

Hearings Division Statistical Report

Calendar Year 2005

*Information Management
Division*

*Oregon Department of Consumer
& Business Services*

January 2007



Hearings Division Statistical Report Calendar Year 2005

Department of Consumer & Business Services
Cory Streisinger, Director

Information Management Division
Dan Adelman, Administrator

Research & Analysis Section
Ronni Rachele, Manager
Tracy O'Connor, Assistant Manager
Russ Reed, Research Analyst

Workers' Compensation Board
Abigail Herman, Chair
Terry Taylor, Manager, Administrative Services Section
Mary Devoursney, Assistant Manager, Administrative Services Section

Coders
Terrie Smith
Adam Sendelbaugh

DCBS Communications
Kiki Hammond, Designer
Lisa Morawski, Editor

350 Winter St. NE, Room 300
P.O. Box 14480
Salem, OR 97309-0405
(503) 378-8254

January 2007

*The information in this report is in the public domain and may be reprinted without permission.
Visit the DCBS Web site, <http://dcbs.oregon.gov>.*

*To receive this publication in an electronic format, see the Information Management WebBoard,
<http://www4.cbs.state.or.us/ex/imd/external/>.*



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

Table of Contents

Hearing requests, cases closed	1
Mediations	3
Issues	3
Opinion and orders	5
Stipulations, disputed claim settlements	6
Permanent disability	8
Time lags	10
Claimant attorney fees	12
Appendix	13

Tables

1. Hearing compensation cases closed, by order type, Oregon, 2005.....	2
2. Hearing compensation cases closed, by requester, Oregon, 2005.....	2
3. Hearing compensation cases closed, by insurer, Oregon, 2005	2
4. WCB mediations, Oregon, 1996-2005	3
5. Number of issues per hearing compensation case, Oregon, 2005	3
6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2005.....	4
7. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1996-2005.....	5
8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2005.....	7
9. Hearing disputed claim settlements by principal issue, Oregon, 2005	8
10. Hearing PPD award increases over previous award, by order type, Oregon, 2005.....	9
11. Hearing PPD awards, no previous award, by order type, Oregon, 2005	9
12. Disposition of hearing PPD cases by order type and prior award, Oregon, 2005	10
13. Median hearing time lags by order type, Oregon, 2005	11
14. Claimant attorney fees, by order type and fee type, Oregon, 2005	12

Figures

1. Requests for hearing, Oregon, 1996-2005.....	1
2. Hearing cases closed, all orders, Oregon, 1996-2005.....	1
3. Distribution of hearing cases closed by order type, Oregon, 1996-2005.....	2
4. Distribution of closed hearing cases by insurer, Oregon, 1996-2005	2
5. Disability issues and award increases, hearing opinion and order, Oregon, 1996-2005	5
6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1996-2005.....	6
7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1996-2005.....	6
8. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1996-2005	6
9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1996-2005.....	6
10. Hearing disputed claim settlement amounts, Oregon, 1996-2005	8
11. Net hearing PPD awards by order type, Oregon, 1996-2005	10
12. PTD awards granted at hearing, Oregon, 1996-2005	11
13. Median time lags, hearing request to order, opinion and order cases, Oregon, 1996-2005	11
14. Average claimant attorney fees by source, Oregon, 1996-2005	12
15. Total hearing claimant attorney fees, Oregon, 1996-2005	12

Hearing requests, cases closed

In 2005, the Hearings Division of the Oregon Workers' Compensation Board received 9,221 requests for hearing, 7.5 percent fewer than in 2004 (Figure 1).

There were 10,012 cases closed by the Hearings Division in 2005, 5 percent more than the previous year (Figure 2). Some orders close more than one case, so there are fewer distinct orders than cases. For 2005, there were 8,850 orders, an average of 1.13 cases per order. Request and order counts *include* cases solely about noncomplying 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 when a judge issued an opinion and order (O&O) was 21.2 percent, slightly below 2004's 21.7 percent (Table 1, Figure 3). The percentage closed by dismissal was a record-high 30.5 percent. About 70.5 percent of these dismissals were issued because the requester withdrew the hearing request. Unless otherwise stated, O&O counts and analyses include 43 "proposed and final own-motion orders."

The worker filed the request in 87.9 percent of the closed cases, 1.5 percentage points greater than in 2004 (Table 2). The breakout of cases by [insurer](#) is depicted in Table 3 and Figure 4.

