



# Hearings Division Statistical Report

*Calendar Year 2008*



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*Information Management  
Division*

*Oregon Department of Consumer  
and Business Services*



**March 2010**



# Hearings Division Statistical Report Calendar Year 2008

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**March 2010**

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## Hearing requests, cases closed

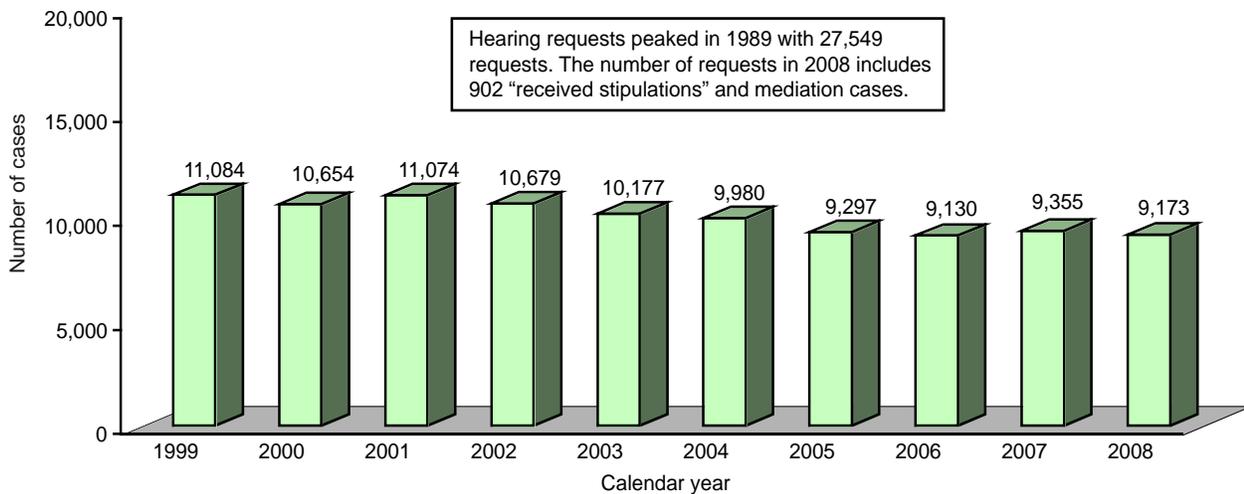
In 2008, the Hearings Division of the Oregon Workers' Compensation Board received 9,173 requests for hearing, 1.9 percent fewer than in 2007 (Figure 1).

There were 9,084 cases closed by the Hearings Division in 2008, 1.9 percent fewer than the previous year (Figure 2). Some orders close more than one case, so there are fewer distinct orders than cases. In

2008, the average number of cases per order was 1.15. Request and order counts include cases solely about noncomplying employer or civil penalty assessment; most analyses below exclude these case types.

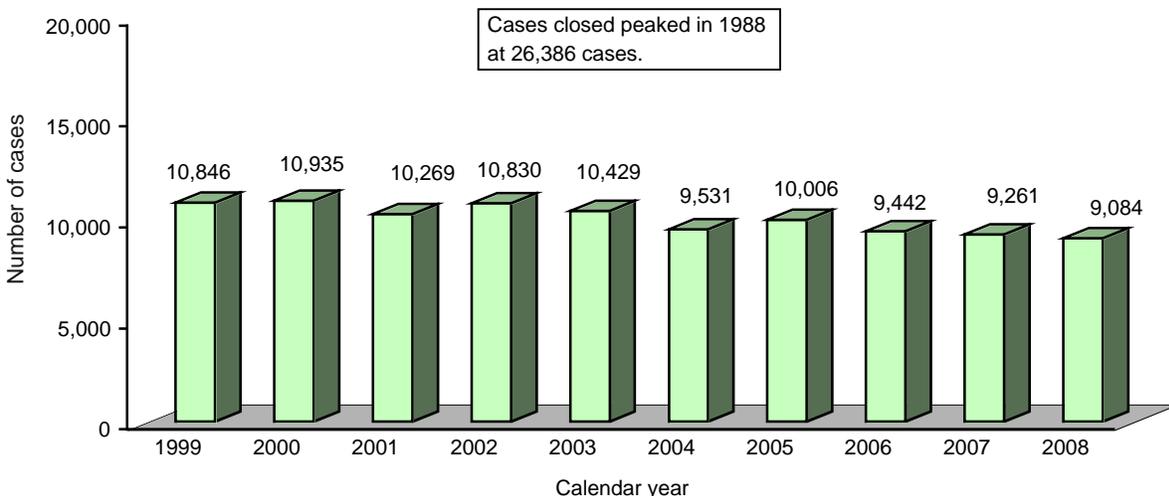
The percentage of cases that involved a judge's decision on the merits ([order types](#) "opinion and order" and "WCD proposed and final order") was

**Figure 1. Requests for hearing, Oregon, 1999-2008**



Note: "Mediation cases" are those set up to record the results of a mediation.

**Figure 2. Hearing cases closed, all orders, Oregon, 1999-2008**



18.3 percent (Table 1 and Figure 3), the lowest percentage on record. The percentage closed by dismissal was 29.3 percent. About 69.7 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, opinion and order (O&O) counts and analyses except Figures 1 and 2 do not include the WCD contested-case orders.

