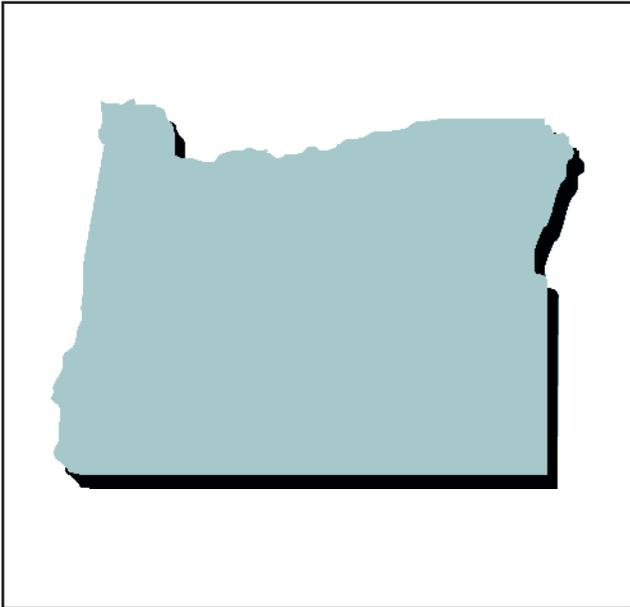




Hearings Division Statistical Report

Calendar Year 2006



*Information Management
Division*

*Oregon Department of Consumer
& Business Services*



March 2008



Hearings Division Statistical Report Calendar Year 2006

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Hearing requests, cases closed

In 2006, the Hearings Division of the Oregon Workers' Compensation Board received 8,876 requests for hearing, 3.7 percent fewer than in 2005 (Figure 1).

There were 9,442 cases closed by the Hearings Division in 2006, 5.7 percent fewer than the previous year (Figure 2). Some orders close more than one case, so there are fewer distinct orders than cases. For 2006, there were 8,298 orders, an average of 1.14 cases per order. Request and order counts include cases solely about non-complying employer or civil penalty assessment; most analyses below exclude these case types.

The percentage of cases that involved a judge's decision on the merits (**order types:** opinion and

order, proposed and final own motion order, and WCD proposed and final order) was 21.0 percent. See Table 1 and Figure 3. The percentage closed by dismissal was a near-record-high 30.1 percent. About 71.5 percent of these dismissals were issued because the requester withdrew the hearing request. WCD contested cases are included in the above counts (see "New order types" in the appendix). Unless otherwise stated below, O&O counts and analyses include five "proposed and final own motion orders" but *not* the 49 WCD proposed and final orders.

The worker filed the request in 88.8 percent of the closed cases, about the same as in 2005 (Table 2). The breakout of cases by **insurer** is depicted in Table 3.