Figure 1. Requests for hearing, Oregon, 1996-2005

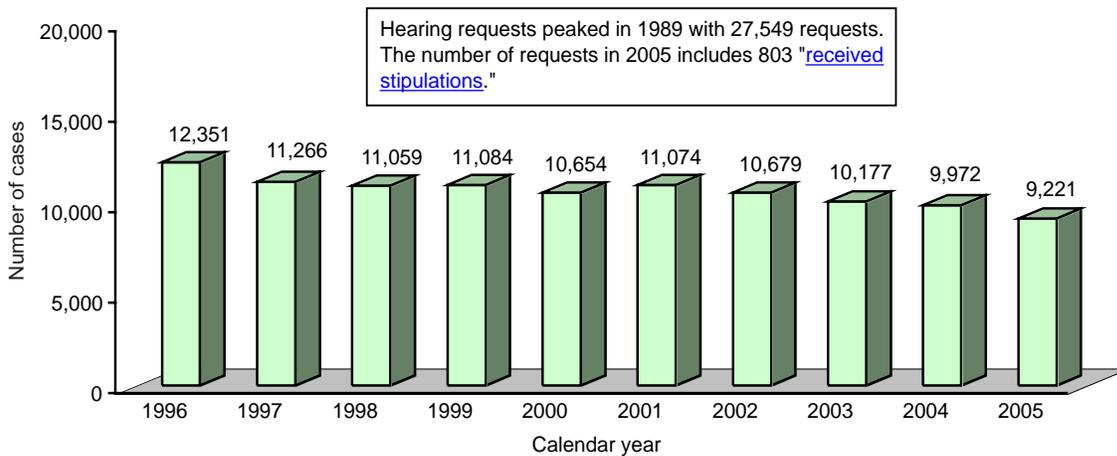


Figure 2. Hearing cases closed, all orders, Oregon, 1996-2005

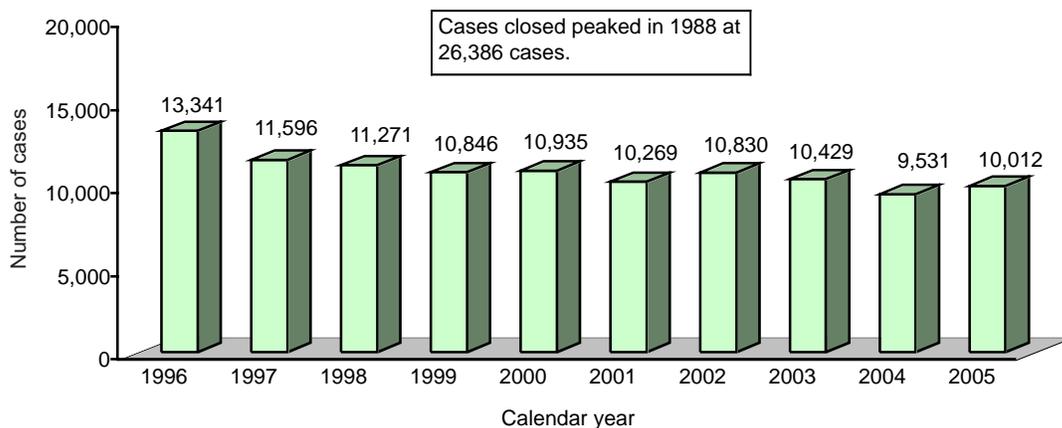


Table 1. Hearing compensation cases closed, by order type, Oregon, 2005

Type of order	Number of orders	Percentage of all orders	Percentage of sub-type*
Opinion and order	2,065	20.7%	98.0%
Proposed and final own-motion order	43	0.4%	2.0%
O&O and P&FOMO	2,108	21.2%	100.0%
Stipulation	1,403	14.1%	29.1%
DCS	3,401	34.1%	70.6%
Order on stipulation	10	0.1%	0.2%
All stipulations	4,814	48.3%	100.0%
Dismissal	529	5.3%	17.4%
Dismiss for CDA	368	3.7%	12.1%
Withdrawal	2,146	21.5%	70.5%
All dismissals	3,043	30.5%	100.0%
Total orders	9,965	100.0%	

* For example, percentage of "all stipulations" and of "all dismissals."
 "Total orders" differs from the Figure 2 count because some cases (e.g., noncomplying employer and civil penalty assessment) are excluded here.

Figure 3. Distribution of hearing cases closed by order type, Oregon, 1996-2005

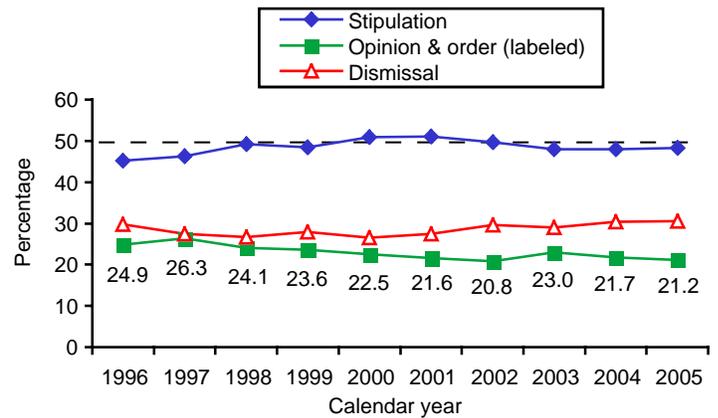


Table 2. Hearing compensation cases closed, by requester, Oregon, 2005

Requester	Number of cases	Percentage of cases
Claimant	8,762	87.9%
Employer	31	0.3%
SAIF	106	1.1%
Private insurer	207	2.1%
Self-insured	4	0.0%
Joint	838	8.4%
WCD	4	0.0%
Other	13	0.1%
All	9,965	100.0%

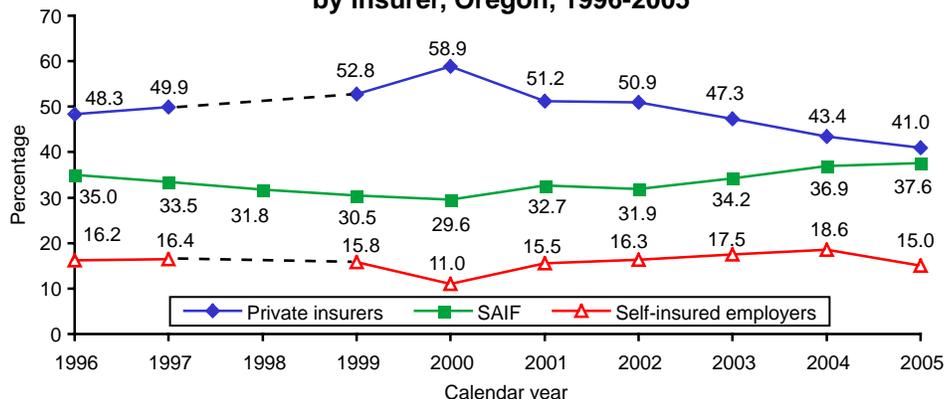
Due to rounding, the sum of percentages may not equal 100.

