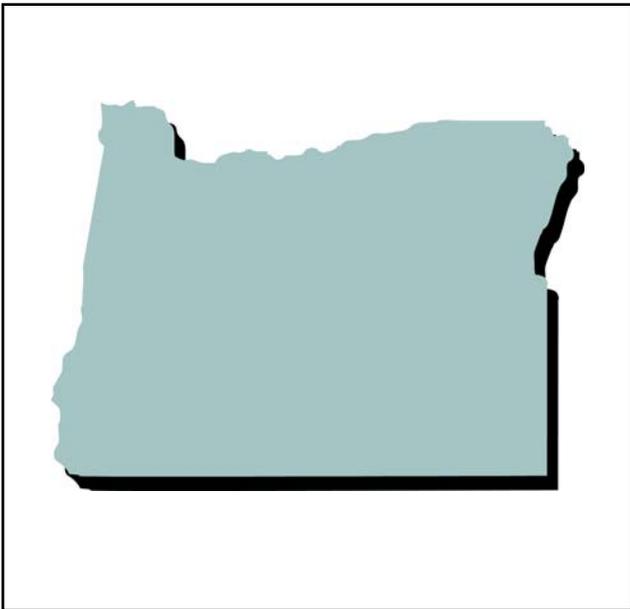




Hearings Division Statistical Report



Calendar Year 2004

*Information Management
Division*

*Oregon Dept. of Consumer
& Business Services*



October 2005



Hearings Division Statistical Report Calendar Year 2004

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Table of Contents

Hearing requests, cases closed	1
Mediations	3
Issues	3
Opinion and orders	4
Stipulations, disputed claim settlements	6
Permanent disability	9
Time lags	10
Claimant attorney fees	12
Appendix	13

Tables

1. Hearing compensation cases closed by order type, Oregon, 2004.....	2
2. Hearing compensation cases by requester and order type, Oregon, 2004.....	2
3. Hearing compensation cases by insurer and order type, Oregon, 2004.....	2
4. Mediations, Oregon, 1996-2004.....	3
5. Number of issues per hearing compensation case, Oregon, 2004.....	3
6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1995-2004.....	4
7. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2004.....	5
8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2004.....	7
9. Hearing disputed claim settlements by principal issue, Oregon, 2004.....	8
10. Hearing PPD award increases over previous award, by order type, Oregon, 2004.....	9
11. Hearing PPD awards, no previous award, by order type, Oregon, 2004.....	9
12. Disposition of hearing PPD cases by order type and prior award, Oregon, 2004.....	10
13. Median hearing time lags by order type, Oregon, 2004.....	11
14. Claimant attorney fees by order type and source, Oregon, 2004.....	12

Figures

1. Requests for hearing, Oregon, 1995-2004.....	1
2. Hearing cases closed, all orders, Oregon, 1995-2004.....	1
3. Distribution of hearing cases closed by order type, Oregon, 1995-2004.....	2
4. Distribution of hearing cases by insurer, Oregon, 1995-2004.....	2
5. Disability issues and award increases, hearing opinion and order, Oregon, 1995-2004.....	4
6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1995-2004.....	6
7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1995-2004.....	6
8. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1995-2004.....	6
9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1995-2004.....	6
10. Hearing disputed claim settlement amounts, Oregon, 1995-2004.....	8
11. Net hearing PPD awards by order type, Oregon, 1995-2004.....	10
12. PTD awards granted at hearing, Oregon, 1995-2004.....	11
13. Median time lags, hearing request to order, opinion and order cases, Oregon, 1995-2004.....	11
14. Average claimant attorney fees by source, Oregon, 1995-2004.....	12
15. Total hearing claimant attorney fees, Oregon, 1995-2004.....	12

Hearing requests, cases closed

In 2004 the Hearings Division of the Oregon Workers' Compensation Board received 9,972 requests for hearing, 2.0 percent fewer than in 2003. See Figure 1.

There were 9,531 closing orders issued by the Hearings Division in 2004, 8.6 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** opin-

ion and order was 21.7 percent, over a percentage point above 1990's record-low 20.6 percent. The percentage closed by dismissal was a record-high 30.4 percent. See Figure 3. About 72.3 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 86.4 percent of the cases, slightly below figures for 2001 and 2002.

The breakout of cases by **insurer** is depicted in Table 3 and Figure 4.