The worker filed the request in 86.9 percent of the closed cases (Table 2); this percentage excludes stipulations received without a prior hearing request. The breakout of cases by [insurer](#) is depicted in Table 3.

**Table 2. Hearing compensation cases closed, by requester, Oregon, 2008**

Requester	Number of cases	Percentage of cases
Claimant	7,883	86.9%
Employer	16	0.2%
SAIF	77	0.8%
Private insurer	196	2.2%
Joint	880	9.7%
WCD	-	0.0%
Other	15	0.2%
All	9,067	100.0%

For settlements received without a prior hearing request, the requester is considered to be “joint.” “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, 2008**

Requester	Number of cases	Percentage of cases
SAIF	3,624	40.0%
Private insurer	1,913	21.1%
Self-insured	369	4.1%
Unknown	3,161	34.9%
All	9,067	100.0%

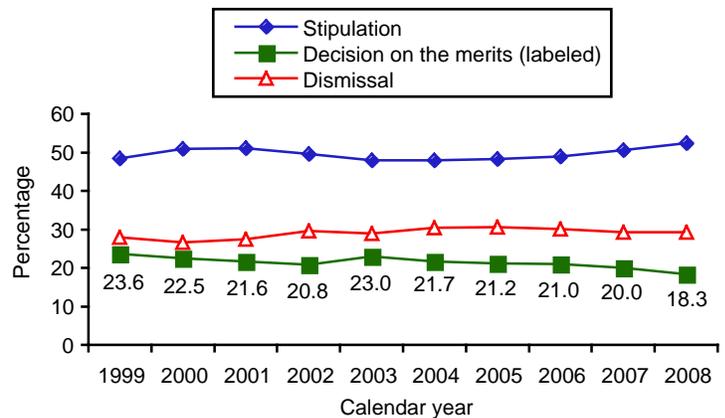
“Unknown” includes unknown insurer, no insurer, multiple insurers, and cases where the third-party administrator is entered instead of the insurer. Due to rounding, percentages may not add to 100.

**Table 1. Hearing compensation cases closed, by order type, Oregon, 2008**

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
<b>Opinion and order</b>	1,600	17.6%	100.0%
Stipulation	1,421	15.7%	29.9%
DCS	3,325	36.7%	69.9%
Order on stipulation	8	0.1%	0.2%
<b>All stipulations</b>	<b>4,754</b>	<b>52.4%</b>	100.0%
Dismissal	367	4.0%	14.4%
Dismiss for CDA	385	4.2%	15.1%
Withdrawal	1,793	19.8%	70.5%
<b>Above dismissals</b>	<b>2,545</b>	<b>28.1%</b>	100.0%
WCD proposed and final order	60	0.7%	35.7%
WCD final order of dismissal	55	0.6%	32.7%
WCD proposed and final order of dismissal	53	0.6%	31.5%
<b>All "WCD orders"</b>	<b>168</b>	<b>1.9%</b>	100.0%
Total orders	9,067	100.0%	

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

**Figure 3. Distribution of hearing cases closed, by order type, Oregon, 1999-2008**



Note: Includes WCD cases beginning in 2006.

## Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 398 mediations during 2008 (Table 4). The number of mediations completed has increased significantly over the past 10 years. The average mediation required 13 work hours on the part of the judge. About 90 percent of mediations resulted in a settlement. The average dollar amount for a disputed claim settlement (DCS) resulting from a mediation (\$14,600) was twice as large as the average amount of \$7,277 for nonmediated DCSs.

**Table 4. Workers' Compensation Board mediations, Oregon, 1999-2008**

Statistic	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Mean
Completed <sup>1</sup>	216	280	248	285	241	268	270	356	346	398	291
Result settled (%) <sup>2</sup>	90	89	85	86	86	84	87	88	89	90	87
Settled by DCS (%) <sup>3</sup>	84	87	93	85	88	81	82	77	79	76	85
Mean DCS \$k/case	10.7	16.7	14.2	10.3	11.2	13.3	11.0	15.1	14.0	14.6	13.1
Disease Claims (%) <sup>4</sup>	63	41	49	42	41	31	67	46	64	72	52
<b>Issues (%)<sup>4</sup></b>											
Claim denial	47	40	39	43	41	32	30	28	30	25	36
Partial denial	54	64	70	65	66	74	73	53	62	53	63
All compensability	--	97	99	95	99	97	94	81	81	79	91
Non-WCB	46	43	51	55	45	50	47	42	43	43	48
ALJ work-hours (mean) <sup>5</sup>	13	14	13	15	15	15	12	12	15	13	13.5
Request to mediation <sup>6</sup>	64	77	73	80	79	95	78	73	72	77	76.8
Mediation to order <sup>6</sup>	43	42	33	37	39	41	41	47	47	41	41.1

**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 mediations 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.

## Issues

The 6,354 O&O and stipulation cases closed in 2008 included a total of 7,129 issues, or 1.12 issues per case (Table 5).