Table 3. Hearing compensation cases closed, by insurer, Oregon, 2005

Requester	Number of cases	Percentage of cases
SAIF	3,745	37.6%
Private insurer	4,089	41.0%
Self-insured	1,498	15.0%
Unknown	633	6.4%
All	9,965	100.0%

"Unknown" includes unknown insurer, no insurer, and multiple insurers. Due to rounding, percentages may not add to 100.

Figure 4. Distribution of closed hearing cases by insurer, Oregon, 1996-2005



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

Table 4. WCB Mediations, Oregon, 1996-2005

Statistic	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Mean
Completed	128	250	233	216	280	248	285	241	268	270	251
Result settled (%) *	84.4	91.6	90.1	89.8	89.3	85.5	86.3	86.3	84.0	87.0	87.4
Settled by DCS (%) **	80.9	82.0	86.6	83.5	86.6	92.5	84.9	88.4	80.9	81.6	84.8
Mean DCS \$k/case	8.0	10.5	10.7	10.7	16.7	14.2	10.3	11.2	13.3	11.0	11.7
Disease claims (%) ***	50	50	44	63	41	49	42	41	31	67	47.9
Mental disease (%) ***	31	30	30	37	32	36	27	20	16	21	28.0
<u>Issues (%) ***</u>											
Claim denial	50	50	47	47	40	39	43	41	32	30	41.9
Partial denial	47	--	49	54	64	70	65	66	74	73	62.4
All compensability	--	90	98	--	97	99	95	99	97	94	96.1
Non-WCB	--	40	47	46	43	51	55	45	50	47	47.1
ALJ work-hours (mean)	--	12	14	13	14	13	15	15	15	12	13.4
Request-mediation (days)	21	25	50	64	77	73	80	79	95	78	64.2
Mediation-order (days)	46	31	34	43	42	33	37	39	41	41	38.7

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 included case is about this condition or issue.

Work-hours includes travel time; values are for all completed mediations, regardless of outcome.

Time lags are median values.

-- Indicates data are not available.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 270 **mediations** during 2005 (Table 4). The percentage of mediations dealing with disease claims was the highest on record at 67 percent. The average mediation required 12 work hours on the part of the administrative law judge, down from 15 hours for the previous three years.

Judges conducted two mediations about permanent total disability (PTD). One was successful, resulting in an agreement to reinstate the PTD award. The other mediation did not result in a settlement, but the worker was later awarded PTD at a hearing. The average dollar amount for a disputed claim settlement (DCS) resulting from a mediation was 1.7 times larger than the average amount for a nonmediated DCS.

Table 5. Number of issues per hearing compensation case, Oregon, 2005

Number of issues	Number of cases
One	5,864
Two	706
Three	83
Four	3
Five	3
More than one issue	795
No issues	263
Total issues	7,552

Issues

The 6,922 O&O and stipulation cases closed in 2005 included a total of 7,552 **issues**, or 1.09 issues per case. See Table 5 for numbers of issues in cases.

For all order types, whole claim denial was the most frequent issue (as it's been every year since 1989), with 41.5 percent of the cases. Partial denial was second, with 38.1 percent. The percentage of cases with the issue of aggravation (2.6 percent) and extent of temporary disability (3.3 percent) were record-low values. Insurer penalty was an issue in 7.3 percent of cases, while responsibility was an issue in a record-low 1.2 percent. Permanent disability is discussed later in this report.

Table 6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2005

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	62	67	30	26	185	60.7%	14.5%
	Decrease	21	19	7	7	54	17.7%	
	Increase	34	24	6	2	66	21.6%	
	Total cases	117	110	43	35	305		
Temporary disability	Affirm	16	20	7	9	52	45.6%	5.4%
	Decrease	2	1	3	0	6	5.3%	
	Increase	16	20	7	13	56	49.1%	
	Total cases	34	41	17	22	114		
Claim denial	Set aside denial	131	128	65	20	344	41.5%	39.3%
	Affirm denial	200	156	92	36	484	58.5%	
	Total cases	331	284	157	56	828		
Partial denial	Set aside denial	92	105	41	18	256	43.5%	27.9%
	Affirm denial	114	147	44	28	333	56.5%	
	Total cases	206	252	85	46	589		
Aggravation denial	Set aside denial	3	6	2	0	11	22.0%	2.4%
	Affirm denial	9	16	13	1	39	78.0%	
	Total cases	12	22	15	1	50		
Responsibility	No	21	22	4	0	47	64.4%	3.5%
	Yes	11	13	2	0	26	35.6%	
	Total cases	32	35	6	0	73		
Premature closure	No	5	14	7	3	29	60.4%	2.3%
	Yes	4	12	2	1	19	39.6%	
	Total cases	9	26	9	4	48		
Insurer penalty	No	65	68	22	17	172	61.4%	13.3%
	Yes	32	43	19	14	108	38.6%	
	Total cases	97	111	41	31	280		
Attorney fee	No	1	1	0	1	3	8.1%	1.8%
	Yes	4	18	5	7	34	91.9%	
	Total cases	5	19	5	8	37		
Subjectivity	No	2	7	0	1	10	58.8%	0.8%
	Yes	3	3	0	1	7	41.2%	
	Total cases	5	10	0	2	17		
Rate of time loss	Affirm	0	1	1	1	3	23.1%	0.6%
	Decrease	0	0	0	0	0	0.0%	
	Increase	4	2	0	4	10	76.9%	
	Total cases	4	3	1	5	13		
Other issue	No	63	84	27	9	183	78.5%	11.1%
	Yes	18	18	10	4	50	21.5%	
	Total cases	81	102	37	13	233		
No issues	Total cases	30	25	10	7	72		
Total issues		933	1,015	416	223	2,587		

Notes: "Percentage disposition" gives the breakout of how issues were resolved; for each issue, the sum of these percentages equals 100 (except for rounding). "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 exceeds 100. "Other insurers" includes cases with multiple insurers, no insurer, or unknown insurer. See the [appendix](#) for situations where no issue is recorded for a case. Includes "proposed and final own-motion orders."

