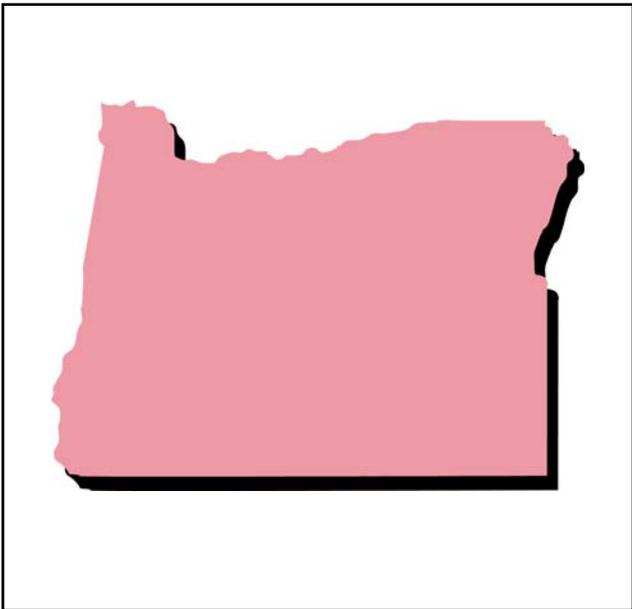




Hearings Division Statistical Report

Calendar Year 2007

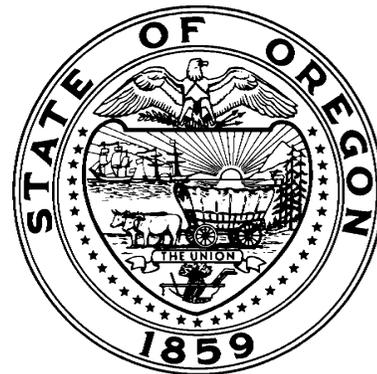


*Information Management
Division*

*Oregon Department of Consumer
and Business Services*



May 2009



Hearings Division Statistical Report Calendar Year 2007

Department of Consumer and Business Services
Cory Streisinger, Director

Information Management Division
Dorothy Oliver, Administrator

Research and Analysis Section
Ronni Rachele, Manager
Gary Helmer, Assistant Manager
Russ Reed, Research Analyst
James Burke, Research Analyst

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

WCB Coders
Sarah Lowry
Heather Hamilton
Rick Noback
Don Stewart
Casey Thompson

DCBS Communications
Kiki Hammond, Designer
Mark Peterson, Editor

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

May 2009

*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 503-378-8254.

Table of Contents

Hearing requests, cases closed	1
Mediations	3
Issues	3
Opinion and orders	5
Stipulations, disputed claim settlements	6
Permanent disability	8
Scheduled and unscheduled disability	8
Whole-body impairment and work disability	9
All disability cases	9
Time lags	11
Claimant attorney fees	12
Appendix	13

Tables

1. Hearing compensation cases closed, by order type, Oregon, 2007.....	2
2. Hearing compensation cases closed, by requester, Oregon, 2007.....	2
3. Hearing compensation cases closed, by insurer, Oregon, 2007	2
4. Workers' Compensation Board mediations, Oregon, 1998-2007.....	3
5. Number of issues per hearing compensation case, Oregon, 2007.....	3
6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2007.....	4
7. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1998-2007.....	5
8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2007.....	7
9. Hearing disputed claim settlements, by principal issue, Oregon, 2007.....	8
10. Hearing PPD award changes, Oregon, 2007.....	9
11. Disposition of hearing PPD cases, by order type, Oregon, 2007.....	9
12. Median hearing time lags, by order type, Oregon, 2007	11
13. Claimant attorney fees, by order type and fee type, Oregon, 2007	12

Figures

1. Requests for hearing, Oregon, 1998-2007.....	1
2. Hearing cases closed, all orders, Oregon, 1998-2007.....	1
3. Distribution of hearing cases closed, by order type, Oregon, 1998-2007.....	2
4. Disability issues and award increases, hearing opinion and order, Oregon, 1998-2007	5
5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1998-2007.....	6
6. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1998-2007.....	6
7. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1998-2007	6
8. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1998-2007.....	6
9. Hearing disputed claim settlement amounts, Oregon, 1998-2007.....	8
10. Net hearing PPD awards, by order type, Oregon, 1998-2007	10
11. PTD awards granted at hearing, Oregon, 1998-2007	10
12. Median time lags, hearing request to order, opinion and order cases, Oregon, 1998-2007.....	11
13. Average claimant attorney fees by source, Oregon, 1998-2007	12
14. Total hearing claimant attorney fees, Oregon, 1998-2007	12

Hearing requests, cases closed

In 2007, the Hearings Division of the Oregon Workers' Compensation Board received 9,355 hearing requests, 2.5 percent more than in 2006 (Figure 1).

The Hearings Division closed 9,261 cases in 2007, 1.9 percent fewer than the previous year (Figure 2). Some orders closed more than one case, so there

are fewer distinct orders than cases. For 2007, there were 8,151 orders, an average of 1.14 cases per order. Request and order counts include cases solely about noncomplying employer or civil penalty assessment; most of the analyses below exclude these case types. Safety cases are excluded from all data in this report.