For all order types, partial denial was the most frequent issue, as it was (for the first time) in 2007. Approximately 43.5 percent of cases were about partial denial, the highest percentage on record. Whole-claim denial was a distant second, with 36.3 percent. The next most frequent issue was insurer penalty, at 7.8 percent of cases. Extent of permanent and temporary disability each were issues in 4.0 percent of the cases.

**Table 5. Number of issues per hearing compensation case, Oregon, 2008**

Number of issues	Percentage of cases*
One	85.9%
Two	12.3%
Three	1.5%
Four	0.3%
Five	0.0%
Six	0.0%
More than one	14.1%

\*Based on total cases with issues.

Table 6. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2008

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	48	34	13	41	136	60.7%	14.0%
	Decrease	21	2	0	9	32	14.3%	
	Increase	29	12	2	13	56	25.0%	
	<b>Total cases</b>	<b>98</b>	<b>48</b>	<b>15</b>	<b>63</b>	<b>224</b>		
Temporary disability	Affirm	18	7	3	8	36	40.9%	5.5%
	Decrease	5	0	0	6	11	12.5%	
	Increase	18	10	2	11	41	46.6%	
	<b>Total cases</b>	<b>41</b>	<b>17</b>	<b>5</b>	<b>25</b>	<b>88</b>		
Claim denial	Set aside	102	34	14	87	237	41.9%	35.3%
	Affirm	138	51	12	127	328	58.1%	
	<b>Total cases</b>	<b>240</b>	<b>85</b>	<b>26</b>	<b>214</b>	<b>565</b>		
Partial denial	Set aside	93	47	10	70	220	41.8%	32.9%
	Affirm	116	66	17	107	306	58.2%	
	<b>Total cases</b>	<b>209</b>	<b>113</b>	<b>27</b>	<b>177</b>	<b>526</b>		
Aggravation denial	Set aside	4	2	0	2	8	19.0%	2.6%
	Affirm	10	6	1	17	34	81.0%	
	<b>Total cases</b>	<b>14</b>	<b>8</b>	<b>1</b>	<b>19</b>	<b>42</b>		
Responsibility	<b>Total cases</b>	<b>23</b>	<b>8</b>	<b>1</b>	<b>15</b>	<b>47</b>		2.9%
Premature closure	No	12	1	1	6	20	58.8%	2.1%
	Yes	1	1	1	11	14	41.2%	
	<b>Total cases</b>	<b>13</b>	<b>2</b>	<b>2</b>	<b>17</b>	<b>34</b>		
Insurer penalty	No	60	26	4	49	139	59.4%	14.6%
	Yes	26	28	7	34	95	40.6%	
	<b>Total cases</b>	<b>86</b>	<b>54</b>	<b>11</b>	<b>83</b>	<b>234</b>		
Attorney fee	No	1	1	0	3	5	27.8%	1.1%
	Yes	8	4	0	1	13	72.2%	
	<b>Total cases</b>	<b>9</b>	<b>5</b>	<b>0</b>	<b>4</b>	<b>18</b>		
Subjectivity	No	2	1	0	3	6	42.9%	0.9%
	Yes	3	0	0	5	8	57.1%	
	<b>Total cases</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>8</b>	<b>14</b>		
Rate of time loss	Affirm	3	0	0	2	5	41.7%	0.8%
	Decrease	1	0	0	0	1	8.3%	
	Increase	5	0	1	0	6	50.0%	
	<b>Total cases</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>12</b>		
Other issue	No	64	37	8	50	159	66.8%	14.9%
	Yes	19	16	2	42	79	33.2%	
	<b>Total cases</b>	<b>83</b>	<b>53</b>	<b>10</b>	<b>92</b>	<b>238</b>		
No issues		16	8	7	16	47		
Total issues		830	394	99	719	2,042		

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 2,042 issues in 1,600 O&O cases, an average of 1.28 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 6. The percentage of cases about permanent disability, 14.0 percent, was the second lowest on record. Whole-claim denial, at 35.3 percent, was the most frequent issue (as it has been since 1989), while partial denial was the second most frequent issue in O&Os.

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 2008, workers’ disability awards were increased in 96 cases (the sum of the last three table columns), about 32 percent of the 299 disability-issue cases.

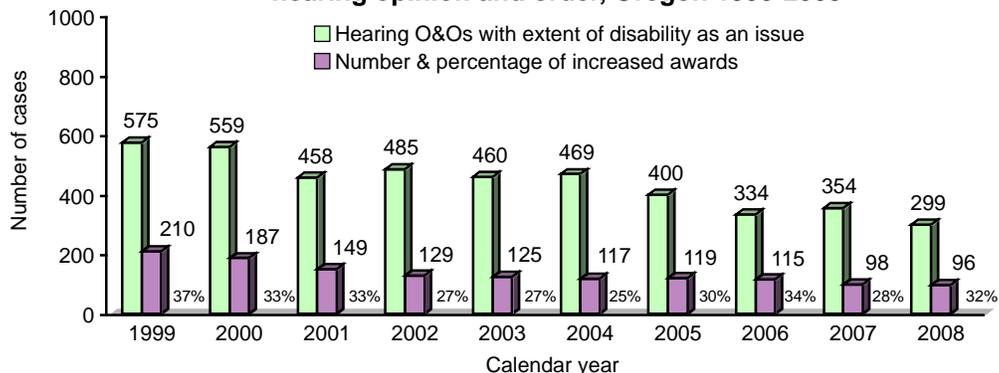
The “percentage disposition” column of Table 6 provides information about the disposition of issues in O&O cases.