Opinion and orders

Hearings judges in 2005 decided 2,587 issues in 2,108 O&O and proposed and final own-motion-order cases, an average of 1.23 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 permanent disability (14.5 percent) was the lowest on record, while the percentage about whole claim denial (39.3 percent) was the highest since 1998. The percentage of cases about responsibility (3.5 percent) and aggravation (2.4 percent) were the lowest on record.

Table 7 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 disability increase. In 2005 workers’ disability awards were increased in 119 cases (the sum of the

last four table columns), about 30 percent of the 400 disability-issue cases. The “percentage disposition” column of Table 6 provides information about how issues in O&O cases were resolved.

The “increase” rate for **permanent disability** (21.6 percent) was the highest since 2001, and the “affirm” rate (60.7 percent) was the second-highest on record after 2004’s 63.5 percent (Figure 6). For **temporary disability**, the “increase” rate (49.1 percent) was the highest since 2000 (Figure 7). The percentage of disability cases **decided in favor of the claimant** (includes insurer appeals where the award is affirmed) for permanent and temporary disability were 34.1 percent and 52.6 percent, respectively. These values for the 1980s and early 1990s were typically 60 percent to 80 percent.

Table 7. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1996-2005

Calendar year	Extent of disability issue	PPD increase over prior award	PPD award, no prior award	PTD award	TD increase with no PPD increase
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
2005	400	52	13	1	53

“Extent of disability issue” means that either permanent disability or temporary disability (time loss), or both, were decided. PPD is permanent partial disability, PTD is permanent total disability, and TD is temporary disability.

Figure 5. Disability issues and award increases, hearing opinion and order, Oregon, 1996-2005

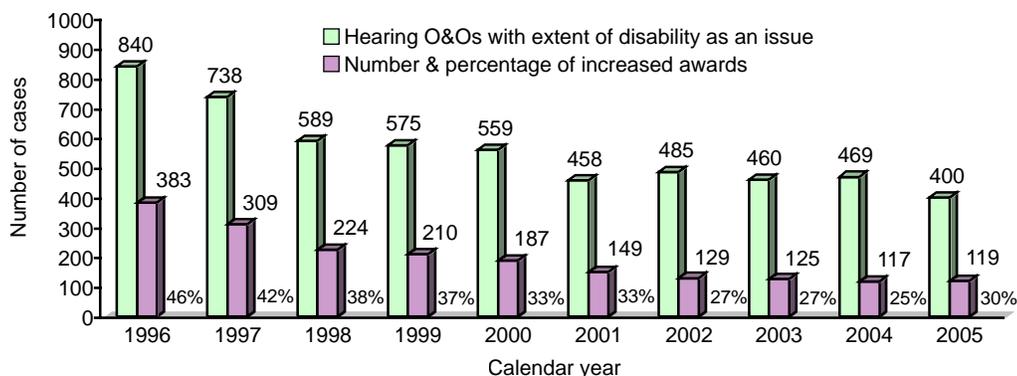
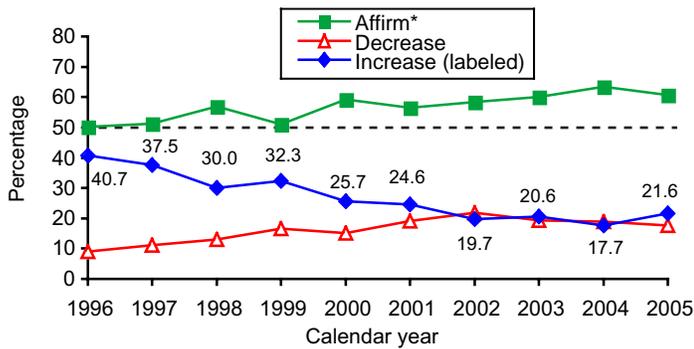


Figure 6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1996-2005



* Remands are coded as "Affirm"