Figure 1. Requests for hearing, Oregon, 1995-2004

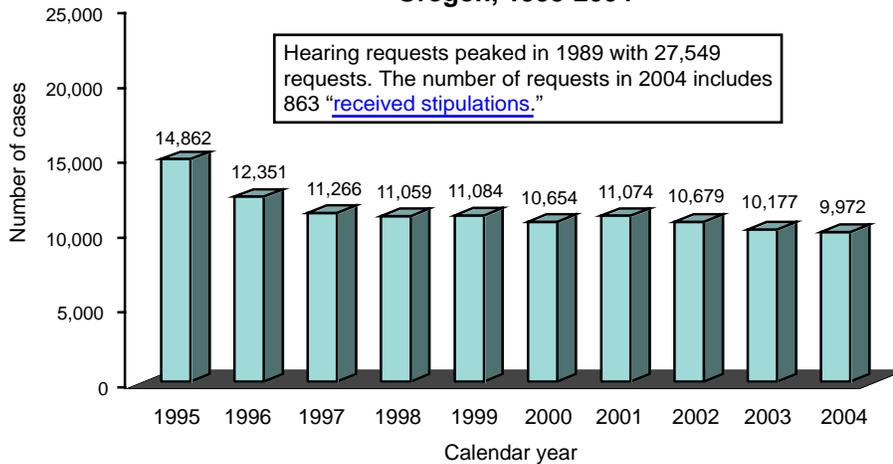
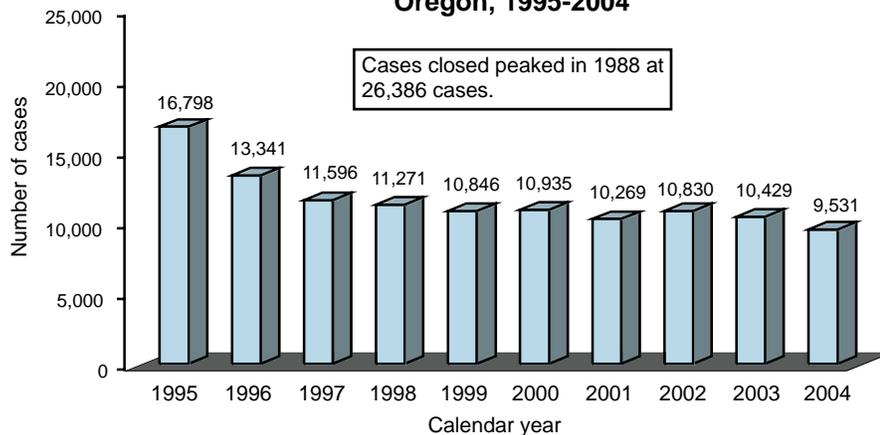


Figure 2. Hearing cases closed, all orders, Oregon, 1995-2004

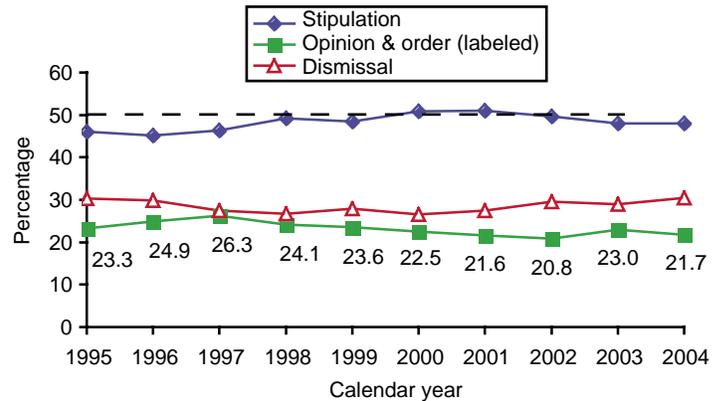


HEARINGS DIVISION STATISTICAL REPORT ■ Calendar Year 2004

Table 1. Hearing compensation cases closed by order type, Oregon, 2004

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
Opinion and order	2,044	21.70%	
Stipulation	1,305	13.8%	28.8%
DCS	3,219	34.1%	71.1%
Order on stipulation	3	0.0%	0.1%
All stipulations	4,527	48.0%	100.0%
Dismissal	462	4.9%	16.1%
Dismiss for CDA	334	3.5%	11.6%
Withdrawal	2,073	22.0%	72.3%
All dismissals	2,869	30.4%	100.0%
Total orders	9,440	100.0%	

Figure 3. Distribution of hearing cases closed by order type, Oregon, 1995-2004



* Percentage of "all stipulations" and of "all dismissals," respectively. Total orders differs from the Figure 2 count because some cases (e.g., non-complying employer and civil penalty assessment) are excluded.

Table 2. Hearing compensation cases by requester and order type, Oregon, 2004

Requester	Opinion and order		All stipulation		Withdrawal		Other dismissals		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Claimant	1837	89.9%	3593	79.4%	1999	96.4%	730	91.7%	8159	86.4%
Employer	11	0.5%	11	0.2%	15	0.7%	6	0.8%	43	0.5%
Joint	0	0.0%	848	18.7%	0	0.0%	6	0.8%	854	9.0%
Insurer	191	9.3%	68	1.5%	56	2.7%	52	6.5%	367	3.9%
Other	5	0.2%	7	0.2%	3	0.1%	2	0.3%	17	0.2%
Total	2044	100%	4527	100%	2073	100%	796	100%	9440	100%

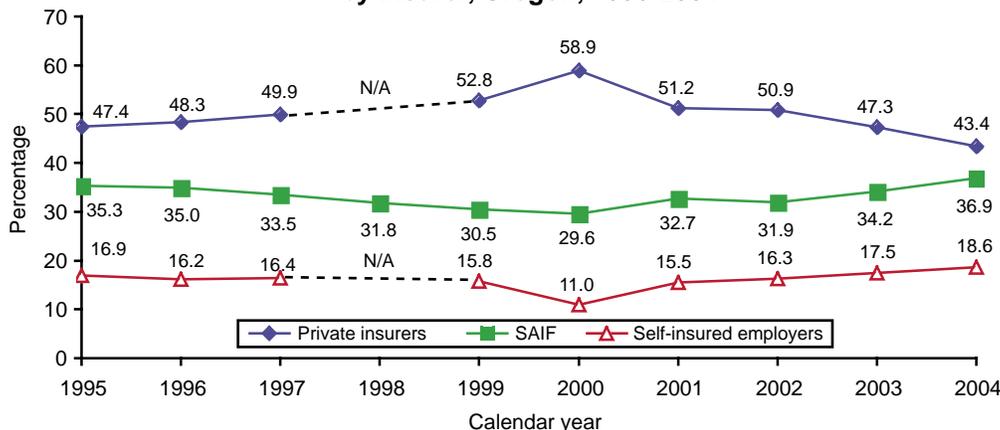
Note: Due to rounding, the sum of percentages may not equal 100.