**Table 7. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1999-2008**

Calendar year	Extent of disability issue	PPD award	PTD award	TD increase with no PPD increase
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
2008	299	56	0	40

“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 1999-2008**



Figures 5 and 6, provide historical values of O&O dispositions on extent of disability. 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 38.8 percent and 48.9 percent, respectively.

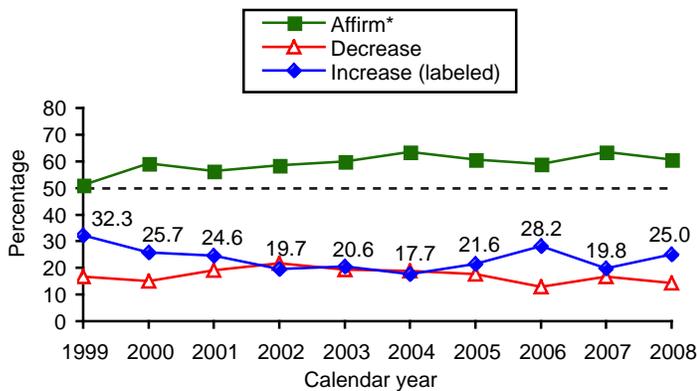
The “set-aside-denial” rate for whole-claim denial, 41.9 percent, was typical of recent years but on the low side of the historical 41 percent to 49 percent range (Figure 7). The “set-aside” rate for partial denial, 41.8 percent, was the lowest of the past few years. For aggravation, the “set-aside” rate, 19.0 percent, was above 2007’s near-record-low 17.1 percent (Figure 7); aggravation denials were affirmed in 81.0 percent of all 2008 O&O cases. The “yes” rate for insurer penalty was 40.6 percent (Figure 8).

In four cases, **sanctions** were requested against worker attorneys. Judges denied sanctions in three cases, and allowed a \$500 sanction in one case.

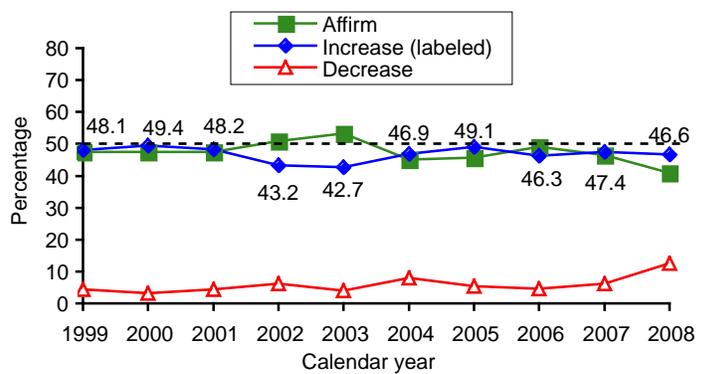
### Stipulations, disputed claim settlements

In 2008, disputing parties settled 5,087 issues in 4,754 stipulated cases, about 1.07 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.

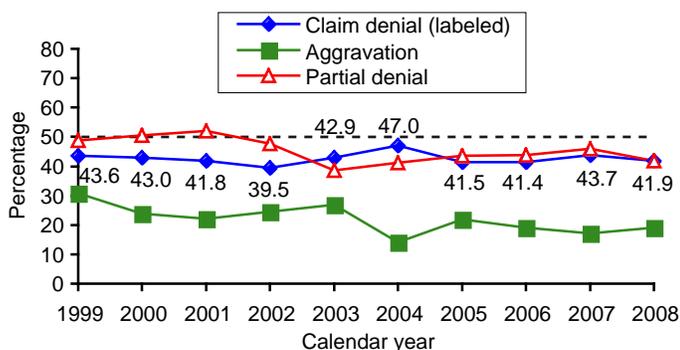
**Figure 5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1999-2008**



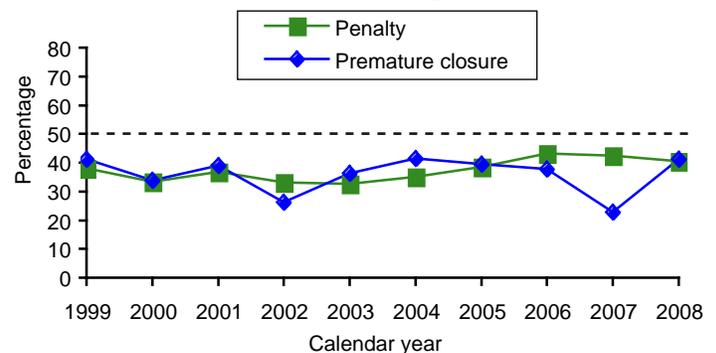
**Figure 6. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1999-2008**