Figure 1. Requests for hearing, Oregon, 1998-2007

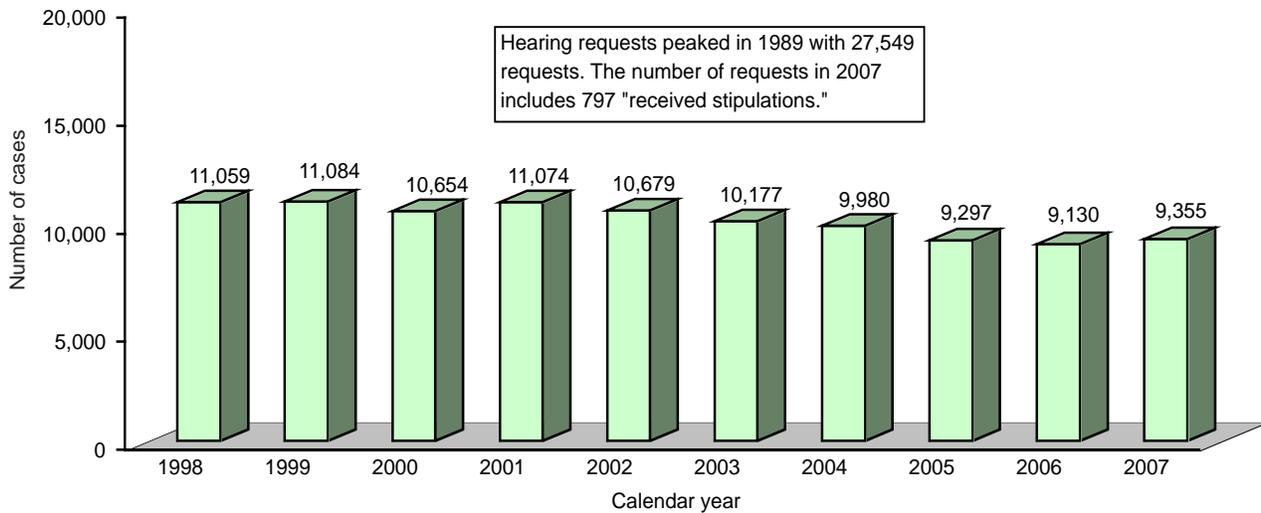


Figure 2. Hearing cases closed, all orders, Oregon, 1998-2007

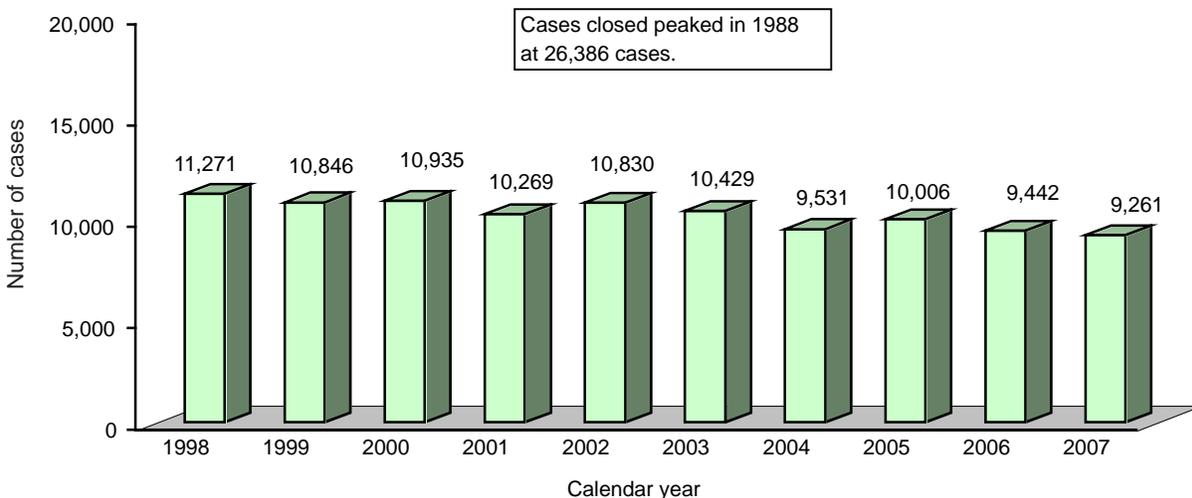


Table 1. Hearing compensation cases closed, by order type, Oregon, 2007

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
Opinion and order	1,765	19.2%	100.0%
Stipulation	1,379	15.0%	29.6%
DCS	3,276	35.6%	70.3%
Order on stipulation	8	0.1%	0.2%
All stipulations	4,663	50.6%	100.0%
Dismissal	447	4.9%	17.1%
Dismiss for CDA	330	3.6%	12.6%
Withdrawal	1,836	19.9%	70.3%
Above dismissals	2,613	28.4%	100.0%
WCD proposed and final order	79	0.9%	46.7%
WCD final order of dismissal	61	0.7%	36.1%
WCD proposed and final order of dismissal	29	0.3%	17.2%
All "WCD orders"	169	1.8%	100.0%
Total orders	9,210	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, 2007

Requester	Number of cases	Percentage of cases
Claimant	8,075	87.7%
Employer	30	0.3%
SAIF	48	0.5%
Private insurer	212	2.3%
Joint	818	8.9%
WCD	8	0.1%
Other ¹	19	0.2%
All	9,210	100.0%

¹ "Other" requester includes medical providers and unknown requesters. Due to rounding, the sum of percentages may not equal 100.

