,153 issues in 4,979 stipulated cases. Table 8 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.

Table 8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2003

Issues & disposition		Insurer					Percentage of cases	Percentage disposition
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	1	3	3	0	7	-	13.0
	Decrease	10	10	3	0	23	-	42.6
	Increase	9	14	1	0	24	-	44.4
	Total cases	20	27	7	0	54	1.1	
Temporary disability	Affirm	1	1	0	0	2	-	1.7
	Decrease	0	0	1	0	1	-	0.8
	Increase	26	69	20	1	116	-	97.5
	Total cases	27	70	21	1	119	2.3	
Claim denial	Set aside denial	103	158	51	1	313	-	14.9
	Affirm denial	652	862	255	22	1,791	-	85.1
	Total cases	755	1,020	306	23	2,104	42.3	
Partial denial	Set aside denial	102	140	43	1	286	-	13.1
	Affirm denial	509	1,080	302	13	1,904	-	86.9
	Total cases	611	1,220	345	14	2,190	44.0	
Aggravation	Set aside denial	4	17	6	0	27	-	13.7
	Affirm denial	24	101	45	0	170	-	86.3
	Total cases	28	118	51	0	197	4.0	
Premature closure	No	0	2	2	0	4	-	80.0
	Yes	0	1	0	0	1	-	20.0
	Total cases	0	3	2	0	5	0.1	
Insurer penalty	No	1	2	0	0	3	-	1.7
	Yes	55	103	14	0	172	-	98.3
	Total cases	56	105	14	0	175	3.5	
Attorney fee	No	3	1	0	0	4	-	3.9
	Yes	28	55	16	0	99	-	96.1
	Total cases	31	56	16	0	103	2.1	
Other issue	No	11	12	6	0	29	-	14.1
	Yes	60	82	32	3	177	-	85.9
	Total cases	71	94	38	3	206	4.1	
No issues*	Total cases	48	113	36	6	203	4.1	
Total issues		1,599	2,713	800	41	5,153		

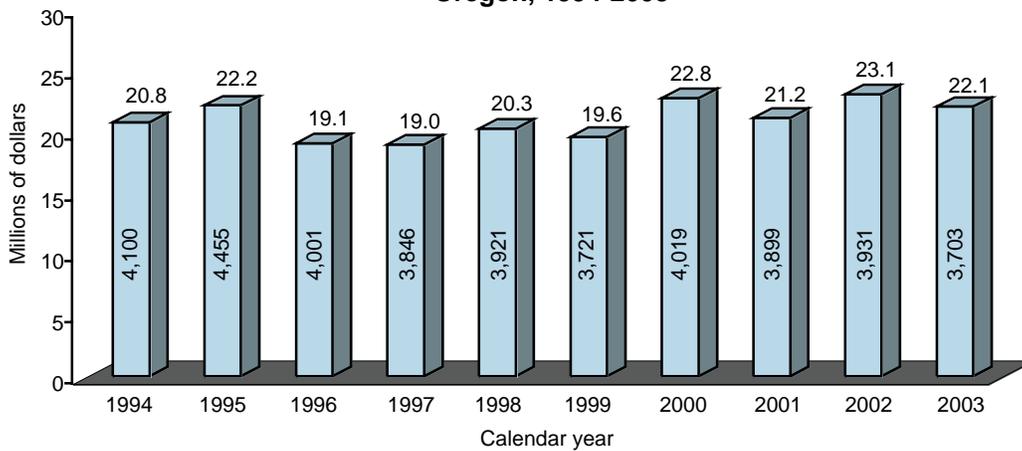
Notes: “Percentage of cases” is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages will exceed 100. “Percentage disposition” gives the breakout of how the issues were decided; for each issue, the sum of these percentages will equal 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 [appendix](#) for situations in which no issues are recorded for an order.

Table 9. Hearing disputed claim settlements by principal issue, Oregon, 2003

Principal issue*	Number of cases	Percentage of cases	Total amount	Average amount	Total fees
Claim denial	1,781	48.1	\$10,658,000	\$5,984	\$2,191,000
Partial denial	1,883	50.9	11,184,000	5,939	2,116,000
Aggravation	38	1.0	212,000	5,573	37,000
All other issues	1	0.0	5,000	5,000	1,000
All issues	3,703	100.0	\$22,058,000	\$5,957	\$4,344,000

*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, 1994-2003



Note: Numbers within bars are case counts.