**Figure 7. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 1999-2008**



**Figure 8. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1999-2008**



**Table 8. Stipulation cases by issue, disposition, and insurer class, Oregon, 2008**

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	1	1	0	2	4	13.3%	0.6%
	Decrease	2	2	1	9	14	46.7%	
	Increase	5	3	1	3	12	40.0%	
	<b>Total cases</b>	<b>8</b>	<b>6</b>	<b>2</b>	<b>14</b>	<b>30</b>		
Temporary disability	Affirm	0	1	0	4	5	3.1%	3.4%
	Decrease	0	1	1	0	2	1.2%	
	Increase	52	36	5	63	156	95.7%	
	<b>Total cases</b>	<b>52</b>	<b>38</b>	<b>6</b>	<b>67</b>	<b>163</b>		
Claim denial	Set aside denial	112	85	10	106	313	18.0%	36.6%
	Affirm denial	677	271	68	411	1,427	82.0%	
	<b>Total cases</b>	<b>789</b>	<b>356</b>	<b>78</b>	<b>517</b>	<b>1,740</b>		
Partial denial	Set aside denial	142	89	7	78	316	14.1%	47.0%
	Affirm denial	673	399	64	784	1,920	85.9%	
	<b>Total cases</b>	<b>815</b>	<b>488</b>	<b>71</b>	<b>862</b>	<b>2,236</b>		
Aggravation denial	Set aside denial	10	4	2	10	26	14.7%	3.7%
	Affirm denial	35	30	7	79	151	85.3%	
	<b>Total cases</b>	<b>45</b>	<b>34</b>	<b>9</b>	<b>89</b>	<b>177</b>		
Responsibility	<b>Total cases</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>5</b>	<b>11</b>		0.2%
Premature closure	No	0	0	0	7	7	100.0%	0.1%
	Yes	0	0	0	0	0	0.0%	
	<b>Total cases</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>7</b>		
Insurer penalty	No	0	1	0	5	6	2.3%	5.5%
	Yes	66	90	6	93	255	97.7%	
	<b>Total cases</b>	<b>66</b>	<b>91</b>	<b>6</b>	<b>98</b>	<b>261</b>		
Attorney fee	No	0	0	0	1	1	0.6%	3.5%
	Yes	43	55	2	64	164	99.4%	
	<b>Total cases</b>	<b>43</b>	<b>55</b>	<b>2</b>	<b>65</b>	<b>165</b>		
Subjectivity	No	0	3	0	8	11	100.0%	0.2%
	Yes	0	0	0	0	0	0.0%	
	<b>Total cases</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>8</b>	<b>11</b>		
Rate of time loss	Affirm	0	1	0	3	4	5.3%	1.6%
	Decrease	0	0	0	0	0	0.0%	
	Increase	23	24	1	23	71	94.7%	
	<b>Total cases</b>	<b>23</b>	<b>25</b>	<b>1</b>	<b>26</b>	<b>75</b>		
Other issue	No	36	18	3	21	78	37.0%	4.4%
	Yes	34	35	5	59	133	63.0%	
	<b>Total cases</b>	<b>70</b>	<b>53</b>	<b>8</b>	<b>80</b>	<b>211</b>		
No issues	Total cases	60	37	7	67	171		
Total issues		1,915	1,151	183	1,838	5,087		

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.

In 2008, insurers paid more than \$26.4 million to workers in 3,325 disputed claim settlement cases (Table 9 and Figure 9), the most since 1991's \$32.6 million (from 6,021 cases). The average DCS amount was \$7,942 and the median amount was \$4,000. The largest amount paid in a single settlement was \$274,500 and the most frequent amount was \$5,000. The DCS amount was unspecified in two cases.

The percentage of DCS cases about partial denial, 56.4 percent, was the highest on record. DCSs accounted for 69.9 percent of all stipulations, 36.7 percent of all closing hearing orders, and 80.3 percent of all claims denied at hearing (excludes aggravations).

DCSs accounted for claimant attorney fees of almost \$4.9 million, 48.0 percent of all fees at hearing. The average DCS fee was \$1,697 (considering only non-zero out-of-compensation fees). About 99.5 percent of DCS fees were paid out of the DCS consideration.

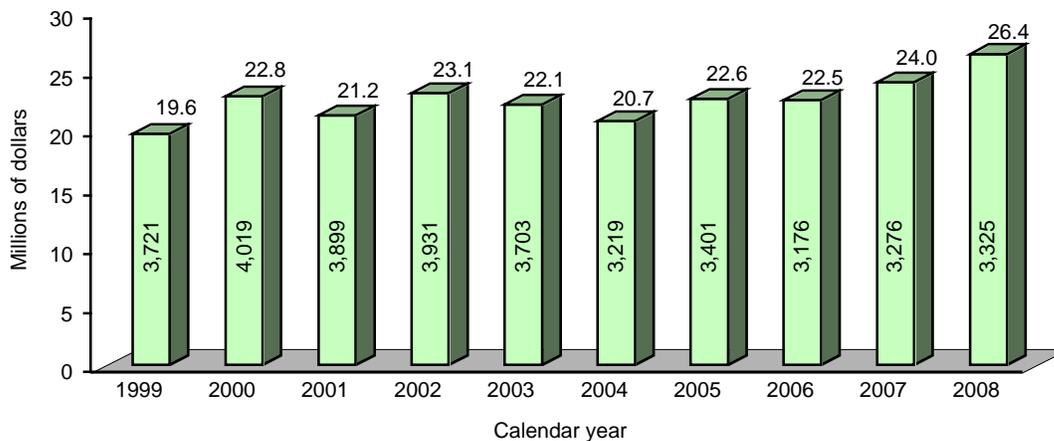
**Table 9. Hearing disputed claim settlements, by principal issue, Oregon, 2008**