Figure 1. Requests for hearing, Oregon, 1997-2006

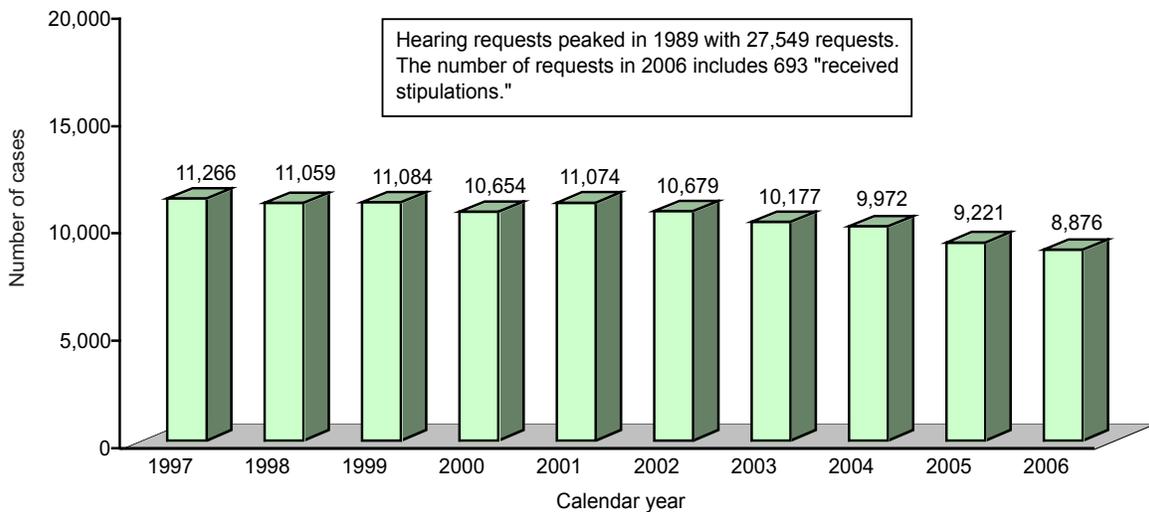


Figure 2. Hearing cases closed, all orders, Oregon, 1997-2006

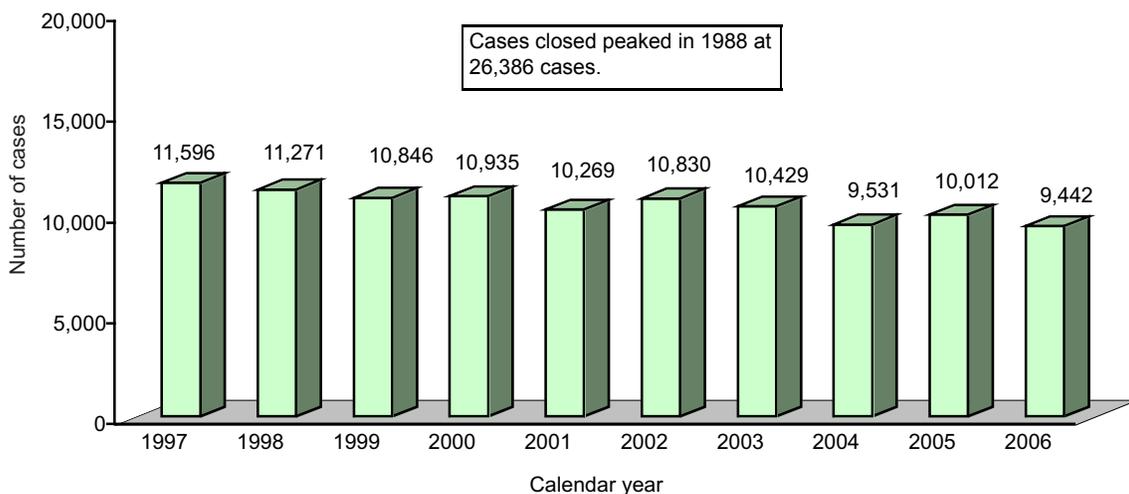


Table 1. Hearing compensation cases closed, by order type, Oregon, 2006

Type of order	Number of orders	Percentage of all orders	Percentage of sub-type*
Opinion and order	1,914	20.4%	99.7%
Proposed and final own-motion order	5	0.1%	0.3%
O&O and P&FOMO	1,919	20.5%	100.0%
Stipulation	1,397	14.9%	30.5%
DCS	3,176	33.9%	69.3%
Order on stipulation	8	0.1%	0.2%
All stipulations	4,581	48.9%	100.0%
Dismissal	441	4.7%	16.0%
Dismiss for CDA	347	3.7%	12.6%
Withdrawal	1,973	21.0%	71.5%
Above dismissals	2,761	29.5%	100.0%
WCD proposed and final order	49	0.5%	43.0%
WCD final order of dismissal	47	0.5%	41.2%
WCD proposed and final order of dismissal	18	0.2%	15.8%
All "WCD orders"	114	1.2%	100.0%
Total orders	9,375	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.

Table 2. Hearing compensation cases closed, by requester, Oregon, 2006

Requester	Number of cases	Percentage of cases
Claimant	8,328	88.8%
Employer	30	0.3%
SAIF	81	0.9%
Private insurer	200	2.1%
Joint	722	7.7%
WCD	3	0.0%
Other	11	0.1%
All	9,375	100.0%

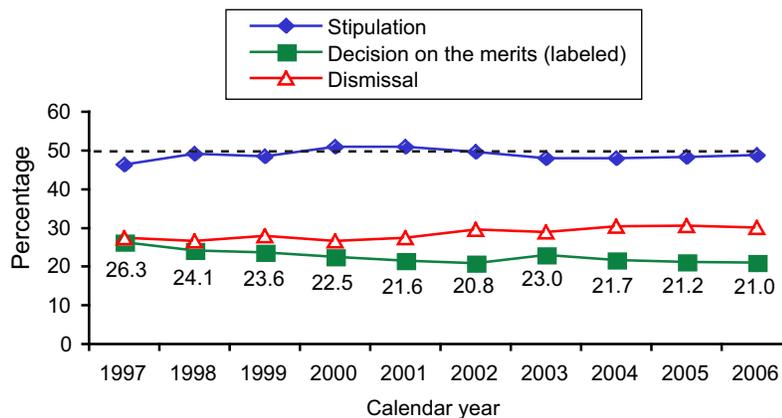
Due to rounding, the sum of percentages may not equal 100.

Table 3. Hearing compensation cases closed, by insurer, Oregon, 2006

Requester	Number of cases	Percentage of cases
SAIF	3,632	38.7%
Private insurer	2,413	25.7%
Self-insured	625	6.7%
Unknown	2,705	28.9%
All	9,375	100.0%

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

Figure 3. Distribution of hearing cases closed by order type, Oregon, 1997-2006



Note: Includes WCD cases in 2006.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 356 mediations during 2006 (Table 4). The average mediation required 12 work hours on the part of the administrative law judge. Almost 88 percent of mediations resulted in a settlement. The average dollar amount for a disputed claim settlement resulting from a mediation (\$15,100) was twice as large as the average amount for non-mediated DCSs.

Table 4. Workers' Compensation Board mediations, Oregon, 1997-2006

Statistic	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Mean
Completed ¹	250	233	216	280	248	285	241	268	270	356	265
Result settled (%) ²	91.6	90.1	89.8	89.3	85.5	86.3	86.3	84.0	87.0	87.7	87.8
Settled by DCS (%) ³	82.0	86.6	83.5	86.6	92.5	84.9	88.4	80.9	81.6	76.9	84.4
Mean DCS \$k/case	10.5	10.7	10.7	16.7	14.2	10.3	11.2	13.3	11.0	15.1	12.4
Disease Claims (%) ⁴	50	44	63	41	49	42	41	31	67	46	47.5
Mental disease (%) ⁴	30	30	37	32	36	27	20	16	21	10	25.9
Issues (%) ⁴											
Claim denial	50	47	47	40	39	43	41	32	30	28	39.7
Partial denial	--	49	54	64	70	65	66	74	73	53	63.1
All compensability	90	98	--	97	99	95	99	97	94	81	94.4
Non-WCB	40	47	46	43	51	55	45	50	47	42	47.1
ALJ work-hours (mean) ⁵	12	14	13	14	13	15	15	15	12	12	13.2
Request-mediation ⁶	25	50	64	77	73	80	79	95	78	73	69.4
Mediation-order ⁶	31	34	43	42	33	37	39	41	41	47	38.8