In 2003, insurers paid to workers in disputed claim settlements almost \$22.1 million, about \$1 million less than paid in 2002. See Table 9. The mean payment was \$5,957, the median payment was \$3,000, and the mode was \$1,000. The largest amount paid in a single settlement was \$310,000. The DCS amount was unspecified in eight cases.

The percentage of cases about partial denial (50.9 percent), claim denial (48.1 percent), and aggravation (1.0 percent) were typical of the past several years.

DCSs accounted for 74.4 percent of all stipulations (second-highest on record), 35.7 percent of all closing hearing orders, and 77.4 percent of all claims denied at hearing (excludes aggravations). Figure 10 provides historical information on DCSs.

DCSs accounted for claimant attorney fees of over \$4.3 million, 48.3 percent of all fees at hearing. The average DCS fee was \$1,326 (considering only cases with non-zero fees). About 99.4 percent of DCS fees were paid out of the DCS consideration.

Permanent disability

There were 414 cases involving extent of permanent disability in 2003, 14.5 percent fewer than in 2002. The relative frequency (5.6 percent) was the lowest on record. Case dispositions were as follows (these figures include stipulations): increase the award, 23.7 percent (a record-low value); decrease the award, 22.5 percent; and affirm the award, 53.9 percent.

The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past 15 years. There are four primary reasons for this change:

- Decreasing numbers of accepted disabling claims
- House Bill 2900 (1987): primarily, enacting disability standards
- Senate Bill 1197 (1990): required reconsideration, medical arbiters for impairment disputes, “tighter” disability standards, and claim disposition agreements
- Senate Bill 369 (1995): 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

Information about cases in which permanent partial disability awards were increased is provided in Tables 10 and 11 for cases with and without a prior award, respectively. The average award increases were 9.6 scheduled [degrees](#) and 24.2 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 16.7 degrees.

There were 55 and 45 cases in which scheduled and unscheduled awards, respectively, were decreased. Average award decreases were 17.6 scheduled degrees, 30.6 unscheduled degrees, and 23.4 degrees combined.

The net amount awarded for PPD at hearing in 2003 was minus \$272 thousand, the second time that hearings net PPD was negative. See Figure 11. The primary reason for the net decrease is that average decreases exceeded average increases (figures are given above).

Table 10. Hearing PPD award increases over previous award, by order type, Oregon, 2003

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 and order	23	27.0	11.3	\$125,000	27	53.2	18.5	\$108,000	\$233,000
Stipulation	9	6.7	6.5	29,000	8	51.2	16.4	30,000	59,000
All orders	32	21.6	10.0	\$154,000	35	52.8	18.0	\$138,000	\$292,000

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, 2003

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 and order	13	10.3	\$68,000	12	43.5	\$101,000	\$169,000
Stipulation	5	5.3	13,000	1	9.6	2,000	15,000
All orders	18	8.9	\$81,000	13	40.9	\$103,000	\$184,000

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. “No previous award” means that there had been no prior award of PPD, either scheduled or unscheduled, at the time of the hearing award.