Principal issue	Number of cases	Percentage of cases	Total DCS amount (\$k)	Average amount (\$)	Total fees* (\$k)
Claim denial	1,410	42.4%	11,571	8,207	2,134
Partial denial	1,875	56.4%	14,648	7,812	2,697
Aggravation denial	29	0.9%	142	4,887	28
Other issues	11	0.3%	47	4,295	8
All issues	3,325	100.0%	26,408	7,942	4,867

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, 1999-2008**



Note: Numbers within bars are case counts.

## Permanent disability

### Pre-2005 scheduled and unscheduled disability:

There were 52 cases about permanent disability where the injury date was before January 2005. The “scheduled and unscheduled” sections of Table 10 provide data about these cases. For example, of cases closed by opinion and order, 12 increased disability. Of these 12 cases, seven had scheduled permanent partial disability increases averaging 9.9 degrees.

### Whole-body impairment and work disability:

There were 202 cases about permanent disability with a 2005 or later injury date, 79.5 percent of permanent-disability cases. The “Impairment and work disability” sections of Table 10 provide data about these cases. For example, of cases closed by opinion and order (shaded section), 44 increased disability. Of these cases, 29 cases increased impairment, and 26 cases increased work disability (both counts include 11 cases with both impairment and work-disability increases). The average impairment increase was 6.0 percent. See [appendix](#) for an explanation of the change in how PPD is determined.

**Table 10. Hearings PPD award changes, Oregon, 2008**

Increases	Opinion and order		All order types		
	Type of PPD award	Number of cases	Average change*	Number of cases	Average change*
<b>Scheduled and unscheduled</b>		<b>12</b>		<b>15</b>	
Scheduled		7	9.9	8	9.4
Unscheduled		5	17.3	7	14.6
(number with both types)		(0)		(0)	
<b>Impairment and work disability</b>		<b>44</b>		<b>53</b>	
Impairment		29	6.0	37	5.5
Work disability		26	11.5	30	11.4
(number with both types)		(11)		(14)	

Decreases	Opinion and order		All order types		
	Type of PPD award	Number of cases	Average change*	Number of cases	Average change*
<b>Scheduled and unscheduled</b>		<b>6</b>		<b>9</b>	
Scheduled		1	48.0	4	21.0
Unscheduled		5	24.9	5	24.9
(number with both types)		(0)		(0)	
<b>Impairment and work disability</b>		<b>25</b>		<b>36</b>	
Impairment		20	7.5	29	7.9
Work disability		16	18.0	22	19.0
(number with both types)		(11)		(15)	

\*Average change awards are in units of degrees or percentages, as indicated in the left column. A case may have award changes in both scheduled and unscheduled disability, or in both impairment and work disability. Cases where an award of PTD is granted or rescinded are not included.

Table 10 indicates that 26 O&O cases increased work disability. Of those 26 cases, 10 awarded work disability for the first time. Another 16 O&O cases reduced work disability, and 12 reduced it to zero; six of those 12 cases still allowed impairment. Judges reversed the department in the determination of whether the worker returned to regular work in 16 cases (10 plus 6).

Permanent disability was decreased by stipulation in 11 cases. Disability was reduced to zero in six of these cases. Some cases may have been in conjunction with a claim disposition agreement, where the value of the disability was considered in determining the CDA proceeds.

**All disability cases:**

In all, 254 cases involved extent of permanent disability in 2008, about 4.0 percent of all cases (the smallest percentage on record). The case count was just 3.6 percent of the 7,007 permanent-disability cases decided in 1990. Case dispositions were as follows (these figures include stipulations): increase the award, 26.8 percent; decrease the award, 18.1 percent; and affirm the award, 55.1 percent. See Table 11 for case counts by order type and disposition.

The net amount awarded for PPD at hearing in 2008 was minus \$67,000 (Figure 10). Note that O&Os made a net increase in awards, while stipulations made a net decrease in awards. The primary reason

**Table 11. Disposition of hearing PPD cases, by order type, Oregon, 2008**

Order type	Dispositions			
	Increase	Decrease	Affirm	All
Opinion and order	<b>56</b> 25.0%	<b>32</b> 14.3%	<b>136</b> 60.7%	<b>224</b> 100.0%
Stipulation	<b>12</b> 40.0%	<b>14</b> 46.7%	<b>4</b> 13.3%	<b>30</b> 100.0%
All orders	<b>68</b> 26.8%	<b>46</b> 18.1%	<b>140</b> 55.1%	<b>254</b> 100.0%