Notes:

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

1. Count is mediations completed in the given year, regardless of order date. Includes all WCB mediations, including those where the dispute is at board review or in the courts. Data through 2005 are based on mediation worksheets; data from 2006 are based on mediation events in the board's data system.

2. Excludes those cases settled after pre-mediation conference calls.

3. A mediation is classified as closed by disputed claim settlement (DCS) if any included case is so closed.

4. A mediation is so classified if any included case is about this condition or issue.

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

6. Time lags are median values, in days.

-- Indicates data are not available.

Issues

The 6,500 O&O and stipulation cases closed in 2006 included a total of 7,181 issues, or 1.10 issues per case. See Table 5.

For all order types, whole claim denial was the most frequent issue (as it's been every year beginning in 1989), with 39.8 percent of the cases. Partial denial was a close second, with 38.7 percent, the second-highest percentage on record. The percentage of cases with the issue of aggravation (3.3 percent), extent of temporary disability (4.3 percent), and responsibility (1.3 percent) all increased from their 2005 record-low values. Insurer penalty was an issue in 7.7 percent of cases, the highest percentage since 2001's 8.1 percent.

Table 5. Number of issues per hearing compensation case, Oregon, 2006

Number of issues	Number of cases
One	5,514
Two	688
Three	82
Four	10
Five	1
Six	0
More than one	781
No issues	246
Total issues	7,181

Opinion and orders

Judges decided 2,386 issues in 1,919 O&O and proposed-and-final-own-motion-order 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 permanent disability (12.2 percent) was the lowest on record. Whole claim denial (36.2 percent) was the most frequent issue.

Table 6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2006

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	65	20	9	44	138	59.0%	12.2%
	Decrease	11	5	1	13	30	12.8%	
	Increase	37	14	0	15	66	28.2%	
	Total cases	113	39	10	72	234		
Temporary disability	Affirm	17	16	4	16	53	49.1%	5.6%
	Decrease	3	0	0	2	5	4.6%	
	Increase	16	9	4	21	50	46.3%	
	Total cases	36	25	8	39	108		
Claim denial	Set aside	116	84	26	61	287	41.4%	36.2%
	Affirm	179	97	47	84	407	58.6%	
	Total cases	295	181	73	145	694		
Partial denial	Set aside	94	92	23	53	262	43.9%	31.1%
	Affirm	135	96	38	66	335	56.1%	
	Total cases	229	188	61	119	597		
Aggravation denial	Set aside	3	6	1	3	13	19.1%	3.5%
	Affirm	11	21	4	19	55	80.9%	
	Total cases	14	27	5	22	68		
Responsibility	Total cases	30	38	4	11	83		4.3%
Premature closure	No	9	5	1	8	23	62.2%	1.9%
	Yes	7	4	2	1	14	37.8%	
	Total cases	16	9	3	9	37		
Insurer penalty	No	49	43	12	39	143	56.7%	13.1%
	Yes	30	35	10	34	109	43.3%	
	Total cases	79	78	22	73	252		
Attorney fee	No	5	1	0	1	7	20.0%	1.8%
	Yes	11	6	4	7	28	80.0%	
	Total cases	16	7	4	8	35		
Subjectivity	No	3	2	0	1	6	54.5%	0.6%
	Yes	1	1	0	3	5	45.5%	
	Total cases	4	3	0	4	11		
Rate of time loss	Affirm	6	3	0	1	10	47.6%	1.1%
	Decrease	1	0	0	0	1	4.8%	
	Increase	2	4	1	3	10	47.6%	
	Total cases	9	7	1	4	21		
Other issue	No	69	47	14	51	181	73.6%	12.8%
	Yes	27	13	3	22	65	26.4%	
	Total cases	96	60	17	73	246		
No issues		20	11	3	17	51		
Total issues		937	662	208	579	2,386		

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."

Table 7 and Figure 4 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 2006, workers' disability awards were increased in 97 cases (the sum of the last four table columns), about 29 percent of the 334 disability-issue cases. The "percentage disposition" column of Table 6 provides information about the disposition of issues in O&O cases.

The "increase" rate for **permanent disability** (28.2 percent) was the highest since 1999 (Figure 5). For **temporary disability**, the "increase" rate (46.3 percent) was typical of recent years (Figure 6). 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 42.7 percent (the highest since 1999) and 48.1

percent (typical of recent years), respectively. These values for the 1980s and early 1990s were typically 60-80 percent.

The "**set-aside-denial**" rate for whole claim denial (41.4 percent) was the lowest since 2002's record-low 39.5 percent; historically, this rate has ranged from 40 to 49 percent (Figure 7). The "set-aside" rate for partial denial (43.9 percent) was the highest since 2002, but well below 2001's 52.0 percent. For aggravation, the "set-aside" rate (19.1 percent) was significantly greater than the record-low 14.1 percent of 2004. The "yes" rate for insurer penalty (43.3 percent) was the highest since 1998 (Figure 8).