Table 3. Hearing compensation cases closed, by insurer, Oregon, 2007

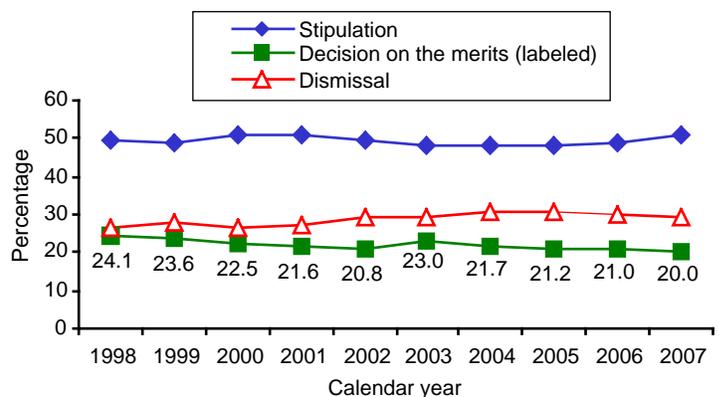
Requester	Number of cases	Percentage of cases
SAIF	3,689	40.1%
Private insurer	2,024	22.0%
Self-insured	449	4.9%
Unknown	3,048	33.1%
All	9,210	100.0%

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

The percentage of cases involving a judge's decision on the merits was 20.0 percent, the lowest value on record (Table 1 and Figure 3). The percentage closed by dismissal was 29.3 percent. About 70.2 percent of these dismissals were issued because the requester withdrew the hearing request. Workers' Compensation Division (WCD) contested cases are included in the above percentages (see "New order types" in the appendix). Unless otherwise stated, opinion and order (O&O) counts and analyses do not include the 79 WCD proposed and final orders.

The claimant filed the hearing request in 87.7 percent of closed cases (Table 2), slightly lower than in 2006. This count excludes "received stipulations," which are considered to be joint requests.

Figure 3. Distribution of hearing cases closed, by order type, Oregon, 1998-2007



Note: Includes WCD cases in 2006.

Table 4. Workers' Compensation Board mediations, Oregon, 1998-2007

Statistic	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Mean
Completed ¹	233	216	280	248	285	241	268	270	356	346	274
Settlement resulted (%) ²	90	90	89	85	86	86	84	87	88	89	87
Settled by DCS (%) ³	87	84	87	93	85	88	81	82	77	79	85
Mean DCS \$k/case	10.7	10.7	16.7	14.2	10.3	11.2	13.3	11.0	15.1	14.0	12.7
Disease claims (%) ⁴	44	63	41	49	42	41	31	67	46	64	49
Mental disease (%) ⁴	30	37	32	36	27	20	16	21	10	20	25
<u>Issues (%) ⁴</u>											
Claim denial	47	47	40	39	43	41	32	30	28	30	38
Partial denial	49	54	64	70	65	66	74	73	53	62	63
All compensability	98	--	97	99	95	99	97	94	81	81	93
Non-WCB	47	46	43	51	55	45	50	47	42	43	48
ALJ work-hours (mean) ⁵	14	13	14	13	15	15	15	12	12	15	13.6
Request-mediation ⁶	50	64	77	73	80	79	95	78	73	72	74.1
Mediation-order ⁶	34	43	42	33	37	39	41	41	47	47	40.4

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 closed by a DCS.

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.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 346 mediations during 2007 (Table 4). The administrative law judges worked an average of 15 hours per mediation. More than 89 percent of mediations resulted in a settlement. The average dollar amount for a disputed claim settlement resulting from mediation (\$14,000) was about 1.75 times as large as the average amount for non-mediated DCSs.

Issues

In 2007, there were 6,428 O&O and stipulation cases closed, which included a total of 7,183 issues, or 1.12 issues per case. See Table 5.

For the past 18 years (1989 to 2006), whole claim denial has been the most frequent issue for all order types; 2007 orders did not follow this pattern. The most frequent issue in 2007 was partial denial with 40.6 percent of all cases, the highest on record.

Table 5. Number of issues per hearing compensation case, Oregon, 2007

Number of issues	Percentage of cases*
One	86.4%
Two	12.1%
Three	1.4%
Four	0.2%
Five	0.0%
Six	0.0%
More than one	13.6%

*Based on total cases with issues.

Whole claim denial was the second most frequent issue at 37.6 percent, the lowest since 1990. The percentage of cases with the issue of aggravation (3.1 percent), extent of temporary disability (4.1 percent), and responsibility (1.3 percent) all were above their 2005 record-low values. Insurer penalty was an issue in 8.6 percent of cases, the highest percentage since 1995's 12.1 percent.

Table 6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2007

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	83	26	8	50	167	63.5%	14.9%
	Decrease	12	10	4	18	44	16.7%	
	Increase	26	9	4	13	52	19.8%	
	Total cases	121	45	16	81	263		
Temporary disability	Affirm	14	14	0	17	45	46.4%	5.5%
	Decrease	3	1	0	2	6	6.2%	
	Increase	21	10	1	14	46	47.4%	
	Total cases	38	25	1	33	97		
Claim denial	Set aside	124	49	8	84	265	43.7%	34.3%
	Affirm	133	70	28	110	341	56.3%	
	Total cases	257	119	36	194	606		
Partial denial	Set aside	101	56	8	70	235	46.0%	29.0%
	Affirm	105	74	16	81	276	54.0%	
	Total cases	206	130	24	151	511		
Aggravation denial	Set aside	2	0	1	3	6	17.1%	2.0%
	Affirm	14	6	2	7	29	82.9%	
	Total cases	16	6	3	10	35		
Responsibility	Total cases	23	21	5	22	71		4.0%
Premature closure	No	22	3	1	11	37	77.1%	2.7%
	Yes	2	4	0	5	11	22.9%	
	Total cases	24	7	1	16	48		
Insurer penalty	No	56	33	5	57	151	57.6%	14.8%
	Yes	35	21	3	52	111	42.4%	
	Total cases	91	54	8	109	262		
Attorney fee	No	0	1	0	3	4	11.8%	1.9%
	Yes	12	8	2	8	30	88.2%	
	Total cases	12	9	2	11	34		
Subjectivity	No	2	6	0	5	13	76.5%	1.0%
	Yes	1	1	0	2	4	23.5%	
	Total cases	3	7	0	7	17		
Rate of time loss	Affirm	4	2	0	0	6	30.0%	1.1%
	Decrease	0	0	0	0	0	0.0%	
	Increase	2	3	0	9	14	70.0%	
	Total cases	6	5	0	9	20		
Other issue	No	72	31	8	60	171	66.0%	14.7%
	Yes	20	25	11	32	88	34.0%	
	Total cases	92	56	19	92	259		
No issues		23	9	3	22	57		
Total issues		889	484	152	735	2,223		