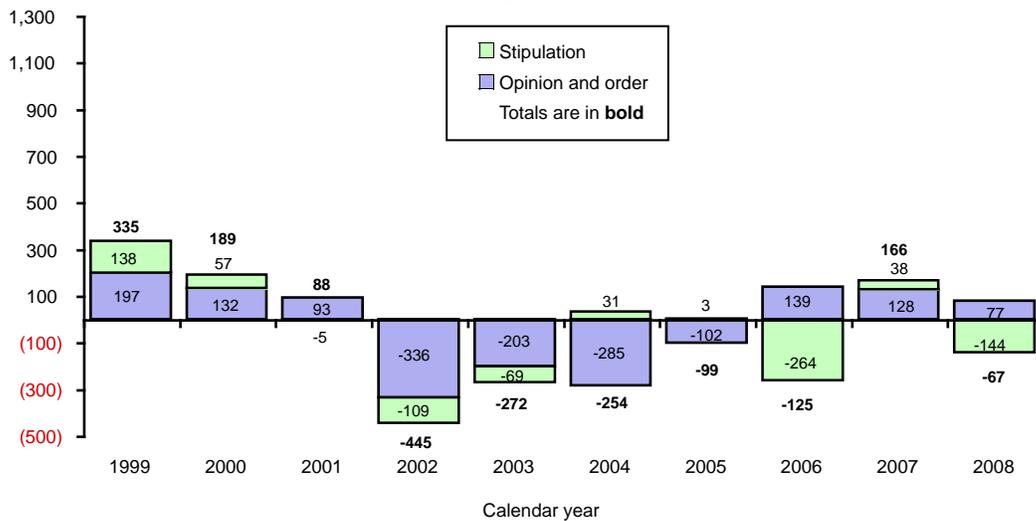
Note: Table entries are number of cases (top number) and the percentage of each order type that has the given disposition (so percentages add to 100 in the horizontal, except for rounding). Includes cases with the award of permanent total disability granted or rescinded.

for the overall net decrease (despite the fact that there were more cases with increases than with decreases) is that average decreases exceeded average increases, as indicated in Table 10. Some stipulations are a compromise between the parties; they award an increase (or sometimes decrease) that's smaller than that requested by the petitioner. Stipulated awards and total PPD paid are not perfect indications of the accuracy of awards granted at closure or department reconsideration because some stipulations reduce PPD awards to zero in conjunction with a claim disposition agreement.

There were no hearing permanent total disability grants in 2008 (Figure 11). There was one PTD rescission, by opinion and order. The net number of PTD awards at hearing was minus one.

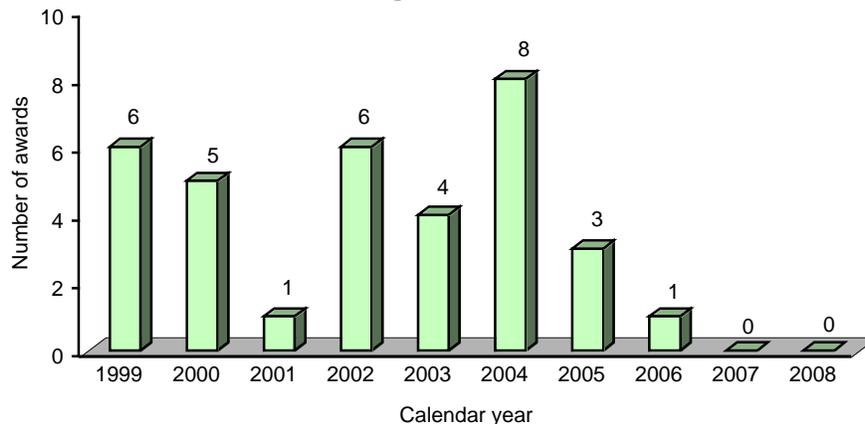
The number and size of hearing [permanent disability awards](#), by most measures, have generally been decreasing over the past 15 years. There are five primary reasons for this change:

**Figure 10. Net hearing PPD awards by order type, Oregon, 1999-2008**



Note: Due to rounding, values may not add to totals.

**Figure 11. PTD awards granted at hearing, Oregon, 1999-2008**



- 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 2008 (Table 12), the median time from injury to hearing request was 344 days (11.3 months), and the median request-to-order

time for all order types was 133 days (4.4 months). Note the request-to-order time lag for a withdrawal or settlement will overstate the dispute’s duration because the hearing is typically cancelled a month before the closing order is issued.

For opinion and order cases (Figure 12), the median time from hearing request to order was 224 days (7.4 months). For O&O cases *without a postponement*, the median request-to-order time was 149 days (4.9 months). The percentage of O&Os with at least one postponement was 41.9 percent, the highest percentage since 1997, but very close to values of the previous two years. O&O time lag data do not include WCD proposed and final orders.