In two cases, **sanctions** were requested against claimant attorneys. In both cases, judges denied the sanctions.

Table 7. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1997-2006

Calendar year	Extent of disability issue	PPD increase over prior award	PPD award, no prior award	PTD award	TD increase with no PPD increase
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
2006	334	39	9	0	49

"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 4. Disability issues and award increases, hearing opinion and order, Oregon, 1997-2006

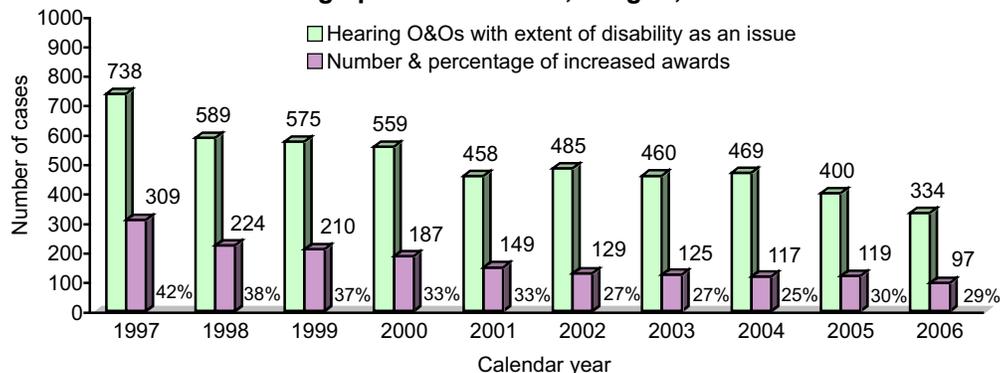
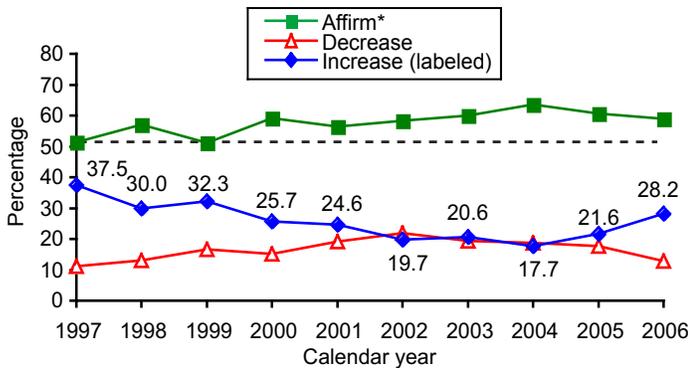


Figure 5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1997-2006



* Remands are coded as "Affirm"

Figure 6. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1997-2006

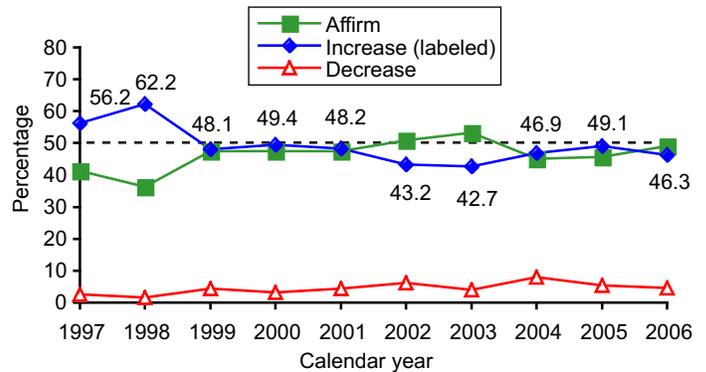


Figure 7. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1997-2006

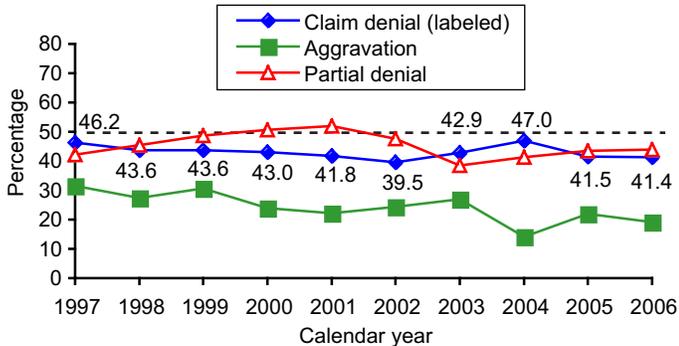
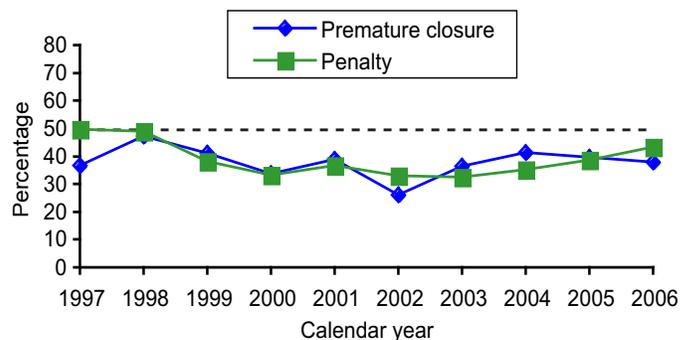


Figure 8. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1997-2006



Stipulations, disputed claim settlements

In 2006, disputing parties settled 4,795 issues in 4,581 stipulated cases, about 1.05 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 compensability issues are always lower than for O&Os because stipulations include DCSs, where the denial is sustained.