Figure 11. Net hearing PPD awards by order type, Oregon, 1994-2003

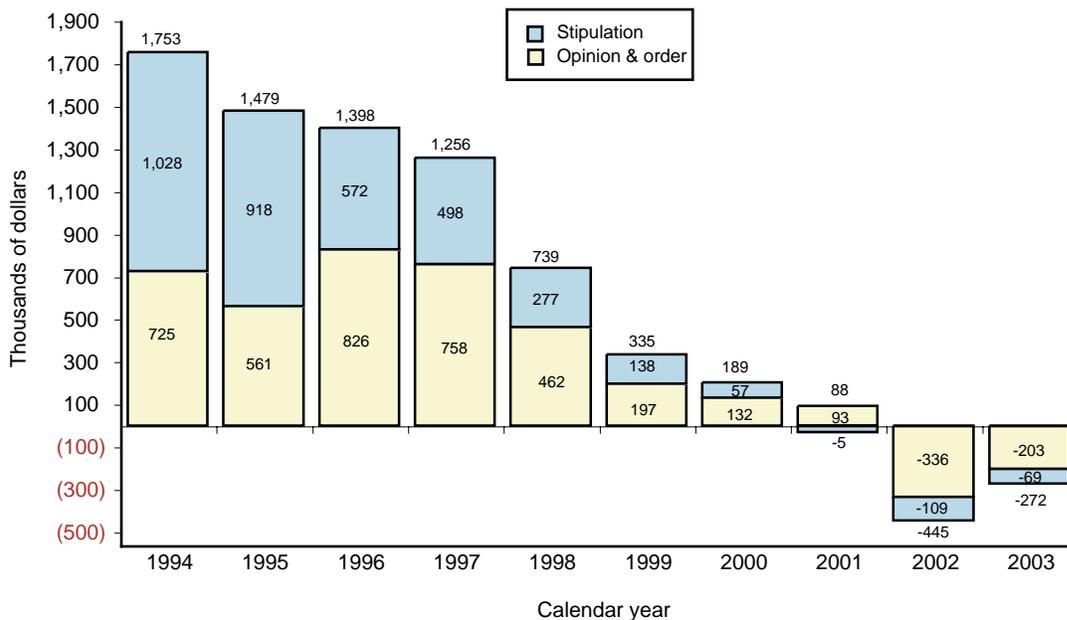


Table 12. Disposition of hearing PPD cases by order type and prior award, Oregon, 2003

Order type	No prior award		Prior award			All cases			All cases and dispositions
	Increase	Affirm	Increase	Decrease	Affirm	Net increase	Net decrease	Affirm	
Opinion & order	25 21.7%	90 78.3%	48 19.7%	70 28.7%	126 51.6%	73 20.3%	70 19.5%	216 60.2%	359
Stipulation	5 55.6%	4 44.4%	16 38.1%	23 54.8%	3 7.1%	21 41.2%	23 45.1%	7 13.7%	51
All orders	30 24.2%	94 75.8%	64 22.4%	93 32.5%	129 45.1%	94 22.9%	93 22.7%	223 54.4%	410

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).

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 having a net increase or decrease when there's an increase in one award type and a decrease in the other.

There were four hearing permanent total disability grants in 2003, as shown in Figure 12; all were reinstatements of rescinded awards. There were no affirmations of PTD awards and no rescissions, so the net number of PTD awards was four. Three of the grants were by stipulation; two of the stipulations resulted from mediations conducted by

hearings judges. For the PTD grants, the average previous PPD award was 57.2 degrees (combining scheduled and unscheduled awards).

Time lags

For all hearing orders in 2003, the median time from injury to hearing request was 320 days. The median request-to-order lag for all order types was 136 days. Table 13 provides various time lags by order type.

For all opinion and order cases, the median time from hearing [request to order](#) was 215 days (7.1 months). See Figure 13. For opinion and

order cases without a postponement, the median request-to-order time was only 144 days (4.7 months). The percentage of opinion and orders with at least one postponement was 40.3 percent, almost 5 percentage points above 2002 and the highest since 1997.

Note that request-to-order time lags include time that the record was kept open, after the hearing was concluded. The median hearing-to-close time lag was 11 days, while the mode was 0 days.

Figure 12. PTD awards granted at hearing, Oregon, 1994-2003

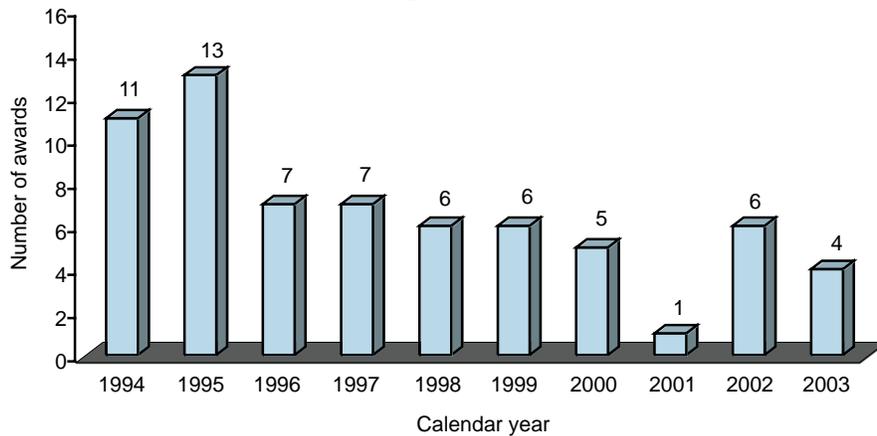
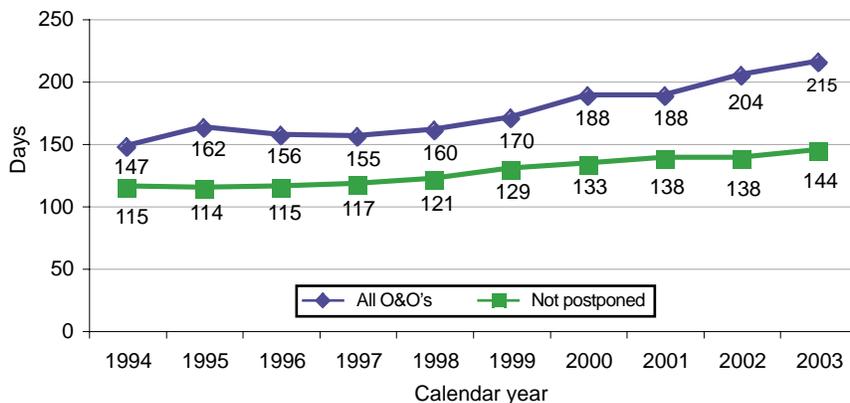