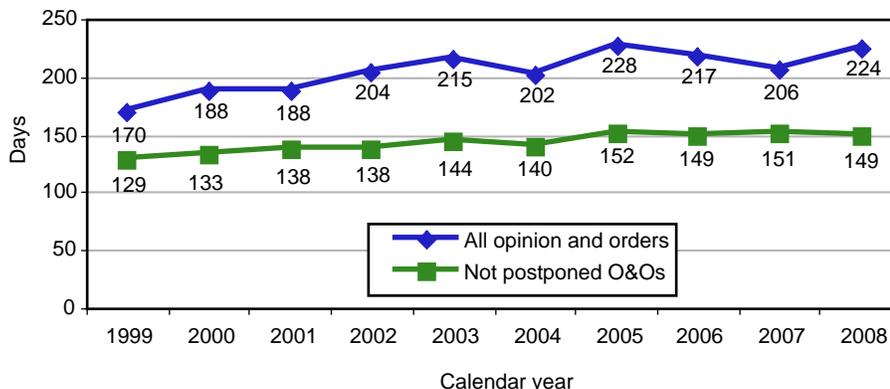
O&O request-to-order time lags include time that the record was kept open, after the hearing was concluded. The median hearing-to-close time lag was 36 days, typical of recent years, while the most frequent time lag was zero (the case closed on the day of the hearing). The median close-to-order time lag was 27 days.

**Table 12. Median hearing time lags, by order type, Oregon, 2008**

Lag period (dates)	Opinion and order	Received stipulation	Other stipulation	Dismissal, withdrawal	All orders
Injury – request	383	424	278	385	344
Injury – order	677	437	483	548	541
Request – order	224	7	148	108	133
Request – hearing	90				
Hearing – closed	36				
Closed – order	27				

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, 1999-2008**



## Claimant attorney fees

Claimants were represented by counsel in at least 92.6 percent of O&O cases and 87.8 percent of all cases (excludes WCD contested cases).

Claimant attorney fees totaling more than \$10.1 million were approved for payment out of worker compensation awards or assessed against insurers in 2008 hearing orders (Table 13). The average fee of \$2,199 was about 5.2 percent more than in 2007 (Figure 13). Total fees were the highest since 1995 and 5.1 percent more than in 2007 (Figure 14). Data here exclude fees in WCD cases.

About 50.1 percent of fees were paid out of compensation or DCS consideration, the highest since the 50 percent to 52 percent values of 2000-2003. 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, 1998-2007

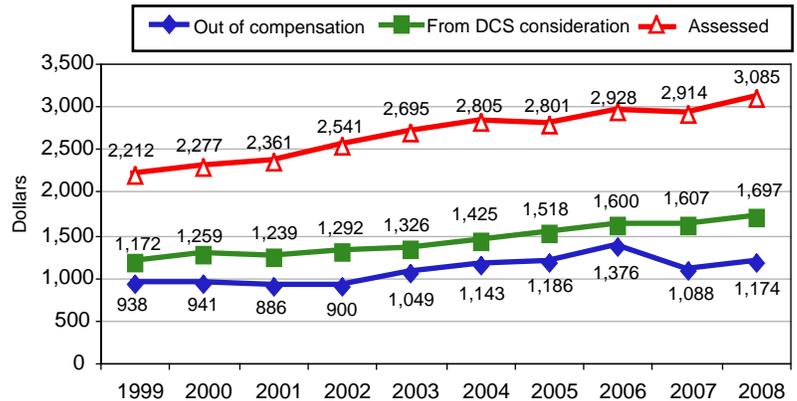


Figure 14. Total hearing claimant attorney fees, Oregon, 1999-2008

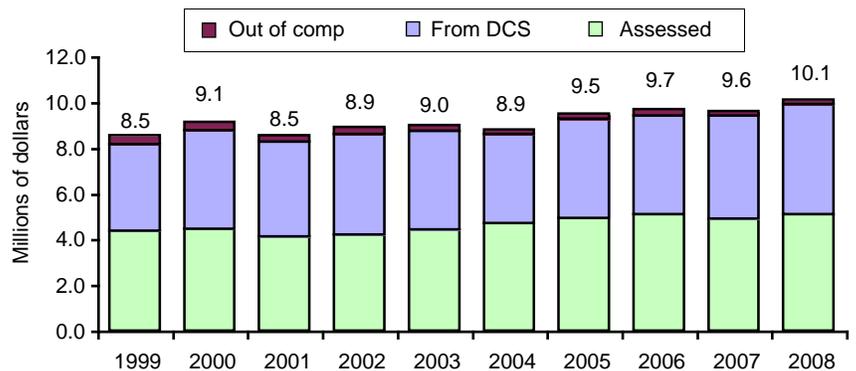


Table 13. Claimant attorney fees, by order and fee type, Oregon, 2008

Fee type	Order type			Percentage of all fees
	Opinion and order	Stipulation	All types	
<b>Out of compensation:</b>				
Total (\$)	135,000	95,000	230,000	2.3%
Average (\$)	1,466	916	1,174	
Cases	92	104	196	
<b>DCS consideration:</b>				
Total (\$)		4,847,000	4,847,000	47.8%
Average (\$)		1,697	1,697	
Cases		2,856	2,856	
<b>Assessed:</b>				
Total (\$)	2,701,000	2,360,000	5,062,000	49.9%
Average (\$)	4,731	2,206	3,085	
Cases	571	1,070	1,641	
<b>All types:</b>				
Total (\$)	2,836,000	7,303,000	10,139,000	100.0%
Average (\$)	4,438	1,839	2,199	
Cases	639	3,971	4,610	

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://wcd.oregon.gov/communications/publications/terms.html>. 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.

**Mediation case** – a case created after a mediation, if necessary, to record the results of the mediation. (Before December 2004, received-stipulation case types were used for this purpose.)

**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.



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