In 2006 insurers paid more than \$22.5 million to workers in 3,176 disputed claim settlements, slightly less than in 2005 (Figure 9). The average amount was \$7,090 (Table 9) and median amount was \$4,000. The largest amount paid in a single settlement was \$250,000; the most frequent amount was \$1,000. The DCS amount was unspecified in nine cases.

The percentage of DCS cases about partial denial (49.6 percent) was the lowest since 2000. DCSs accounted for 69.3 percent of all stipulations, 33.9 percent of all closing hearing orders, and 78.7 percent of all claims denied at hearing (excludes aggravations).

DCSs accounted for claimant attorney fees of almost \$4.3 million, 44.4 percent of all fees at hearing. The average DCS fee was \$1,600 (considering only non-zero out-of-compensation fees). About 99.3 percent of DCS fees were paid out of the DCS consideration.

Table 8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2006

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	1	2	1	4	8	14.3%	1.2%
	Decrease	4	3	1	15	23	41.1%	
	Increase	13	5	0	7	25	44.6%	
	Total cases	18	10	2	26	56		
Temporary disability	Affirm	1	1	1	2	5	2.9%	3.8%
	Decrease	1	0	0	0	1	0.6%	
	Increase	44	53	5	66	168	96.6%	
	Total cases	46	54	6	68	174		
Claim denial	Set aside denial	141	104	9	98	352	18.6%	41.4%
	Affirm denial	640	420	118	366	1,544	81.4%	
	Total cases	781	524	127	464	1,896		
Partial denial	Set aside denial	131	93	22	69	315	16.4%	41.9%
	Affirm denial	540	421	87	557	1,605	83.6%	
	Total cases	671	514	109	626	1,920		
Aggravation denial	Set aside denial	9	4	3	9	25	17.1%	3.2%
	Affirm denial	24	42	11	44	121	82.9%	
	Total cases	33	46	14	53	146		
Responsibility	Total cases	2	0	0	0	2		0.0%
Premature closure	No	0	2	0	2	4	66.7%	0.1%
	Yes	2	0	0	0	2	33.3%	
	Total cases	2	2	0	2	6		
Insurer penalty	No	1	2	1	1	5	2.0%	5.4%
	Yes	56	70	13	103	242	98.0%	
	Total cases	57	72	14	104	247		
Attorney fee	No	0	1	0	0	1	1.3%	1.6%
	Yes	18	19	4	33	74	98.7%	
	Total cases	18	20	4	33	75		
Subjectivity	No	0	1	0	3	4	80.0%	0.1%
	Yes	0	0	0	1	1	20.0%	
	Total cases	0	1	0	4	5		
Rate of time loss	Affirm	0	0	0	0	0	0.0%	1.7%
	Decrease	0	1	0	0	1	1.3%	
	Increase	29	24	1	24	78	98.7%	
	Total cases	29	25	1	24	79		
Other issue	No	16	15	3	8	42	22.2%	4.1%
	Yes	29	39	11	68	147	77.8%	
	Total cases	45	54	14	76	189		
No issues	Total cases	47	45	15	88	195		
Total issues		1,702	1,322	291	1,480	4,795		

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.

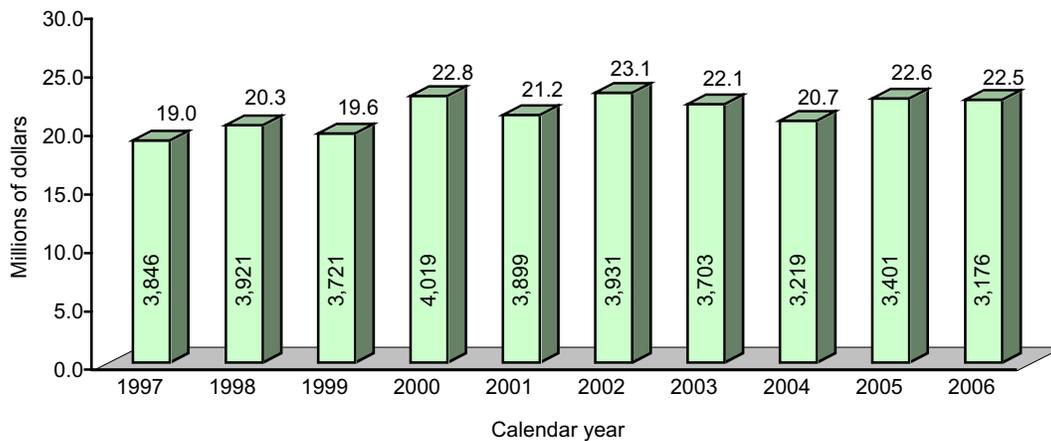
Table 9. Hearing disputed claim settlements by principal issue, Oregon, 2006

Principal issue	Number of cases	Percentage of cases	Total amount (\$k)	Average amount (\$)	Total fees* (\$k)
Claim denial	1,535	48.3%	\$11,025	\$7,182	\$2,094
Partial denial	1,576	49.6%	11,140	7,069	2,130
Aggravation denial	61	1.9%	333	5,464	72
All other issues	4	0.1%	21	5,186	4
All issues	3,176	100.0%	\$22,519	\$7,090	\$4,299

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

* Includes some assessed fees.