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.

Opinion and orders

Hearings judges decided 2,223 issues in 1,765 O&O cases, an average of 1.26 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 6. The percentage of cases about whole claim denial (34.3 percent) was the lowest it has been since 1996; however, since 1989, it has been the most frequent issue in O&Os. Partial denial was second at 29.0 percent.

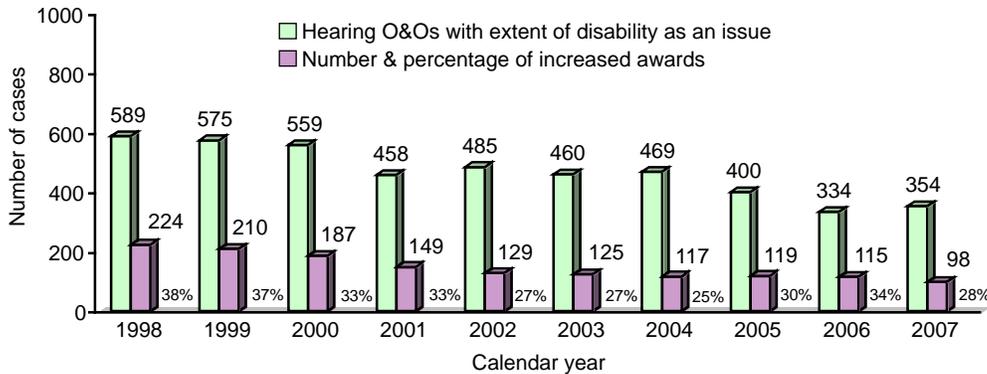
Table 7 and Figure 4 provide information about the number of O&O cases with extent of disability (temporary, permanent, or both) at issue and the type of disability increase. In 2007, worker’s disability awards were increased in 98 cases (the sum of the last three columns in Table 7), about 28 percent of the 354 disability-issue cases. The “percentage disposition” column of Table 6 provides information about the disposition of issues in O&O cases.

Table 7. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1998-2007

Calendar year	Extent of disability issue	PPD award	PTD award	TD increase with no PPD increase
1998	589	138	4	82
1999	575	148	2	60
2000	559	110	2	75
2001	458	85	0	64
2002	485	75	1	53
2003	460	73	1	51
2004	469	66	0	51
2005	400	65	1	53
2006	334	66	0	49
2007	354	52	0	46

“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, 1998-2007



The “affirm” rate for permanent disability cases (63.5 percent) tied 2004 as the highest on record. The “increase” rate for permanent disability was 19.8 percent, down from 2006’s 28.2 percent (Figure 5). Temporary disability’s increase rate was typical of recent years at 47.4 percent (Figure 6). The percentage of disability cases decided in claimants’ favor (includes insurer appeals where the award is affirmed) for permanent and temporary disability were 34.2 percent and 47.4 percent, respectively. These values were typically higher in the 1980s and early 1990s at 60 percent to 80 percent.

The “set-aside-denial” rate for whole claim denial was 43.7 percent; historically, this rate has ranged from 41 percent to 49 percent (Figure 7). The “set-aside” rate for partial denial (46.0 percent) was the highest since 2002, but well below 2001’s 52.0 percent. For aggravation, the “set-aside” rate (17.1 percent) was

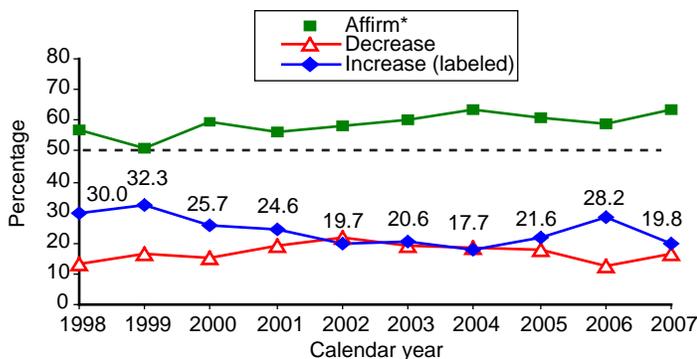
three points higher than 2004’s record-low 14.1 percent. The “yes” rate for insurer penalty in 2007 (42.4 percent), although lower than 2006’s 43.3 percent, was high for recent years (Figure 8).

In three cases, sanctions were requested against worker attorneys. The judge denied the sanctions in two cases, but agreed to sanction a claimant attorney \$1,000 for a frivolous hearing request.

Stipulations, disputed claim settlements

In 2007, disputing parties settled 4,960 issues in 4,663 stipulated cases, about 1.06 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.