Table 13. Median hearing time lags by order type, Oregon, 2003

Lag periods	Opinion and order	Received stipulation*	Other stipulation*	Dismissal and withdrawal	All orders
Injury date to request date	361	600	246	333	320
Injury date to order date	639	606	479	522	541
Request date to order date	215	5	144	115	136
Request date to hearing date	91	--	--	--	--
Hearing date to closed date	11	--	--	--	--
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, 1994-2003



Claimant attorney fees

Claimant [attorney fees](#) totaling almost \$9.0 million were approved for payment out of worker compensation or assessed against insurers in 2003 hearing orders. See Table 14. Total fees were 0.84 percent greater than in 2002.

About 50.7 percent of the fees were paid out of compensation or DCS consideration, slightly less than the values of the past three years. 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 \$1,781, about 5.5 percent more than in 2002. Figures 14 and 15 depict average and total fees (respectively), by type, for the past 10 years.

Claimants were represented by counsel in 92.8 percent of opinion and order cases and 87.3 percent of all cases.

Figure 14. Average claimant attorney fees by source, Oregon, 1994-2003

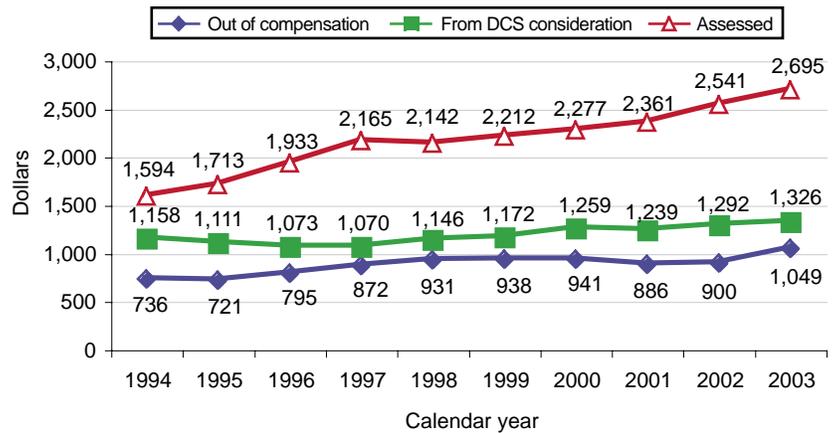


Figure 15. Total hearing claimant attorney fees, Oregon, 1994-2003

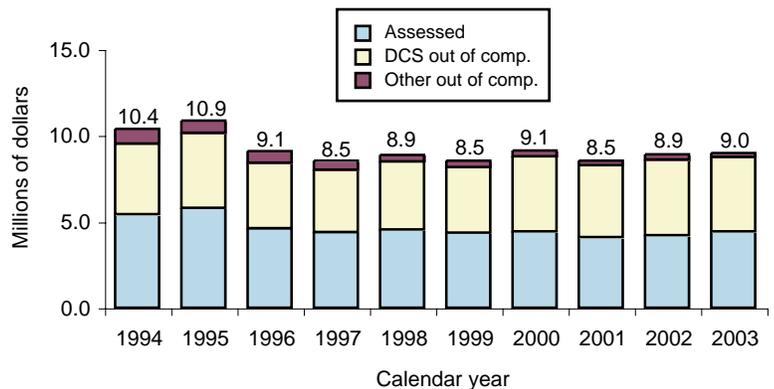


Table 14. Claimant attorney fees by order type and source, Oregon, 2003

Source of fees	Opinion and order	Stipulation	Dismissal	Order awarding attorney fees	All orders	Percentage of all fees
Out of claimant compensation						
Total fees	145,000	96,000	0	44	241,000	2.7%
Average fee	1,333	799	0	44	1049	
Cases	109	120	0	1	230	
From DCS consideration						
Total fees	0	4,318,000	0	0	4,318,000	48.0%
Average fee	0	1,326	0	0	1,326	
Cases	0	3,257	0	0	3,257	
Assessed against insurer						
Total fees	2,913,000	1,516,000	1000	0	4,430,000	49.3%
Average fee	3,759	1,752	250	0	2,695	
Cases	775	865	4	0	1,644	
From all sources						
Total fees	3,059,000	5,930,000	1,000	44	8,989,000	100.0%
Average fee	3,569	1,417	250	44	1,781	
Cases	857	4,186	4	1	5,048	

DCS fees are those taken from the DCS consideration only. Attorney fees are missing (were not determinable from the order) in about 50 cases. The total amount of unknown fees is probably less than 1 percent of the total value of known fees. Fees may not add to totals due to rounding.

Appendix

Background and context

The Hearings Division of the Oregon Workers' Compensation Board provides a forum for appeal in the Oregon workers' compensation system. Hearings administrative law 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) may appeal to the Hearings Division. See ORS 656.283.

This report covers cases for which hearing orders were written during the subject calendar year, regardless of the date the hearing was requested or held. The basic unit of data is the case, not the written order. 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]; 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.

Terminology