Table 3. Hearing compensation cases by insurer and order type, Oregon, 2004

Insurer	Opinion and order		All stipulation		Withdrawal		Other dismissals		All order types	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
SAIF	819	40.1%	1,527	33.7%	835	40.3%	306	38.4%	3,487	36.9%
Private	769	37.6%	2,175	48.0%	796	38.4%	356	44.7%	4,096	43.4%
Self-Insured	431	21.1%	793	17.5%	412	19.9%	120	15.1%	1,756	18.6%
Other	25	1.2%	32	0.7%	30	1.4%	14	1.8%	101	1.1%
Total	2,044	100%	4,527	100%	2,073	100%	796	100%	9,440	100%

Notes: "Other" insurer includes multiple insurers, no insurer, and unknown insurer. Due to rounding, the sum of percentages may not equal 100.

Figure 4. Distribution of hearing cases by insurer, Oregon, 1995-2004



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

Table 4. Mediations, Oregon, 1996-2004

	1996	1997	1998	1999	2000	2001	2002	2003	2004	Average
Mediations completed*	219	250	233	216	280	248	285	241	268	249
Settlement resulted (%)*	84.4	91.6	90.1	89.8	89.3	85.5	86.3	86.3	84.0	87.5
Settled by DCS (%)**	81	82	87	84	87	92	85	88	81	85.2
Mean DCS amount (\$k/case)	8.0	10.5	10.7	10.7	16.7	14.2	10.3	11.2	13.3	11.7
Disease claims (%)***	50	50	44	63	41	49	42	41	31	45.7
Mental disease (%)***	31	30	30	37	32	36	27	20	16	28.7
Claim denial issue (%)***	50	50	47	47	40	39	43	41	32	43.2
Partial denial issue (%)***	47	--	49	54	64	70	65	66	74	61.2
Compensability issue (%)***	--	90	98	--	97	99	95	99	97	96.3
Non-WC issue (%)***	--	40	47	46	43	51	55	45	50	47.0
ALJ work-hours (mean)****	--	12.0	13.8	13.0	13.5	13.1	14.7	14.6	14.5	13.7
Request to mediation lag (days)	21	25	50	64	77	73	80	79	95	62.7
Mediation to order lag (days)	46	31	34	43	42	33	37	39	41	38.4

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 (DCS) 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.

Time lags are median values.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 268 [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 2.2 times larger than the average amount for non-mediated DCSs.

Issues

The 6,571 opinion and order and stipulation cases in 2004 included a total of 7,297 [issues](#), or 1.11 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 39.7 percent of the cases. Partial denial was a close second, with 37.8 percent. The percentage of cases with the issue of aggravation (3.8 percent) and extent of temporary disability (3.5 percent) were near-record-low values. Insurer penalty was an issue in 7.5 percent of cases, while responsibility was an issue in a record-low 1.4 percent. Permanent disability is discussed in another section of this report.

Table 5. Number of issues per hearing compensation case, Oregon, 2004

Number of issues	Number of cases
One	5,467
Two	768
Three	86
Four	9
Five	0
More than one issue	863
No issues	241
Total issues	7,297

Opinion and orders

Hearings judges in 2004 decided 2,562 issues in 2,044 cases, an average of 1.25 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 permanent disability (18.2 percent) was the highest since 1997, and the percentage about whole claim denial (37.9 percent) was the highest since 1998. The percentage of cases about responsibility (4.4 percent) was the lowest on record.

Table 6 and Figure 5 provide information about the number of opinion and order cases with extent of disability (temporary, permanent, or both) at issue and the type of disability increase. In 2004 worker’s disability awards were increased in 117 cases (the sum of the last four table columns), about 25 percent of the 469 disability-issue cases.

The right column of Table 7 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 “increase” rate for **permanent disability** (17.7 percent) was the lowest on record, and the “affirm” rate (63.5 percent) was the highest on record. For **temporary disability**, the “increase” rate (46.9 percent) was up from 2003’s record-low 42.7 percent, the “affirm” rate (45.1 percent) was down from 2003’s record-high 53.2 percent, and the decrease rate (8.0 percent) was the highest ever.