Figure 7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1996-2005

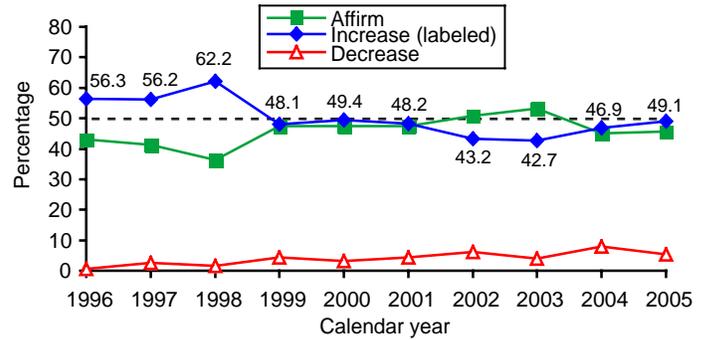


Figure 8. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1996-2005

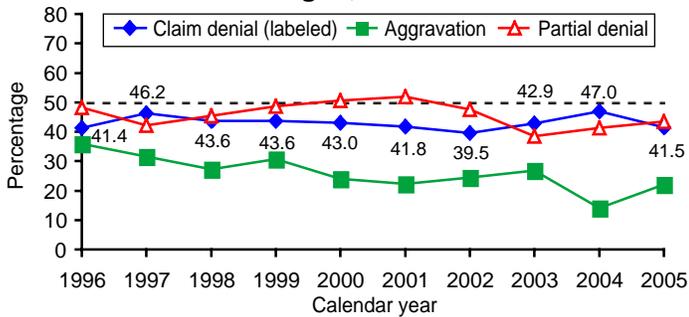
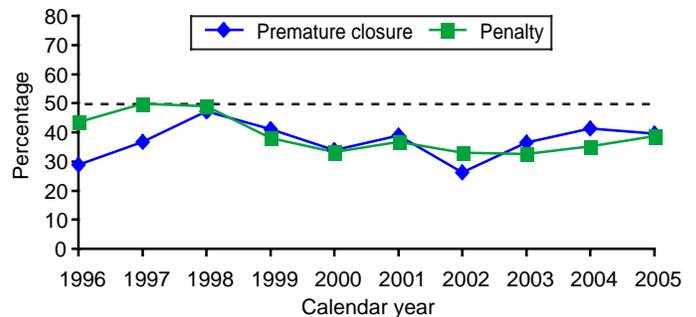


Figure 9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1996-2005



The “set-aside-denial” rate for whole claim denial (41.5 percent) was the lowest since 2002’s record-low 39.5 percent; historically, this rate has ranged from 40 percent to 49 percent (Figure 8). The “set-aside” rate for partial denial (43.5 percent) increased from the near-record-low values of 2003 and 2004. For aggravation, the “set-aside” rate (22 percent) was significantly greater than the record-low 14.1 percent of 2004. The “yes” rate for insurer penalty (38.6 percent) was the highest since 1998 (Figure 9).

In six cases, [sanctions](#) were requested – three against worker attorneys, one against an insurer attorney, and two against both attorneys. In one case, the par-

ties agreed to a \$1,500 sanction against a claimant attorney on a “disputed-claim” basis. In the other five cases, judges denied sanctions.

Stipulations, disputed claim settlements

In 2005, disputing parties settled 4,965 issues in 4,814 stipulated cases, about 1.03 issues per case. Claim denial and partial denial were by far the most frequent issues (Table 8), which is typical. Dispositions of “set aside denial” for the compensability issues are always low because stipulations include disputed claim settlements, where the denial is sustained.

Table 8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2005

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	1	5	4	2	12	18.8%	1.3%
	Decrease	3	4	2	5	14	21.9%	
	Increase	13	11	4	10	38	59.4%	
	Total cases	17	20	10	17	64		
Temporary disability	Affirm	1	3	1	2	7	6.0%	2.4%
	Decrease	0	0	0	0	0	0.0%	
	Increase	27	43	10	29	109	94.0%	
	Total cases	28	46	11	31	116		
Claim denial	Set aside denial	97	156	44	74	371	18.1%	42.5%
	Affirm denial	548	573	217	336	1,674	81.9%	
	Total cases	645	729	261	410	2,045		
Partial denial	Set aside denial	69	121	31	65	286	14.0%	42.5%
	Affirm denial	362	732	219	446	1,759	86.0%	
	Total cases	431	853	250	511	2,045		
Aggravation denial	Set aside denial	6	13	3	1	23	17.6%	2.7%
	Affirm denial	13	59	20	16	108	82.4%	
	Total cases	19	72	23	17	131		
Responsibility	No	0	2	0	2	4	57.1%	0.1%
	Yes	2	1	0	0	3	42.9%	
	Total cases	2	3	0	2	7		
Premature closure	No	0	1	0	0	1	100.0%	0.0%
	Yes	0	0	0	0	0	0.0%	
	Total cases	0	1	0	0	1		
Insurer penalty	No	0	1	0	1	2	0.9%	4.7%
	Yes	40	97	27	58	222	99.1%	
	Total cases	40	98	27	59	224		
Attorney fee	No	0	0	0	0	0	0.0%	2.1%
	Yes	25	45	12	19	101	100.0%	
	Total cases	25	45	12	19	101		
Subjectivity	No	0	1	0	0	1	100.0%	0.0%
	Yes	0	0	0	0	0	0.0%	
	Total cases	0	1	0	0	1		
Rate of time loss	Affirm	0	0	0	2	2	3.6%	1.2%
	Decrease	0	0	0	1	1	1.8%	
	Increase	10	19	6	18	53	94.6%	
	Total cases	10	19	6	21	56		
Other issue	No	14	26	9	2	51	29.3%	3.6%
	Yes	20	59	24	20	123	70.7%	
	Total cases	34	85	33	22	174		
No issues	Total cases	32	82	43	34	191		
Total issues		1,251	1,972	633	1,109	4,965		

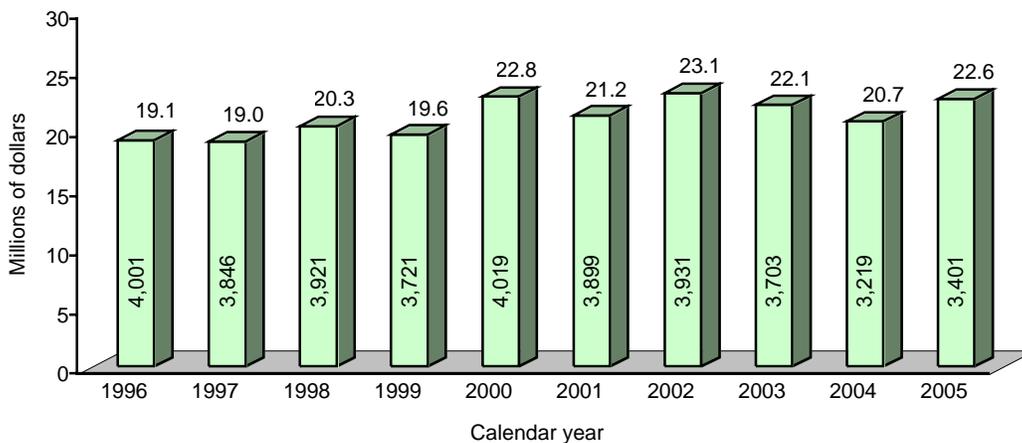
Notes: "Percentage disposition" gives the breakout of how issues were resolved; for each issue, the sum of these percentages equals 100 (except for rounding). "Percentage of cases" is the fraction of all cases that contain each issue; some cases have more than one issue, so the sum of these percentages exceeds 100. "Other insurers" includes cases with multiple insurers, no insurer, or unknown insurer. See the [appendix](#) for situations where no issue is recorded for a case.