Note: for other terminology, see the Workers' Compensation Division's list of terms and abbreviations: <http://www.cbs.state.or.us/external/wcd/communications/publications/3284.pdf>. Other terms are defined in the law and WCB rules.

Administrative law judge – a WCB Hearings Division attorney, referred to as “judge” in this report. Formerly called “referees,” judges conduct hearings, decide cases, write opinion and orders, issue dismissal orders, approve settlements, and conduct mediations.

Attorney fees – fees paid to attorneys representing injured workers. Attorney fees are awarded for these outcomes:

- Getting a denial overturned
- Obtaining an increase in compensation
- Preventing a decrease in compensation

Comments about attorney fees:

- 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 in which attorney fees were an issue in the hearing request and also fees decided in “order awarding attorney fee” cases.
- Attorney fees that are recorded for hearings cases are not necessarily the actual amounts paid. For example, if the duration of time loss is increased and the ending date is not specified, the fees recorded are the maximum allowable (\$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.

- Sometimes, fee amounts cannot be determined from the order. In most such cases, the fee is based, at least in part, on penalties against the insurer. There is no way to know when part of a fee is missing, as with a denial reversal and an unknown penalty fee.

Types of attorney fees:

- Out of compensation. Fees that are taken out of a worker's compensation when an attorney is instrumental in obtaining an increase in compensation.
- Out of DCS consideration. Fees in disputed-claim settlements usually come from the DCS proceeds.
- Assessed. Fees assessed against the insurer. This type of fee is most frequently awarded when the attorney is instrumental in getting an insurer denial reversed. Penalty-related fees are considered to be this type, even when the fee comes from the penalty amount.

Case – a dispute. A case is established and assigned a case number at the time of the hearing request. A case may have several contested issues.

Degree – a unit of impairment derived from the percentage of impairment and used to determine the value of the award. The value of each degree of disability is based on the date of injury.

Favorable rate – the percentage of dispositions in favor of the worker. For the issues of temporary disability and permanent disability, this rate reflects award increases plus affirmations of the prior order when the insurer or employer requested the hearing.

Hearing – a formal proceeding in which the parties to a dispute and their representatives appear before a judge and provide evidence (testimony and/or documents) and argument. Hearings are normally followed by the judge writing an opinion and order.

Insurer class – SAIF, private insurance carrier, or self-insured employer. Some cases with an “unknown” insurer are appeals of department non-subjectivity determinations (disputes about whether the worker or the employer is subject to the workers' compensation law).

Issue – the subject(s) of a dispute. Only issues that are resolved (decided by the judge, or settled by the parties) are recorded with a disposition.