The percentage of opinion and order cases **decided in favor of the claimant** for permanent and temporary disability were 37.3 and 47.8 per-

Table 6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1995-2004

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
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
2004	469	48	18	0	51

Figure 5. Disability issues and award increases, hearing opinion and order, Oregon, 1995-2004

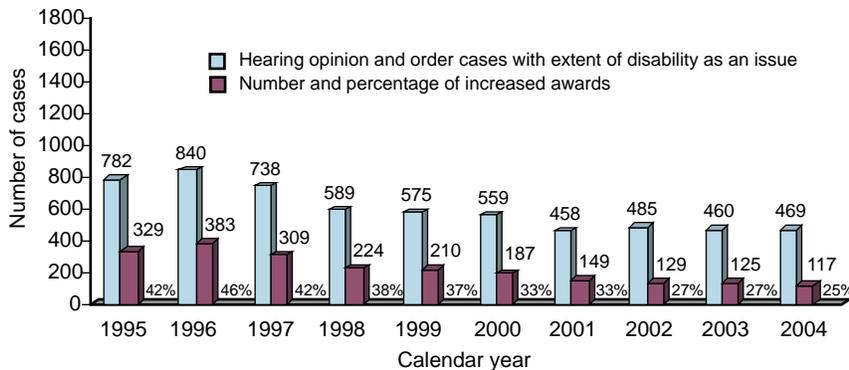
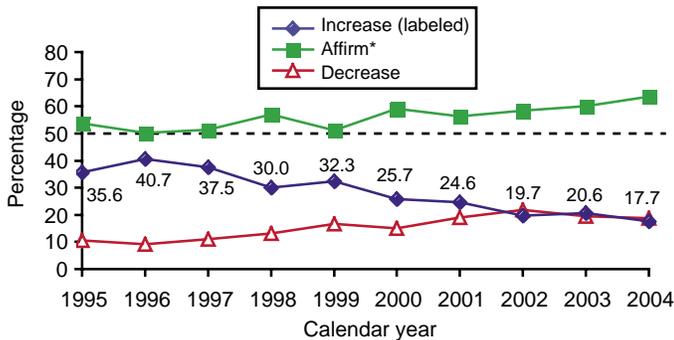


Table 7. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2004

Issue and disposition		Insurer					Percentage of cases	Percentage disposition
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	109	88	39	1	237	18.2%	63.5%
	Decrease	36	22	10	2	70		18.8%
	Increase	31	25	10	0	66		17.7%
	Total cases	176	135	59	3	373		
Temporary disability	Affirm	17	25	8	1	51	5.5%	45.1%
	Decrease	4	4	1	0	9		8.0%
	Increase	16	23	13	1	53		46.9%
	Total cases	37	52	22	2	113		
Claim denial	Set aside denial	139	154	69	2	364	37.9%	47.0%
	Affirm denial	172	152	85	2	411		53.0%
	Total cases	311	306	154	4	775		
Partial denial	Set aside denial	76	85	42	2	205	24.3%	41.3%
	Affirm denial	107	109	75	0	291		58.7%
	Total cases	183	194	117	2	496		
Aggravation	Set aside denial	2	6	2	0	10	3.5%	14.1%
	Affirm denial	12	33	16	0	61		85.9%
	Total cases	14	39	18	0	71		
Responsibility	No	24	27	3	0	54	4.4%	60.0%
	Yes	17	15	4	0	36		40.0%
	Total cases	41	42	7	0	90		
Premature closure	No	13	15	5	1	34	2.8%	58.6%
	Yes	6	12	6	0	24		41.4%
	Total cases	19	27	11	1	58		
Insurer penalty	No	71	84	43	0	198	14.9%	64.9%
	Yes	26	53	27	1	107		35.1%
	Total cases	97	137	70	1	305		
Attorney fee	No	7	11	3	0	21	3.4%	30.0%
	Yes	24	17	7	1	49		70.0%
	Total cases	31	28	10	1	70		
Subjectivity	No	5	6	0	2	13	0.9%	72.2%
	Yes	4	1	0	0	5		27.8%
	Total cases	9	7	0	2	18		
Time loss rate	Affirm	1	1	0	0	2	0.2%	50.0%
	Decrease	0	0	0	0	0		0.0%
	Increase	1	1	0	0	2		50.0%
	Total cases	2	2	0	0	4		
Other issue	Insurer favor	53	47	17	2	119	9.2%	63.0%
	Worker favor	27	26	14	3	70		37.0%
	Total cases	80	73	31	5	189		
No issues*	Total cases	29	13	18	1	61		
Total issues		1,000	1,042	499	21	2,562		

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.

Figure 6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1995-2004



*Remands are coded as "Affirm."