Figure 9. Hearing disputed claim settlement amounts, Oregon, 1997-2006



Note: Numbers within bars are case counts.

Permanent disability

There were 290 cases involving extent of permanent disability in 2006, about 4.5 percent of all cases. Case dispositions were as follows (these figures include stipulations): increase the award, 31.4 percent (the highest since 2001, when the identical value was recorded); decrease the award, 18.3 percent; and affirm the award, 50.3 percent.

Pre-2005 scheduled and unscheduled disability:

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 16.5 scheduled degrees and 25.6 unscheduled degrees. Combining scheduled and unscheduled disability awards, the average award increase was 22.0 degrees, the highest value since 1991. For O&O cases only, these values were 21.4, 27.8, and 25.6 degrees, respectively.

There were 22 and 17 cases where scheduled and unscheduled awards, respectively, were decreased. Average award decreases were 32.6 scheduled degrees, 49.1 unscheduled degrees, and 39.8 degrees combined. For O&O cases, these values were 31.9, 53.0, and 43.8 degrees, respectively.

Whole-body impairment and work disability:

See appendix for explanation of the change in how PPD is determined.

In 2006, 72 cases involving the new PPD system were resolved. See Table 12 for information about the award dispositions in these cases. Of the 18 cases with an O&O increase, 9 increased only impairment, 6 increased work disability only, and 3 increased both.

Eleven of 19 settlements reduced PPD. Of those 11, eight reduced PPD to zero.

Table 10. Hearing PPD award increases over previous award, by order type, Oregon, 2006

Type of order	Scheduled disability			Unscheduled disability				Both types	
	Number of cases	Average prior award	Average hearing increase	Total (\$k) hearing increases	Number of cases	Average prior award	Average hearing increase	Total (\$k) hearing increases	Total (\$k) hearing increases
Opinion and order	14	14.0	20.3	\$158.7	26	81.1	25.1	\$215.8	\$374.5
Stipulation	7	17.8	8.1	31.5	9	54.8	18.1	43.8	75.4
All orders	21	15.3	16.2	\$190.2	35	74.3	23.3	\$259.6	\$449.9

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. Excludes PPD for workers with injuries on/after 1/1/2005.

Table 11. Hearing PPD awards, no previous award, by order type, Oregon, 2006

Type of order	Scheduled disability			Unscheduled disability			Both types
	Number of cases	Average hearing increase	Total (\$k) hearing increases	Number of cases	Average hearing increase	Total (\$k) hearing increases	Total (\$k) hearing increases
Opinion and order	3	26.8	\$44.9	6	39.5	\$51.0	\$95.9
Stipulation	3	8.3	13.8	0			13.8
All orders	6	17.5	\$58.7	6	39.5	\$51.0	\$109.7

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. Excludes PPD for workers with injuries on/after 1/1/2005.

Table 12. Data about new PPD system, Oregon, 2006

Hearings order type	Number of cases	Disposition		
		Increase %	Decrease %	Affirm %
O&O	53	34.0%	11.3%	54.7%
Stipulation	19	26.3%	57.9%	15.8%
All	72	31.9%	23.6%	44.4%
Average award changes, for O&O cases:				
Change	Type of award	Cases	Average \$ amount	
Increase	Impairment	12	3,572	
Increase	Work disability	9	10,044	
Decrease	Impairment	5	6,364	
Decrease	Work disability	3	13,989	

Data are for PPD cases resolved, with post-1/1/2005 injury date. Averages are for those cases with an award change by opinion and order. Some cases may have both impairment and work disability changed.

All disability cases:

Table 13 depicts the overall disposition of hearing PPD cases. Here, the dollar value of scheduled and unscheduled awards is 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.

The net amount awarded for PPD at hearing in 2006 was minus \$125,000, the fifth straight year that more disability has been taken away than granted at hearing. See Figure 10. The primary reason for the net decrease is that average decreases exceeded average increases (values are given above). Note that, for both pre-2005 injuries and for the new impairment and work disability PPD system, 2006 O&Os have made a net increase in awards, while stipulations have made a net decrease in awards. In some cases, stipulations are a compromise between the parties; they award an increase (or sometimes decrease) that's smaller than that requested by the petitioner. But in other cases, the stipulation serves to reduce PPD awards to zero as part of a "global settlement" (the value of the PPD will be considered in determining the amount paid in a claim disposition agreement). So stipulated