Figure 5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1998-2007



* Remands are coded as "Affirm"

Figure 6. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1998-2007

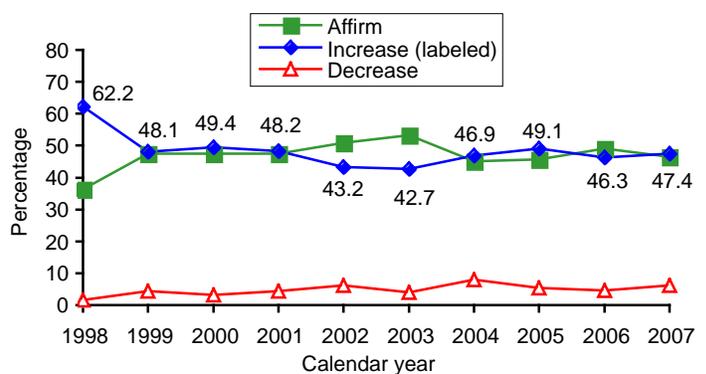


Figure 7. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1998-2007

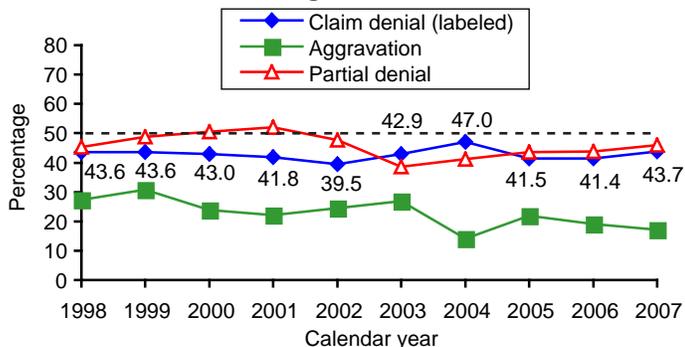


Figure 8. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1998-2007

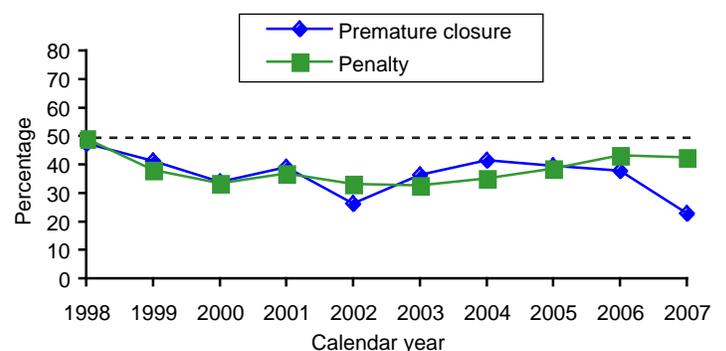


Table 8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2007

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	2	1	0	3	6	20.0%	0.6%
	Decrease	3	1	1	6	11	36.7%	
	Increase	4	5	0	4	13	43.3%	
	Total cases	9	7	1	13	30		
Temporary disability	Affirm	0	2	0	4	6	3.6%	3.6%
	Decrease	0	1	0	1	2	1.2%	
	Increase	56	40	6	58	160	95.2%	
	Total cases	56	43	6	63	168		
Claim denial	Set aside denial	121	79	14	96	310	17.1%	38.8%
	Affirm denial	679	309	88	425	1,501	82.9%	
	Total cases	800	388	102	521	1,811		
Partial denial	Set aside denial	102	107	13	80	302	14.4%	45.0%
	Affirm denial	630	406	75	685	1,796	85.6%	
	Total cases	732	513	88	765	2,098		
Aggravation denial	Set aside denial	5	8	0	7	20	12.2%	3.5%
	Affirm denial	37	40	6	61	144	87.8%	
	Total cases	42	48	6	68	164		
Responsibility	Total cases	5	1	1	3	10		0.2%
Premature closure	No	0	0	0	1	1	50.0%	0.0%
	Yes	1	0	0	0	1	50.0%	
	Total cases	1	0	0	1	2		
Insurer penalty	No	1	2	0	5	8	2.7%	6.2%
	Yes	71	95	7	110	283	97.3%	
	Total cases	72	97	7	115	291		
Attorney fee	No	0	1	0	0	1	0.8%	2.6%
	Yes	28	31	2	58	119	99.2%	
	Total cases	28	32	2	58	120		
Subjectivity	No	2	0	0	3	5	100.0%	0.1%
	Yes	0	0	0	0	0	0.0%	
	Total cases	2	0	0	3	5		
Rate of time loss	Affirm	0	0	0	2	2	2.6%	1.7%
	Decrease	1	0	1	0	2	2.6%	
	Increase	21	33	4	17	73	94.8%	
	Total cases	22	33	5	19	77		
Other issue	No	27	18	2	21	68	37.0%	3.9%
	Yes	34	31	5	46	116	63.0%	
	Total cases	61	49	7	67	184		
No issues	Total cases	41	25	4	108	178		
Total issues		1,830	1,211	225	1,696	4,960		

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.