Figure 7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1995-2004

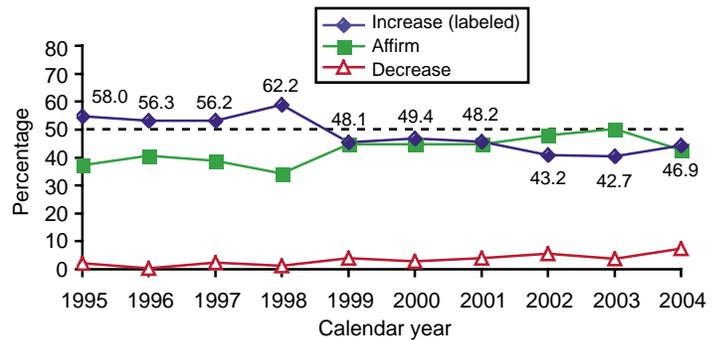


Figure 8. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1995-2004

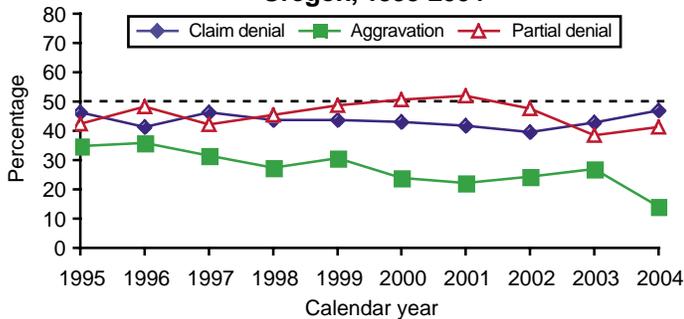
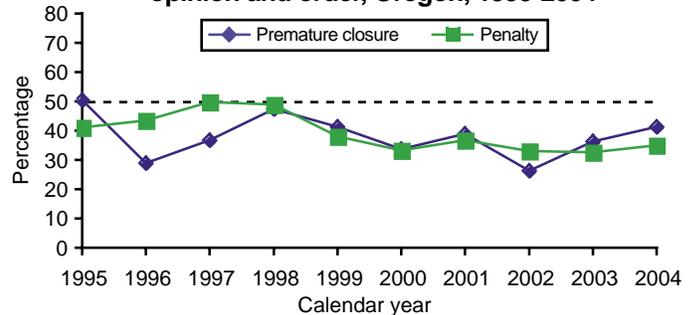


Figure 9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1995-2004



cent, respectively. For 2003, these percentages were 30.6 percent (a record-low value) and 47.6 percent. These values for the 1980s and early 1990s were typically 60-80 percent.

The “set-aside-denial” rate for whole claim denial (47.0 percent) was the highest since 1994’s 48.0 percent; historically, this rate has ranged from 41 to 49 percent. The “set-aside” rate for partial denial (41.3 percent) increased from 2003’s near-record-low 38.5 percent. For aggravation, the “set-aside” rate (a record-low 14.1 percent) was over a third smaller than the previous-record-low 22.2 percent of 2001. The “yes” rates for premature closure (41.4 percent) was the highest since 1998, and insurer penalty (35.1 percent) was up from 2003’s record-low 32.6 percent.

In three opinion and order cases, [sanctions](#) were requested against claimant attorneys and, in another case, the worker requested sanctions. All were denied.

Stipulations, disputed claim settlements

In 2004, disputing parties settled 4,735 issues in 4,527 stipulated cases. Table 8 gives information about relative frequency and disposition of issues. 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, 2004

Issues and disposition		Insurer					Percentage of cases	Percentage disposition
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	2	5	2	0	9		15.0%
	Decrease	7	1	6	0	14		23.3%
	Increase	19	12	6	0	37		61.7%
	Total cases	28	18	14	0	60	1.3%	
Temporary disability	Affirm	0	2	0	0	2		1.7%
	Decrease	0	0	2	0	2		1.7%
	Increase	43	56	12	2	113		96.6%
	Total cases	43	58	14	2	117	2.6%	
Claim denial	Set aside denial	135	133	49	2	319		17.4%
	Affirm denial	578	688	230	17	1,513		82.6%
	Total cases	713	821	279	19	1,832	40.5%	
Partial denial	Set aside denial	103	124	35	1	263		13.2%
	Affirm denial	488	923	312	3	1,726		86.8%
	Total cases	591	1,047	347	4	1,989	43.9%	
Aggravation	Set aside denial	5	12	5	0	22		12.4%
	Affirm denial	16	90	50	0	156		87.6%
	Total cases	21	102	55	0	178	3.9%	
Responsibility	No	0	0	0	0	0		
	Yes	0	0	0	0	0		
	Total cases	0	0	0	0	0	0.0%	
Premature closure	No	0	6	1	0	7		63.6%
	Yes	1	1	2	0	4		36.4%
	Total cases	1	7	3	0	11	0.2%	
Insurer penalty	No	0	2	1	0	3		1.6%
	Yes	61	107	18	1	187		98.4%
	Total cases	61	109	19	1	190	4.2%	
Attorney fee	No	0	0	0	0	0		0.0%
	Yes	32	58	15	0	105		100.0%
	Total cases	32	58	15	0	105	2.3%	
Subjectivity	No	0	0	0	0	0		
	Yes	0	0	0	0	0		
	Total cases	0	0	0	0	0	0.0%	
Time loss rate	Affirm	0	0	0	0	0		0.0%
	Decrease	0	0	0	0	0		0.0%
	Increase	0	1	1	0	2		100.0%
	Total cases	0	1	1	0	2	0.0%	
Other issue	Insurer favor	11	15	8	0	34		13.5%
	Worker favor	56	111	47	3	217		86.5%
	Total cases	67	126	55	3	251	5.5%	
No issues*	Total cases	56	84	36	4	180		
Total issues		1,557	2,347	802	29	4,735		