Table 9. Hearing disputed claim settlements by principal issue, Oregon, 2005

Principal issue	Number of cases	Percentage of cases	Total amount (\$)	Average amount (\$)	Total fees (\$)
Claim denial	1,660	48.8%	11,145,000	6,714	2,172,000
Partial denial	1,728	50.8%	11,444,000	6,623	2,159,000
Aggravation denial	12	0.4%	38,000	3,158	7,000
All other issues	1	0.0%	0	0	0
All issues	3,401	100.0%	22,627,000	6,653	4,338,000

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, 1996-2005



Note: Numbers within bars are case counts.

In 2005, insurers paid more than \$22.6 million to workers in disputed claim settlements, the most since 2002 (Figure 10). The mean amount was \$6,653 (Table 9), and the median amount was \$3,700. The largest amount paid in a single settlement was \$137,500, and the most frequent amount was \$1,000. The [DCS](#) amount was unspecified in eight cases.

The percentage of DCS cases about partial denial (50.8 percent) was down from the record-high 52.7 percent of 2004. DCSs accounted for 70.6 percent of all stipulations, 34.1 percent of all closing hearing orders, and 76.9 percent of all claims denied at hearing (excludes aggravations).

Disputed claim settlements accounted for claimant attorney fees of more than \$4.3 million, 45.7 percent of all fees at hearing. The average DCS fee was \$1,518

(considering only nonzero out-of-compensation fees). About 99.5 percent of DCS fees were paid out of the DCS consideration.

Permanent disability

There were 369 cases involving extent of permanent disability in 2005, about 5.3 percent of all cases. Case dispositions were as follows (these figures include stipulations): increase the award, 28.2 percent (up from the near-record-low 23.8 percent of 2004); decrease the award, 18.4 percent; and affirm the award, 53.4 percent.

The number and size of hearing permanent disability awards, 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 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 where **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 9.7 scheduled degrees and 24.7 unscheduled degrees. Combining scheduled and unscheduled disability awards, the average award increase was 18.3 degrees (2004’s 16.0 degrees was the smallest value on record).

There were 30 and 43 cases where scheduled and unscheduled awards, respectively, were decreased. Average award **decreases** were 17.1 scheduled degrees, 39.6 unscheduled degrees, and 30.3 degrees combined.

The net amount awarded for PPD at hearing in 2005 was minus \$97,000, the fourth 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 above).

Post-2005 injury whole-body impairment and work disability (see [appendix](#) for summary). Under the new permanent partial disability system, 11 disputes were appealed to hearings. Nine were dismissed or withdrawn, and two settled. In one settlement, the parties agreed to increase impairment from none to 2 percent (\$1,377 value). In the other, work disability was decreased from 16 percent to 10 percent (a \$4,131 reduction).

Table 10. Hearing PPD award increases over previous award, by order type, Oregon, 2005

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	18.8	10.0	\$119,880	30	49.2	27.6	\$225,170	\$345,050
Stipulation	13	16.4	9.2	66,963	16	71.2	14.2	61,204	128,167
All orders	38	18.0	9.7	\$186,843	46	56.8	22.9	\$286,374	\$473,217

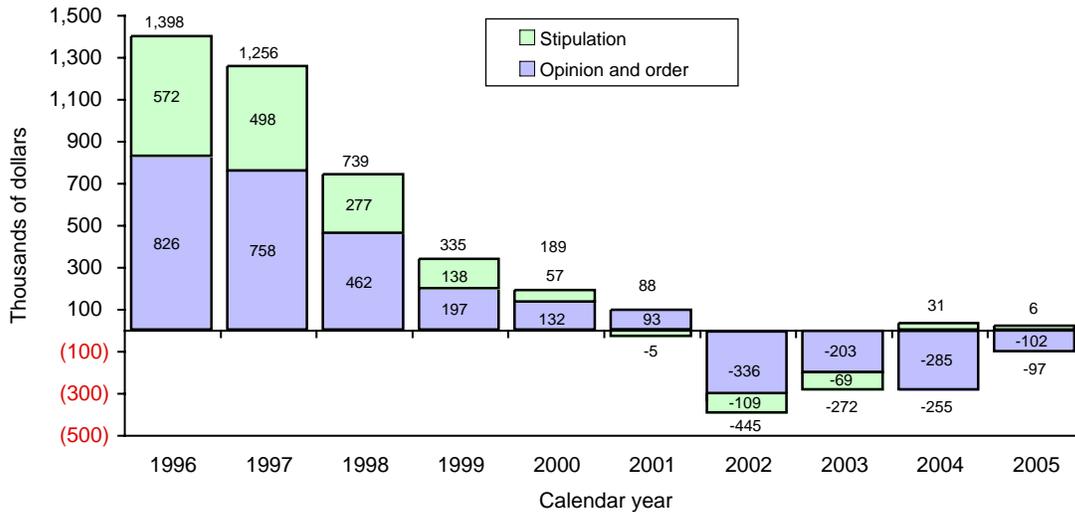
Note: Award units are degrees. Dollar increases are based on degree value for the date of injury. Dollar values may not add to totals due to rounding.