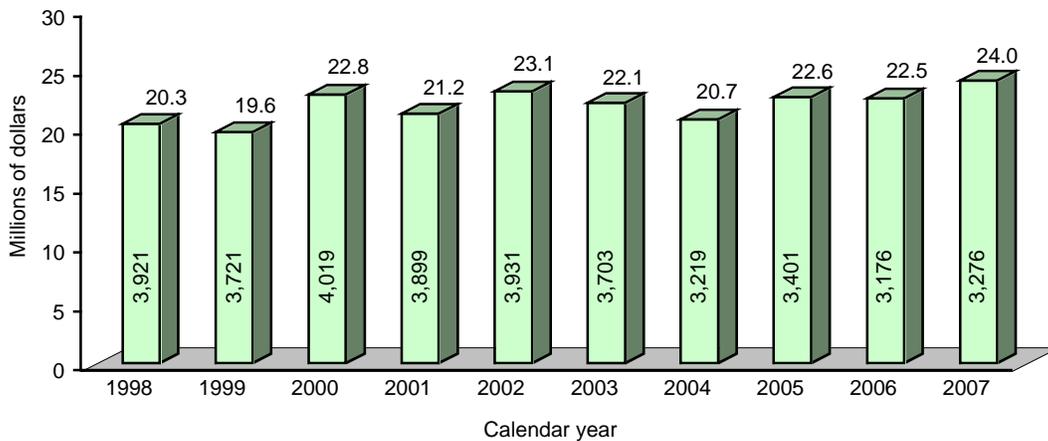
Table 9. Hearing disputed claim settlements, by principal issue, Oregon, 2007

Principal issue	Number of cases	Percentage of cases	Total DCS amount (\$k)	Average amount (\$)	Total fees* (\$k)
Claim denial	1,485	45.3%	10,983	7,396	2,081
Partial denial	1,761	53.8%	12,879	7,314	2,443
Aggravation denial	26	0.8%	167	6,421	30
Other issues	4	0.1%	18	4,550	5
All issues	3,276	100.0%	24,048	7,341	4,559

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, 1998-2007



Note: Numbers within bars are case counts.

In 2007, insurers paid more than \$24.0 million to workers in 3,276 disputed claim settlement cases, slightly more than in 2006 (Figure 9). The average DCS amount was \$7,341 (Table 9) and the median amount was \$3,900. The largest amount paid in a single settlement was \$200,000 and the most frequent amount was \$1,000. The DCS amount was unspecified in five cases.

The percentage of DCS cases about partial denial (53.8 percent) was the highest on record. DCSs accounted for 70.3 percent of all stipulations, 35.6 percent of all closing hearing orders, and 80.7 percent of all claims denied at hearing, the highest percentage on record (excludes aggravations).

DCSs accounted for claimant attorney fees of \$4.6 million, 47.3 percent of all fees at hearing. The average DCS fee was \$1,607 (considering only non-zero out-of-compensation fees). About 99.3 percent of DCS fees were paid out of the DCS consideration.

Permanent disability

There are two systems for determining permanent disability discussed in this section: scheduled and unscheduled awards in claims where the injury date is prior to Jan. 1, 2005 (hereafter referred to as “old PPD”), and impairment and work disability when the injury is on or after that date (hereafter, “new PPD”).

Scheduled and unscheduled disability

Data about increased and decreased permanent partial disability awards cases are provided in Table 10. For example, for all order types the average award increases and decreases for scheduled PPD awards were 20.4 and 7.8 degrees, respectively. Of the \$62,200 awarded (net) in old PPD cases, about \$47,100 (75.7 percent) was awarded for scheduled disability.

Table 10. Hearings PPD award changes, Oregon, 2007

Increases	Opinion and order		All order types	
	Type of PPD award	Number of cases	Average change*	Number of cases
Scheduled and unscheduled	21		24	
Scheduled	8	18.2	9	20.4
Unscheduled	16	31.2	18	28.8
(number with both types)	(3)		(3)	
Impairment and work disability	30		40	
Impairment	20	7.6	29	7.2
Work disability	15	15.1	17	16.5
(number with both types)	(5)		(6)	

Decreases	Opinion and order		All order types	
	Type of PPD award	Number of cases	Average change*	Number of cases
Scheduled and unscheduled	19		24	
Scheduled	11	8.3	13	7.8
Unscheduled	11	34.8	14	36.5
(number with both types)	(3)		(3)	
Impairment and work disability	25		30	
Impairment	14	11.4	19	9.9
Work disability	16	11.8	18	11.8
(number with both types)	(5)		(7)	

*“Average change” awards are in units of degrees for scheduled and unscheduled awards, and in whole-body percentages for impairment and work disability awards. A case may have award changes in two award types. For example, looking at **impairment and work disability increases by opinion and order** (shaded), the counts of 20 impairment awards and 15 work-disability awards each includes five cases with both award types

Whole-body impairment and work disability

In 2007, 174 cases involving new PPD were resolved; awards were increased in 40 cases and decreased in 30 cases. Of the 30 O&O disability cases with an award increase, 15 (20 minus 5) increased only impairment, 10 (15 minus 5) increased work disability only, and five increased both. Of the 30 orders that reduced PPD, eight of 25 O&Os and three of five stipulations reduced PPD to zero.

New PPD constituted 59.4 percent of all hearings PPD cases, 58.3 percent of all cases with PPD change, and 62.5 percent of net PPD awarded.

All disability cases

There were 293 cases involving extent of permanent disability in 2007, about 4.6 percent of all cases – the second lowest on record after 2006’s 4.5 percent. Case dispositions were as follows (these figures include stipulations): award increase, 22.2 percent (the lowest on record); award decrease, 18.8 percent; and affirm the award, 59.0 percent (Table 11).

Of the 119 total cases of PPD award change in 2007, 80.7 percent were by opinion and order.

Table 11 depicts the overall disposition of hearing PPD cases. Here, the dollar value of award types 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.