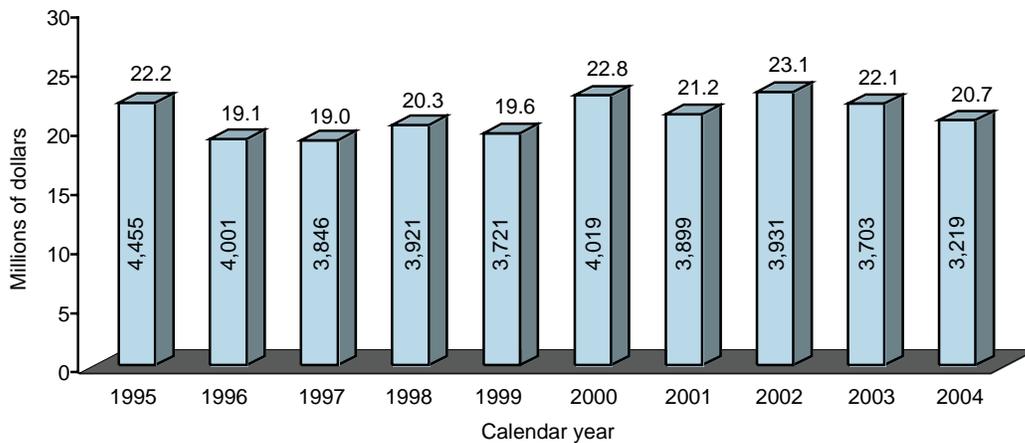
Notes: "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages will exceed 100. "Percentage disposition" gives the breakout of how the issues were decided; for each issue, the sum of these percentages will equal 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, 2004

Principal issue*	Number of cases	Percentage of cases	Total amount	Average amount	Total fees
Claim denial	1,502	46.7%	\$9,050,000	\$6,025	\$1,752,000
Partial denial	1,697	52.7%	11,495,000	6,774	2,170,000
Aggravation denial	19	0.6%	117,000	6,154	18,000
All other issues	1	0.0%	2,600	2,600	1,500
All issues	3,219	100.0%	\$20,664,000	\$6,419	\$3,941,000

*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, 1995-2004



Note: Numbers within bars are case counts.

In 2004 insurers paid almost \$20.7 million to workers in disputed claim settlements, the smallest total since 1999. See Table 9. Figure 10 provides historical information on DCSs. The mean payment was \$6,419, and the largest amount paid in a single settlement was \$300,000. As it was for 2003, the median amount was \$3,000 and the mode was \$1,000. The DCS amount was unspecified in five cases.

The percentage of cases about partial denial (52.7 percent) was the highest ever, while the percentages about claim denial, aggravation, and other issues were record-low or near-record-low values.

DCSs accounted for 71.1 percent of all stipulations, 34.1 percent of all closing hearing orders, and 78.1 percent of all claims denied at hearing (excludes aggravations).

DCSs accounted for claimant attorney fees of over \$3.9 million, 44.4 percent of all fees at hearing. The average DCS fee was \$1,425 (considering only cases with non-zero fees). About 99.2 percent of DCS fees were paid out of the DCS consideration.

Permanent disability

There were 433 cases involving extent of permanent disability in 2004, about 6.6 percent of all cases. Case dispositions were as follows (these figures include stipulations): increase the award, 23.8 percent (near 2003's record-low 23.7 percent); decrease the award, 19.4 percent; and affirm the award, 56.8 percent.

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

- Decreasing numbers of accepted disabling claims
- House Bill 2900 (1987): primarily, enacted disability standards
- Senate Bill 1197 (1990): required reconsideration, medical arbiters for impairment disputes, "tighter" disability standards, and claim disposition agreements
- Senate Bill 369 (1995): limited evidence at hearing, prohibited issues that were not raised at nor arose out of the reconsideration, and limited 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 12.7 scheduled degrees and 20.0 unscheduled [degrees](#). Combining scheduled and unscheduled disability awards, the average award increase was 16.0 degrees, the smallest value on record.

There were 50 and 45 cases in which scheduled and unscheduled awards, respectively, were decreased. Average award **decreases** were 15.8 scheduled degrees, 32.2 unscheduled degrees, and 23.6 degrees combined.

The net amount awarded for PPD at hearing in 2004 was negative \$255,000, the third straight year that more disability has been taken away than granted at hearing. See Figure 11. The primary reason for the net decrease is that average decreases exceeded average increases (values are given in the two paragraphs above).

Table 10. Hearing PPD award increases over previous award, by order type, Oregon, 2004

Type of order	Scheduled disability			Unscheduled disability				Both types	
	Number of cases	Average prior award	Average hearing increase	Total hearing \$ increases	Number of cases	Average prior award	Average hearing increase	Total hearing \$ increases	Total hearing \$ increases
Opinion and order	25	12.7	13.1	\$172,205	26	57.5	21.1	\$140,745	\$312,950
Stipulation	16	11.0	9.0	76,613	10	57.6	18.6	42,164	118,777
All orders	41	12.0	11.5	\$248,818	36	57.5	20.4	\$182,909	\$431,727

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, 2004

Type of order	Scheduled disability			Unscheduled disability			Both types
	Number of cases	Average hearing increase	Total hearing \$ increases	Number of cases	Average hearing increase	Total hearing \$ increases	Total hearing \$ increases
Opinion and order	11	18.7	\$93,906	8	19.2	\$26,131	\$120,037
Stipulation	2	3.5	3,909	2	16.0	5,888	9,797
All orders	13	16.4	\$97,815	10	18.6	\$32,019	\$129,834