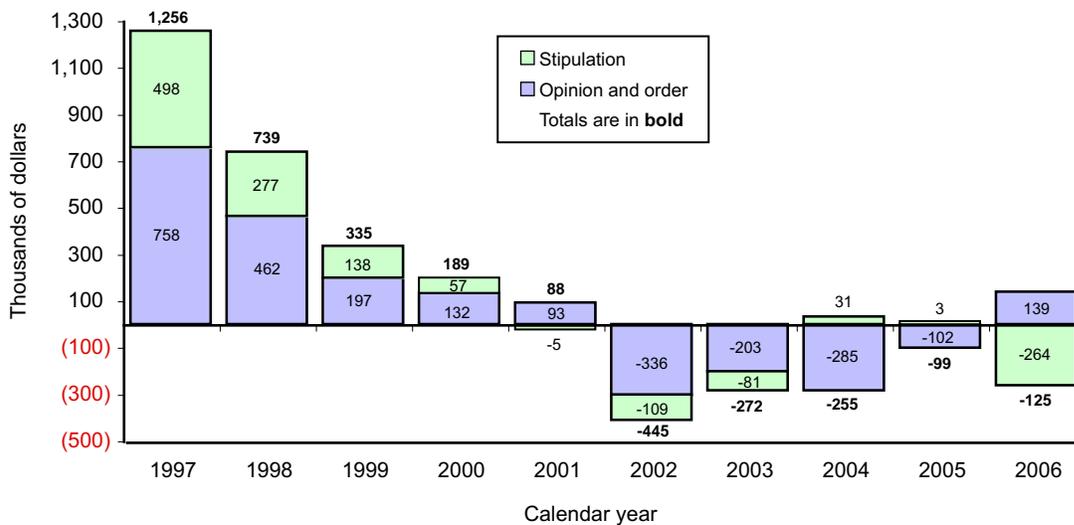
awards and total PPD paid are not indications of the accuracy of awards granted at closure or department reconsideration.

There was one hearing **permanent total disability** grant in 2006, as shown in Figure 11. It was a reinstatement of a prior PTD award, by stipulation. Prior PPD awarded in this claim was 100 percent of each leg and 100 percent unscheduled disability for low back. In another case, a judge affirmed an earlier award by O&O. The net number of PTD awards at hearing was one.

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 injuries and accepted disabling claims
- Decreasing severity of injuries
- 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

Figure 10. Net hearing PPD awards by order type, Oregon, 1997-2006



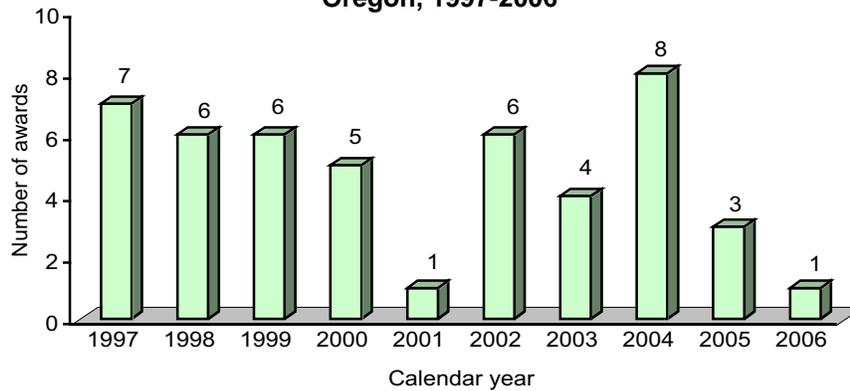
Note: Values may not add to totals due to rounding.

Table 13. Disposition of hearing PPD cases by order type and prior award, Oregon, 2006

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	9 18.8%	39 81.3%	39 29.3%	24 18.0%	70 52.6%	48 26.5%	24 13.3%	109 60.2%	181
Stipulation	3 42.9%	4 57.1%	15 53.6%	12 42.9%	1 3.6%	18 51.4%	12 34.3%	5 14.3%	35
All orders	12 21.8%	43 78.2%	54 33.5%	36 22.4%	71 44.1%	66 30.6%	36 16.7%	114 52.8%	216

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

Figure 11. PTD awards granted at hearing, Oregon, 1997-2006



Time lags

For all hearing orders in 2006, the median time from injury to hearing request was 329 days. The median request-to-order time for all order types was 143 days (Table 14). Note that when there’s a withdrawal or settlement, the hearing is typically canceled a month before the closing order is issued; therefore, for these order types, the request-to-order time lag will overstate the dispute’s duration.

For opinion and order cases (Figure 12), the median time from hearing request to order was 217 days (7.1 months). For O&O cases *without a postponement*, the median request-to-order time was only 149 days (4.9 months). The percentage of O&Os with at least one postponement was 41.8 percent, very close to the 1991-2005 average. O&O time lag data exclude proposed and final own motion orders and WCD proposed and final orders.

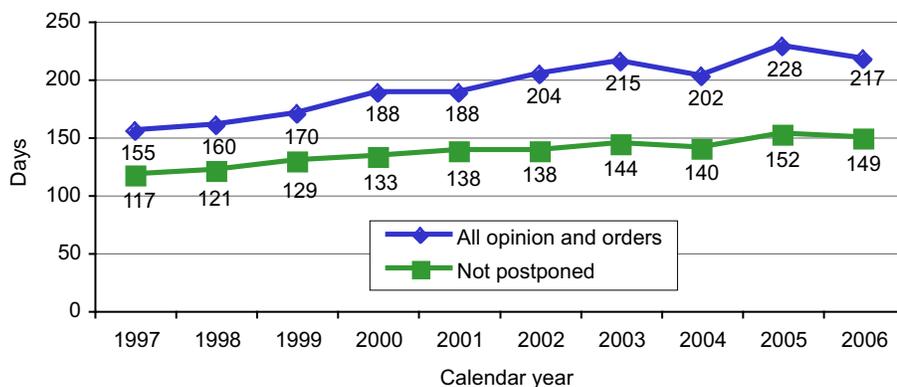
Table 14. Median hearing time lags by order type, Oregon, 2006

Lag periods	Opinion and order	Received stipulation	Other stipulation	Dismissal and withdrawal	All orders
Injury date to request date	327	445	276	376	329
Injury date to order date	632	454	485	547	537
Request date to order date	217	5	154	118	143
Request date to hearing date	91	--	--	--	--
Hearing date to closed date	35	--	--	--	--
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 12. Median time lags, hearing request to order, opinion and order cases, Oregon, 1997-2006



O&O 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 35 days, while the most common time lag was 0 days. The median close-to-order time lag was 27 days.