Table 11. Hearing PPD awards, no previous award, by order type, Oregon, 2005

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	3	6.7	\$10,228	10	35.1	\$63,051	\$73,279
Stipulation	3	12.1	20,348	4	19.2	12,505	32,853
All orders	6	9.4	\$30,576	14	30.6	\$75,556	\$106,132

Notes. Award units are degrees. Dollar increases are based on degree value at injury date. Dollar values may not add to totals due to rounding. “No previous award” means no prior PPD award, either scheduled or unscheduled, at the time of the hearing award.

Figure 11. Net hearing PPD awards by order type, Oregon, 1996-2005



Note: Values may not add to totals due to rounding.

Table 12. Disposition of hearing PPD cases by order type and prior award, Oregon, 2005

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	13 14.9%	74 85.1%	52 24.1%	54 25.0%	110 50.9%	65 21.5%	54 17.8%	184 60.7%	303
Stipulation	7 43.8%	9 56.3%	29 64.4%	14 31.1%	2 4.4%	36 59.0%	14 23.0%	11 18.0%	61
All orders	20 19.4%	83 80.6%	81 31.0%	68 26.1%	112 42.9%	101 27.7%	68 18.7%	195 53.6%	364

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 three hearing **permanent total disability** grants in 2005, as shown in Figure 12. A judge awarded an original grant in an O&O, and the parties agreed to reinstate two PTD awards in stipulations. There were two affirmations of PTD awards and no rescissions, so the net number of PTD awards was three. For the PTD grants, the average previous PPD award was 183 degrees (combining scheduled and unscheduled awards).

Time lags

For all hearing orders in 2005, the median time from injury to hearing request was 315 days. The median request-to-order time for all order types was 146 days (Table 13) Note that when there's a withdrawal or settlement, the hearing may be cancelled a month before the closing order is issued; therefore, for these order types, the request-to-order time lag may overstate the dispute's duration.

For all opinion and order cases (Figure 13), the median time from hearing [request to order](#) was 228 days (7.5 months). For O&O cases *without a postponement*, the median request-to-order time was only 152 days

(5 months). The percentage of O&Os with at least one postponement was 40.4 percent, very close to the 1991-2004 average. O&O time lag data exclude proposed and final own-motion orders.

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 31 days, while the mode was 0 days. The median close-to-order time lag was 27 days.

Figure 12. PTD awards granted at hearing, Oregon, 1996-2005

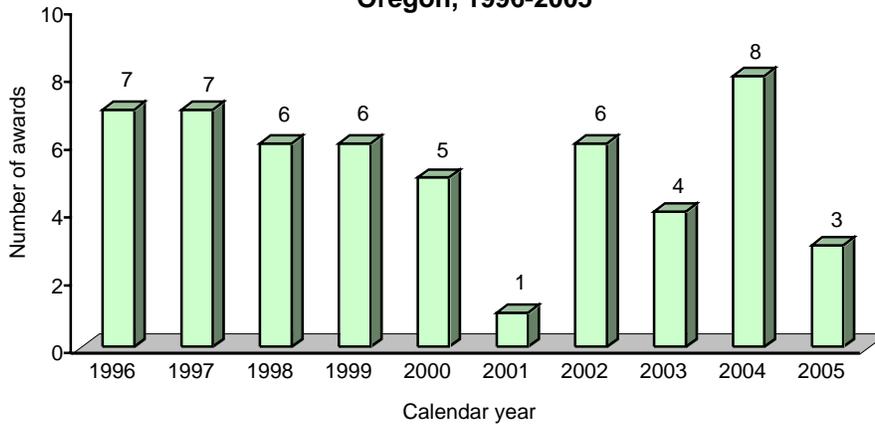


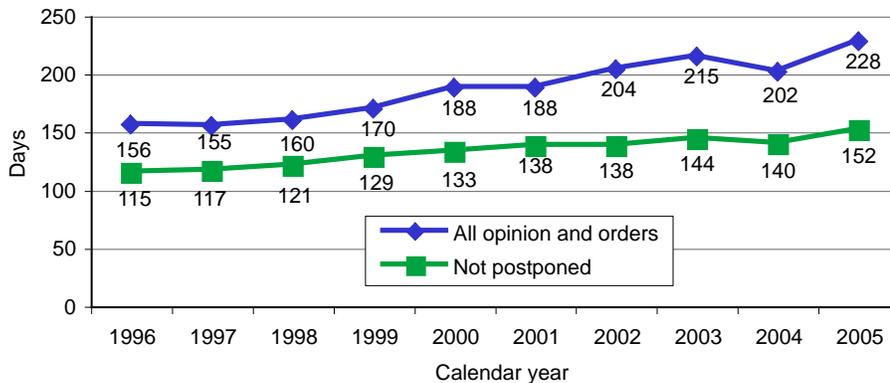
Table 13. Median hearing time lags by order type, Oregon, 2005

Lag periods	Opinion and order	Received stipulation*	Other stipulation*	Dismissal and withdrawal	All orders
Injury date to request date	328	475	263	349	315
Injury date to order date	632	489	522	567	559
Request date to order date	228	6	161	166	146
Request date to hearing date	89	--	--	--	--
Hearing date to closed date	31	--	--	--	--
Closed date to order date	27	--	--	--	--

Note: Units are calendar days. Hearing and closed dates apply to opinion and order cases only. Time lag segments do not add to totals because figures are medians, not means.