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, 1995-2004

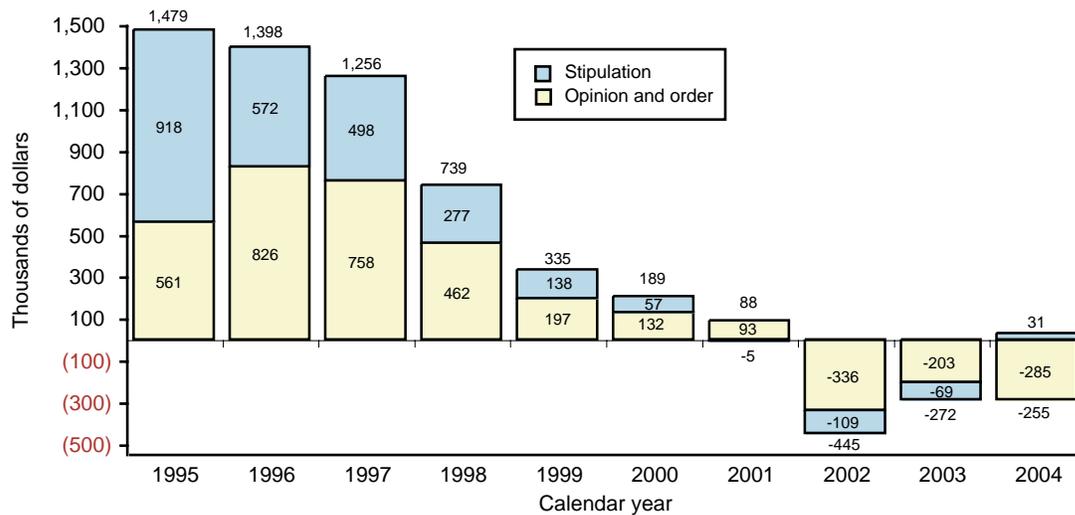


Table 12. Disposition of hearing PPD cases by order type and prior award, Oregon, 2004

Order type	No prior award		Prior award			All cases			All cases and dispositions
	Increase	Affirm	Increase	Decrease	Affirm	Net increase	Net decrease	Affirm	
Opinion and order	18 18.2%	81 81.8%	48 17.6%	70 25.7%	154 56.6%	66 17.8%	70 18.9%	235 63.3%	371
Stipulation	4 50.0%	4 50.0%	25 56.8%	14 31.8%	5 11.4%	29 55.8%	14 26.9%	9 17.3%	52
All orders	22 20.6%	85 79.4%	73 23.1%	84 26.6%	159 50.3%	95 22.5%	84 19.9%	244 57.7%	423

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.

Eight **permanent total disability** awards were granted at hearing in 2004, as shown in Figure 12. All were reinstatements of rescinded awards, and all were by stipulation; two of the stipulations resulted from mediations conducted by hearings judges. There were two affirmations of PTD awards (by opinion and order), and no rescissions, so the net number

of PTD awards was eight. For the PTD grants, the average previous PPD award was 147 degrees (combining scheduled and unscheduled awards).

Time lags

For all hearing orders in 2004, the median time from injury to hearing request was 320 days. The median request-to-order time for all order types was 127 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 202 days (6.6 months), 13 days shorter than for 2003.

See Figure 13. For opinion and order cases *without a postponement*, the median request-to-order time was only 140 days (4.6 months). The percentage of opinion and orders with at least one postponement was 36.7 percent, well below the 1991-2004 average of 39.4 percent.

Note that request-to-order time lags include time during which the record was kept open after the hearing was concluded. The median hearing-to-close time lag was 28 days, while the mode was 0 days. The median close-to-order time lag was 28 days.

Figure 12. PTD awards granted at hearing, Oregon, 1995-2004

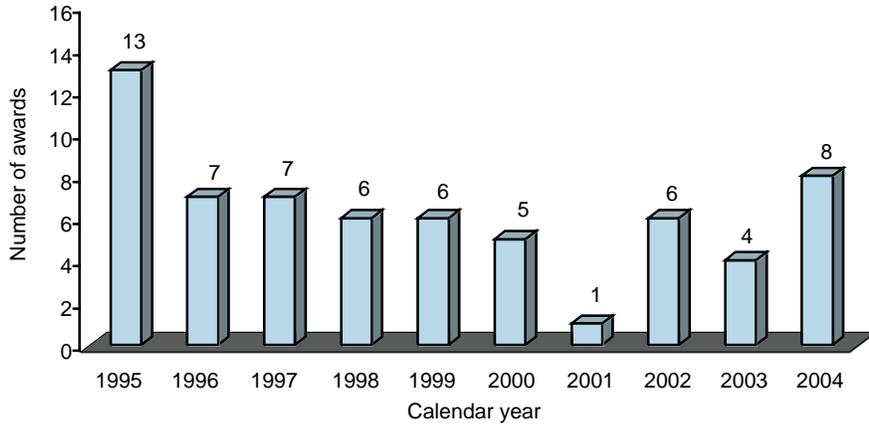
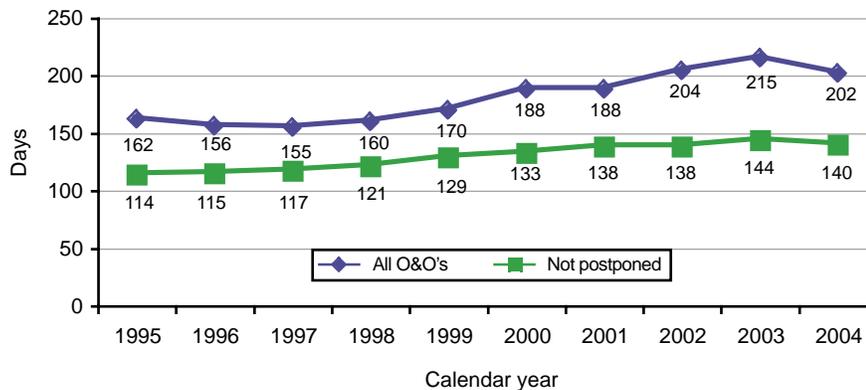