Claimant attorney fees

Claimants were represented by counsel in at least 91.1 percent of O&O cases and 86.6 percent of all cases.

Claimant attorney fees totaling almost \$9.7 million were approved for payment out of workers' compensation awards or assessed against insurers in 2006 hearing orders (Table 15). The average fee of \$2,130 was about 6.3 percent more than in 2005 (Figure 13). Total fees were the highest since 1995 and 2.0 percent more than in 2005 (Figure 14). Data here exclude fees in WCD cases.

About 47.0 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 65.0 percent, but fewer extent of disability cases and smaller percentages of disability-increase dispositions have reduced this percentage.

Figure 13. Average claimant attorney fees by source, Oregon, 1997-2006

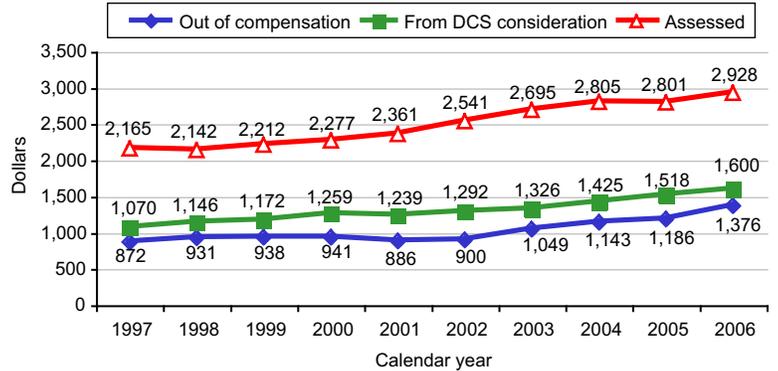


Figure 14. Total hearing claimant attorney fees, Oregon, 1997-2006

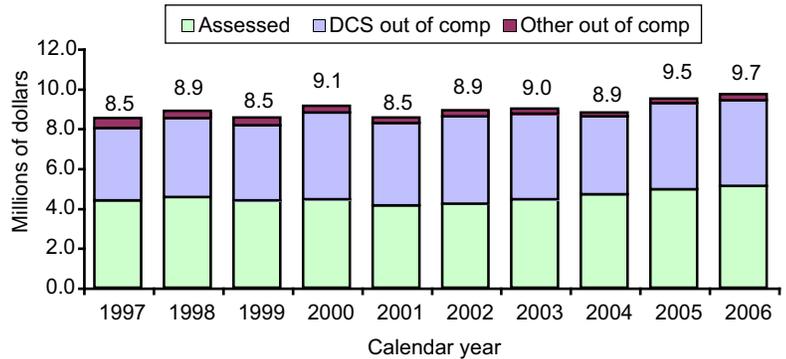


Table 15. Claimant attorney fees, by order type and fee type, Oregon, 2006

Fee type	Order type				Percentage of all fees
	Opinion and order	Stipulation	Dismissal	All types	
Out of compensation:					
Total (\$k)	182.8	93.5	3.0	279.3	2.9%
Average (\$)	1,828	917	3,000	1,376	
Cases	100	102	1	203	
DCS consideration:					
Total (\$k)		4,269.7		4,269.7	44.1%
Average (\$)		1,600		1,600	
Cases		2,668		2,668	
Assessed:					
Total (\$k)	2,944.4	2,180.1	7.5	5,132.1	53.0%
Average (\$)	4,224	2,068	3,750	2,928	
Cases	697	1,054	2	1,753	
All types:					
Total (\$k)	3,127.2	6,543.3	10.5	9,681.1	100.0%
Average (\$)	4,035	1,737	3,500	2,130	
Cases	775	3,768	3	4,546	

DCS fees are those from DCS consideration, only. Fees may not add to totals due to rounding. Cases may not add to all-types cases because some cases have more than one fee type. Occasionally DCSs include assessed fees; they are included here as assessed fees.

Appendix

Background and context

The Hearings Division of the Oregon Workers' Compensation Board provides a forum for impartial dispute resolution 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 request a hearing with 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.

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.

New order types

House Bill 2091, effective Jan. 1, 2006, transferred jurisdiction of appeal of director's orders from the Office of Administrative Hearings to the Workers' Compensation Board. These "WCD contested cases" most frequently involve disputes about medical services or vocational services. The board has set up three new order types to deal with them:

- **WCD/Proposed and final order** – A judge's decision *on the merits* of the case. Appeal of this order is to WCD (not board review), and the subsequent review level is the Court of Appeals.
- **WCD/Final order of dismissal** – A dismissal, usually due to withdrawal by the petitioner. In most WCB reports, these are treated as *withdrawals*.
- **WCD/Proposed and final order of dismissal** – A dismissal, usually due to a settlement. In most WCB reports, these are treated as *dismissals*.

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 judge. 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 may be 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 a permanent partial disability. 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. See 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. See 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. See 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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