Table 11. Disposition of hearing PPD cases, by order type, Oregon, 2007

Order type	Dispositions			
	Increase	Decrease	Affirm	All
Opinion and order	52 19.8%	44 16.7%	167 63.5%	263 100.0%
Stipulation	13 43.3%	11 36.7%	6 20.0%	30 100.0%
All orders	65 22.2%	55 18.8%	173 59.0%	293 100.0%

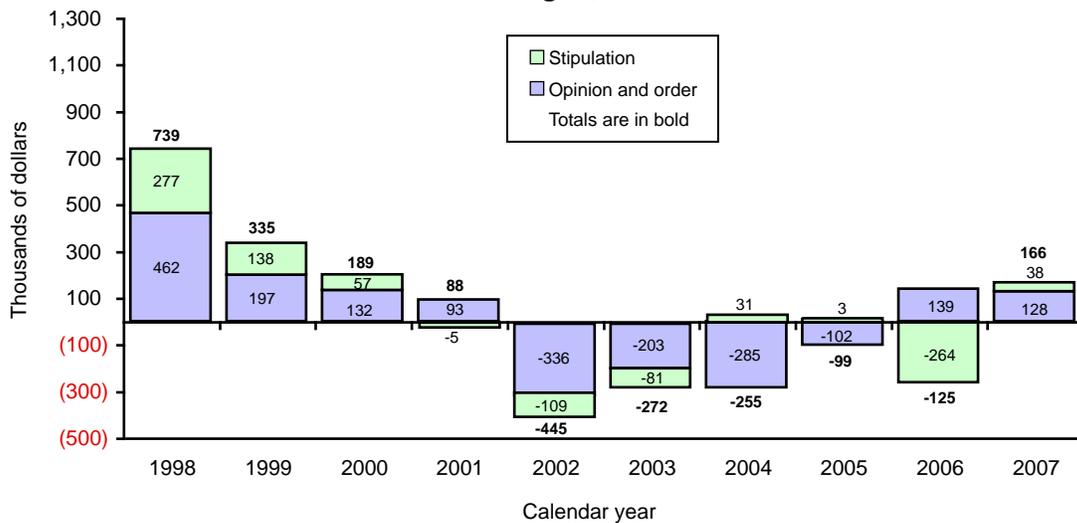
Note: Table entries are number of cases (top number) and the percentage of each order type that has the given disposition (so percentages add to 100 in the horizontal, except for rounding).

Permanent partial disability awards at hearing have been decreasing in recent years; this trend was reversed in 2007 when more disability was given than taken away for the first time in six years. The net amount awarded for PPD at hearing in 2007 was \$166,000 (Figure 10). In O&Os, net PPD was positive for both old and new disability. Stipulations, on the other hand, awarded a net increase in new PPD, but a net decrease in old PPD. In some cases, stipulations are a compromise between the parties; they award an increase (or sometimes decrease) that's smaller than the petitioner requested. 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). Therefore, stipulated awards and total net PPD awarded at hearing are not indications of the accuracy of awards granted at closure or department reconsideration.

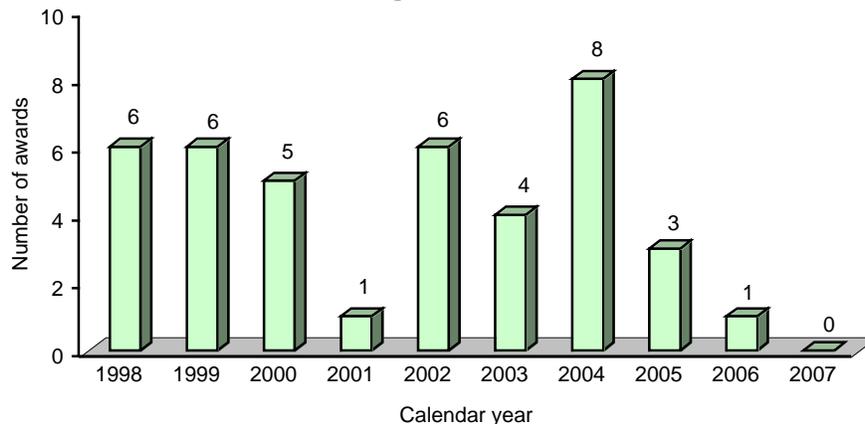
For the first time on record there were no hearings permanent-total-disability grants in 2007. The number of grants has been declining in recent years; there was only one in 2006, as shown in Figure 11. There was one PTD rescission in 2007, by stipulation.

Figure 10. Net hearing PPD awards, by order type, Oregon, 1998-2007



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

Figure 11. PTD awards granted at hearing, Oregon, 1998-2007



The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past 20 years. The primary reasons for this change follow:

- 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

Time lags

For all hearing orders in 2007, the median time from injury to hearing request was 339 days. The median request-to-order time for all order types was 138 days (Table 12). Note that when there’s a withdrawal or settlement, the hearing is typically cancelled one 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 206 days (6.8 months). For O&O cases without a postponement, the median request-to-order time was 151 days (5.0 months). The percentage of O&Os with at least one postponement was 41.8 percent. O&O time-lag data exclude WCD proposed and final orders.