Table 13. Median hearing time lags by order type, Oregon, 2004

Lag periods	Opinion and order	Received stipulation*	Other stipulation*	Dismissal and withdrawal	All orders
Injury date to request date	348	526	256	339	320
Injury date to order date	626	534	492	527	535
Request date to order date	202	6	141	103	127
Request date to hearing date	89	--	--	--	--
Hearing date to closed date	28	--	--	--	--
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, 1995-2004



Claimant attorney fees

Claimant [attorney fees](#) totaling almost \$8.9 million were approved for payment out of workers' compensation or assessed against insurers in 2004 hearing orders. See Table 14. Total fees were 1.2 percent less than in 2003.

About 46.8 percent of the fees were paid out of compensation or DCS consideration, the second-smallest percentage on record. 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 of \$1,944 was about 9.2 percent more than in 2003. Figures 14 and 15 depict average and total fees (respectively), by type, for the past 10 years.

Claimants were represented by counsel in 93.6 percent of opinion and order cases and 87.0 percent of all cases.

Figure 14. Average claimant attorney fees by source, Oregon, 1995-2004

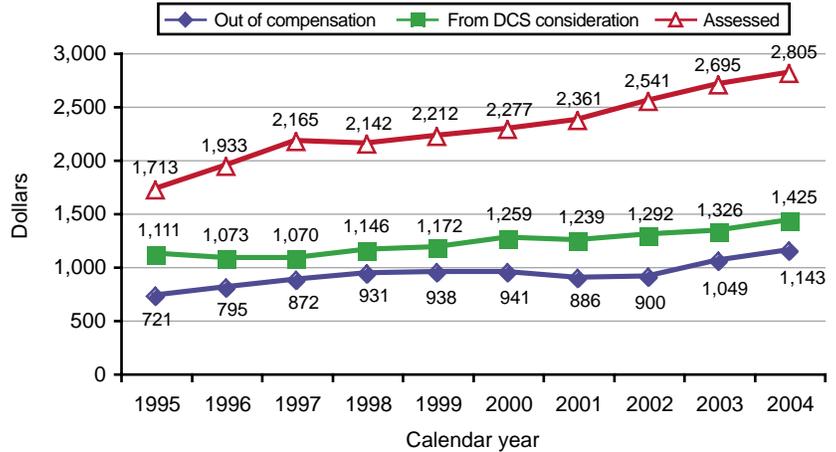


Figure 15. Total hearing claimant attorney fees, Oregon, 1995-2004

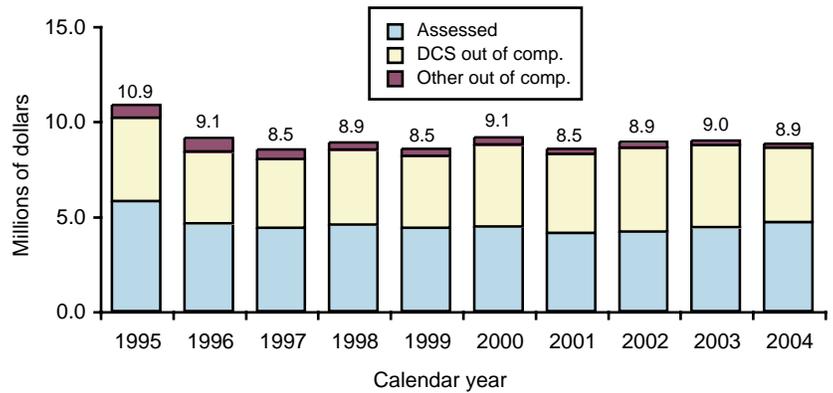


Table 14. Claimant attorney fees by order type and source, Oregon, 2004

Source of fees	Order type				All orders	Percentage of all fees
	Opinion and order	Stipulation	Dismissal	Order awarding attorney fees		
Out of claimant compensation						
Total fees	153,700	89,300	1,300	1,500	245,700	2.8%
Average fee	1,492	812	1,250	1,500	1,143	
Cases	103	110	1	1	215	
From DCS consideration						
Total fees		3,910,500			3,910,500	44.0%
Average fee		1,425			1,425	
Cases		2,744			2,744	
Assessed against insurer						
Total fees	3,019,900	1,708,000	1,500		4,729,400	53.2%
Average fee	3,942	1,859	1,500		2,805	
Cases	766	919	1		1,686	
From all sources						
Total fees	3,173,600	5,707,800	2,800	1,500	8,885,600	100.0%
Average fee	3,720	1,536	1,375	1,500	1,944	
Cases	853	3,715	2	1	4,571	

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. Administrative law judges carry out this hearings 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 opinions 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 pre-existing 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 pre-existing 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) Temporary disability rate – the rate at which time loss should be paid. Usually, this issue involves what wage should be used in the computation of TD rate. (Note: if the question is whether temporary total disability or temporary partial disability should be paid, the issue is coded as “extent of temporary disability,” not this issue.) This issue was first coded in 2004.

(12) 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 (a 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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