*"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, 1996-2005



Claimant attorney fees

Claimant [attorney fees](#) totaling almost \$9.5 million were approved for payment out of worker compensation or assessed against insurers in 2005 hearing orders (Table 14). The average fee of \$2,003 was about 3 percent more than in 2004 (Figure 14). Total fees were the highest since 1995 and 6.8 percent more than in 2004 (Figure 15).

About 47.9 percent of the fees were paid out of compensation or DCS consideration, just a little higher than 2004's near-record-low 46.8 percent. In 1990, this figure was 65 percent, but fewer extent-of-disability cases and smaller percentages of disability-increase dispositions have reduced this percentage.

Claimants were represented by counsel in 91.1 percent of O&O cases and 85.6 percent of all cases.

Figure 14. Average claimant attorney fees by source, Oregon, 1996-2005

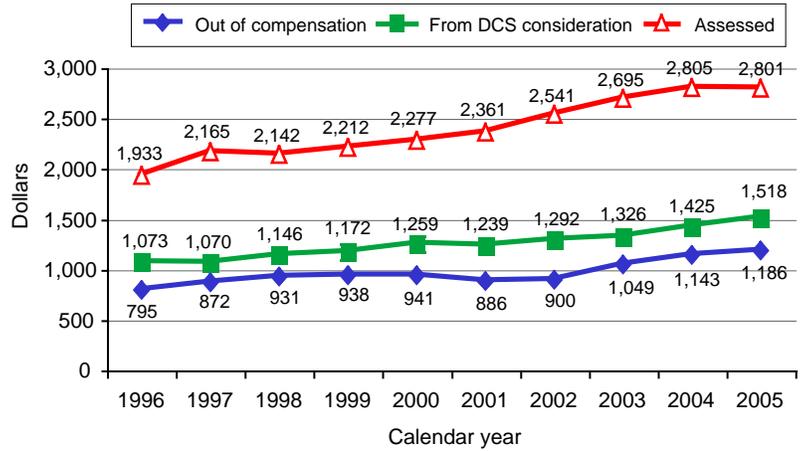


Figure 15. Total hearing claimant attorney fees, Oregon, 1996-2005

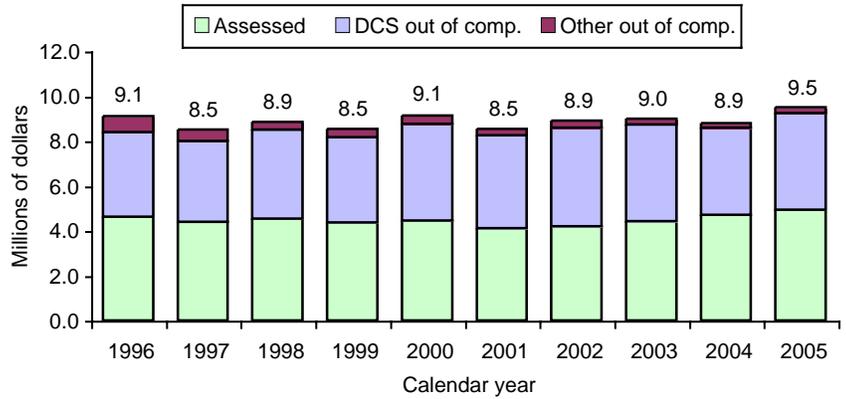


Table 14. Claimant attorney fees, by order type and fee type, Oregon, 2005

Fee type	Order type				Percentage of all fees
	Opinion and order	Stipulation	Dismissal	All types	
Out of compensation:					
Total (\$k)	140.9	91.3	1.4	233.6	2.5%
Average (\$)	1,423	941	1,363	1,186	
Cases	99	97	1	197	
DCS consideration:					
Total (\$k)		4,316.0		4,316.0	45.5%
Average (\$)		1,518		1,518	
Cases		2,844		2,844	
Assessed:					
Total (\$k)	2,972.9	1,967.6		4,940.5	52.1%
Average (\$)	3,927	1,954		2,801	
Cases	757	1,007		1,764	
All types:					
Total (\$k)	3,113.8	6,374.9	1.4	9,490.1	100.0%
Average (\$)	3,738	1,633	1,363	2,003	
Cases	833	3,905	1	4,739	

DCS fees are those taken from the DCS consideration only. 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 noncomplying 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 the 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.

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.

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.

New PPD system

Via Senate Bill 757, the legislature created a new system for determining permanent partial disability awards. It applies to workers injured on or after Jan. 1, 2005. Instead of scheduled and unscheduled PPD awards, which are measured in degrees and paid at rates that are a function of injury date and (for unscheduled PPD) the number of degrees awarded, the new system provides for two award types:

- **Impairment.** The impairment for all body parts is combined into whole-body impairment, measured in percent (1-100). It is paid at the *state* average weekly wage (for injuries between Jan. 1, 2005 and June 30, 2005, \$688.56 for each percent of impairment).
- **Work disability.** If a worker cannot return to regular work at the job held at injury, work disability is awarded. It combines impairment with a value based on age, education, and adaptability factors; it is given in percent, and exceeds impairment because the factors are all positive. Each percent is paid at 1.5 times the *worker's* average weekly wage (but the wage used is not less than 50 percent nor more than 133 percent of the state average weekly wage). Under House Bill 2408, work disability is not paid if the attending physician releases the worker to regular work.

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, and 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.
- 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 nonsubjectivity 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 amount 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 not recorded 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.

Proposed and final own-motion order – an order of an administrative law judge on behalf of the own-motion board. The order is issued when a worker appeals an insurer denial of a new or omitted medical condition after aggravation rights have expired. They are included with opinion and orders for most analyses in this report.

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.



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