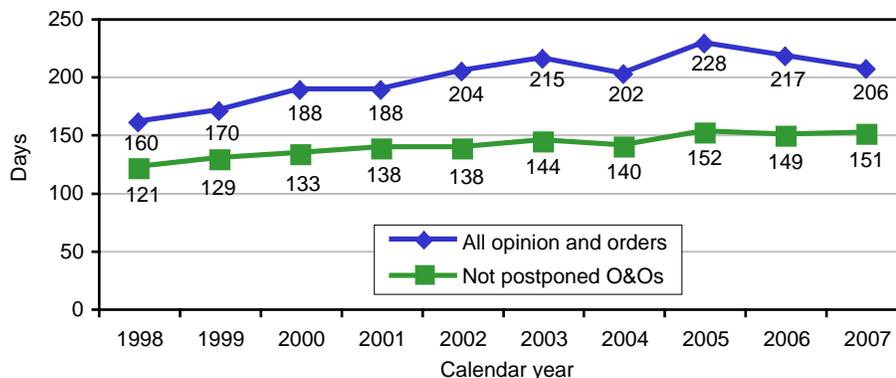
O&O request-to-order time lags include time that the record was kept open, after the hearing was concluded. The median hearing-to-close time lag was 36 days, while the most frequent time lag was zero days (the record closed on the day of the hearing). The median close-to-order time lag was 28 days.

Table 12. Median hearing time lags, by order type, Oregon, 2007

Lag period (dates)	Opinion and order	Received stipulation	Other stipulation	Dismissal, withdrawal	All orders
Injury – request	346	442	272	365	339
Injury – order	620	450	495	525	533
Request – order	206	6	155	107	138
Request – hearing	92				
Hearing – closed	36				
Closed – order	28				

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 stipulation” 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, 1998-2007



Claimant attorney fees

Claimants were represented by counsel in at least 93.5 percent of O&O cases and 87.9 percent of all cases.

Claimant attorney fees totaling more than \$9.6 million were approved for payment out of workers' compensation awards or assessed against insurers in 2007 hearing orders (Table 13). The average fee in 2007 was \$2,091 (Figure 13). Total fees were typical of recent years (Figure 14). Data here exclude fees in WCD cases.

About 49.3 percent of fees were paid out of compensation or DCS consideration, 2.5 percentage points higher than 2004's near-record-low 46.8 percent. This figure was 65.0 percent in 1990, 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, 1998-2007

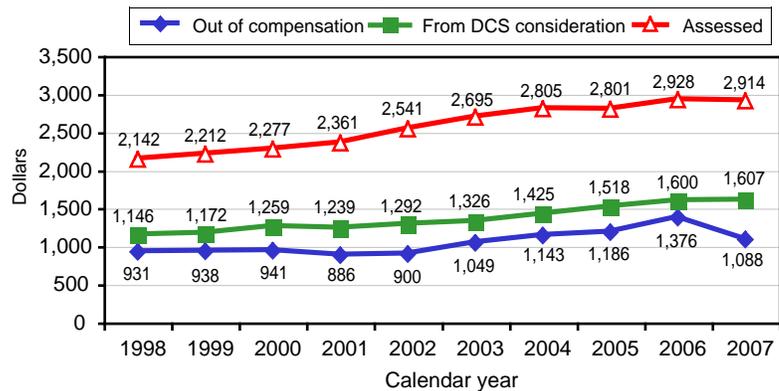


Figure 14. Total hearing claimant attorney fees, Oregon, 1998-2007

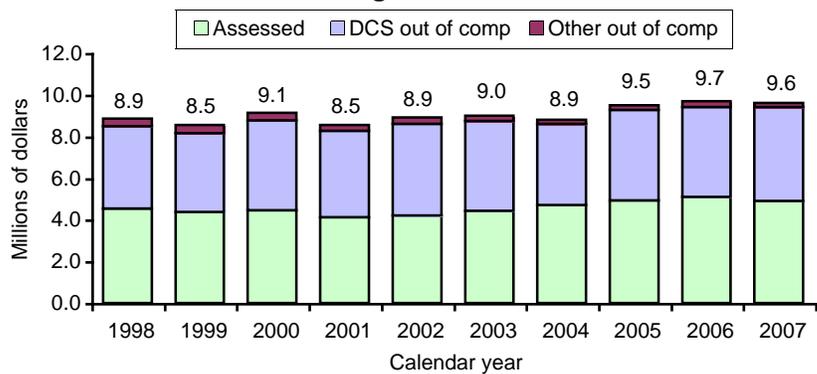


Table 13. Claimant attorney fees, by order and fee type, Oregon, 2007

Fee type	Order type			Percentage of all fees
	Opinion and order	Stipulation	All types	
Out of compensation:				
Total (\$k)	139	89	227	2.4%
Average (\$)	1,445	785	1,088	
Cases	96	113	209	
DCS consideration:				
Total (\$k)		4,528	4,528	46.9%
Average (\$)		1,607	1,607	
Cases		2,818	2,818	
Assessed:				
Total (\$k)	2,750	2,141	4,892	50.7%
Average (\$)	4,231	2,081	2,914	
Cases	650	1,029	1,679	
All types:				
Total (\$k)	2,889	6,758	9,647	100.0%
Average (\$)	4,018	1,735	2,091	
Cases	719	3,894	4,613	

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 about noncomplying employer status or civil penalty assessment [exception: these cases are included in hearing request and order counts]; and (4) nonclosing 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 opinion 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.

During the year covered by this report, Oregon law or WCB rules placed the following restrictions on claimant attorney fees (stated amounts could be exceeded only in extraordinary circumstances):

- Out of compensation – 25 percent of the increase; to a maximum of \$1,500 for time loss, \$4,600 for permanent partial disability, and \$12,500 for permanent total disability.
- Out of DCS consideration – 25 percent of the first \$17,500; 10 percent of proceeds above that threshold.
- Assessed – \$1,000 in a responsibility dispute, and \$2,000 for penalties for unreasonable insurer conduct. Otherwise, there were no restrictions.

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.

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.



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