These issues are recorded:

- (1) Extent of permanent disability – the number of degrees of permanent partial disability or whether the worker is permanently and totally disabled. See ORS 656.206 and 656.214.
- (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. See ORS 656.210 and 656.212.
- (3) Claim denial – denial of a new claim, denial of the whole claim for reasons of work-relatedness (“course and scope”); this issue excludes denial because the worker failed to cooperate [ORS 656.262(14)], 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 considered to be this issue.

(4) Partial denial – denial of part of a claim, denial of a new condition in an accepted claim.

This issue 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.

(5) Aggravation – worsening of the compensable condition since the most recent award. It raises the question of whether the claim should be reopened (ORS 656.273).

(6) Responsibility – which insurer should accept a claim and pay benefits. This issue, 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). See ORS 656.307.

(7) Premature closure – whether the claim was closed before worker was medically stationary. See ORS 656.268 and 656.283(7).

(8) Penalties – “additional amounts” paid by the insurer to the worker and/or worker's attorney, usually for unreasonable claims processing conduct. See ORS 656.262(11), 656.268(5), and 656.291(2).

(9) Attorney fee – whether claimant's attorney should be awarded fees, and how much, for efforts or results achieved outside of hearings. This issue is recorded when fees are requested for attorney efforts or results achieved outside of hearings, not when fees are requested for the hearing outcome. See ORS 656.262(11), 656.291(2), 656.307(5), 656.308(2), 656.382, 656.386, and 656.388.

(10) Subjectivity – whether the worker or employer is subject to Oregon workers' compensation law (ORS 656.027). This issue was first coded in 2000. Previously, it was coded as “other” issue.

(11) Other issue – any issue not specified above.

No issue is recorded for a case when:

- All raised issues are “reserved” or “preserved” to be resolved later
- The hearing request is dismissed in an order captioned as an opinion and order
- All issues are withdrawn at hearing in an order not captioned as a dismissal
- The numbers of cases exceeds the number of distinct denials
- Both insurer and worker appeal a department reconsideration order and two cases are set up

Mediation – a process in which the Workers' Compensation Board provides (without cost to either party) facilities and a mediator (specially trained administrative law judge) to help settle disputes without formal litigation. Mediations are held only when both parties agree to mediate.

Order types:

Dismissal – an order by a judge dismissing the hearing request; 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 not substantial evidence to support a responsibility finding against a particular insurer, per ORS 656.308(2)(c).

Disputed claim settlement – resolution of a compensability dispute wherein the parties agree to leave a claim or medical condition denied, in exchange for some consideration (usually cash paid to the worker). See ORS 656.289(4). DCSs are a type of stipulation. DCSs affirm a compensability denial, but may sometimes include other issues. The DCS amount is sometimes unspecified; usually this happens when the insurer is to pay medical bills and the amount is not mentioned in the order.

Opinion and order – an order of the administrative law judge that records a decision on the merits and the rationale for it. Usually, an opinion and order is written when a hearing is conducted, but a judge may sometimes decide the case on the written record alone.

Order on stipulation – an order written by a judge, based on an agreement of the parties. In this report, we don't distinguish between orders on stipulation and other stipulations.

Stipulation – an order written to record, approve, and make enforceable an agreement of the parties. In its broadest use, it includes disputed claim settlements. In almost all uses, it includes “orders on stipulation.”

Received stipulation – a settlement received without a prior hearing request. Such orders are classified as “joint” requests. The order type may be stipulation or disputed claim settlement.

Responsibility dispute – a dispute about which insurer is responsible for a claim. In a “pure” responsibility dispute, no insurer denies compensability, and the department publishes a “307 paying agent order” to designate an insurer to pay benefits until responsibility is determined. Responsibility disputes involve multiple cases, one from each of the worker's hearing requests contesting an insurer's denial. See ORS 656.307 and 656.308.

Sanction – a payment to an opposing party that a judge may order against an attorney for an appeal that is frivolous, filed in bad faith, or for the purpose of harassment (ORS 656.390). Data are not automatically collected about attorney sanctions.

Time lag, request to order – the time from the original hearing request to the closing order. It includes the time from the request to the scheduled time of the hearing, the time from the hearing to record closure (i.e., it includes time that the record is kept open after the hearing was concluded), and the time required for the judge to write the order. Postponements greatly extend this time.



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