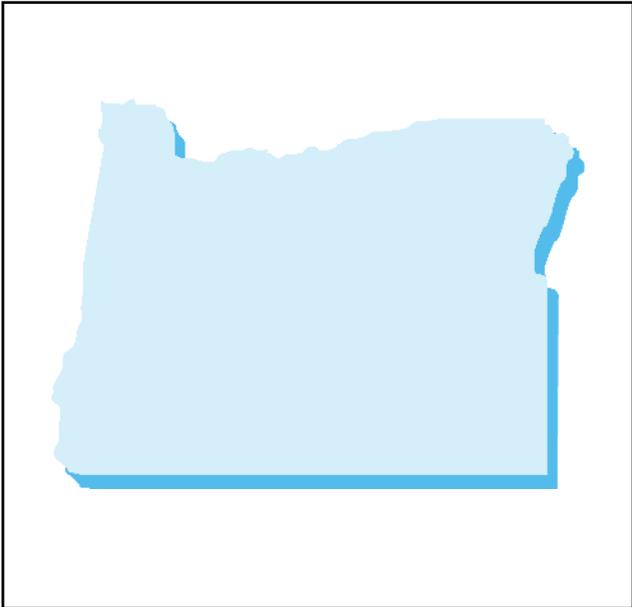




Hearings Division Statistical Report

Calendar Year 2010



*Information Management
Division*

*Oregon Department of Consumer
and Business Services*



November 2011



Hearings Division Statistical Report Calendar Year 2010

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Hearing requests, cases closed

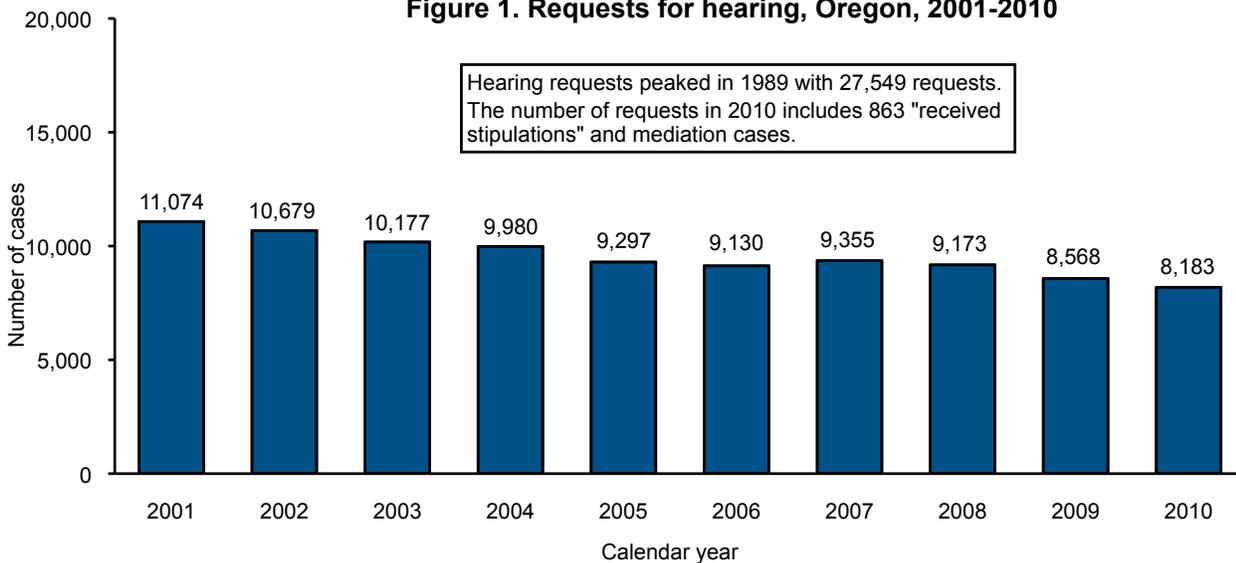
In 2010, the Hearings Division of the Oregon Workers' Compensation Board received 8,183 requests for hearing, 4.5 percent fewer than in 2009 (Figure 1).

The Hearings Division closed 8,580 cases in 2010, 5.1 percent fewer than the previous year (Figure 2). Some orders close more than one case, so

there are fewer distinct orders than cases. In 2010, the average number of cases per order was 1.13. Request and order counts include cases solely about noncomplying employer or civil penalty assessment; most analyses below exclude these case types.

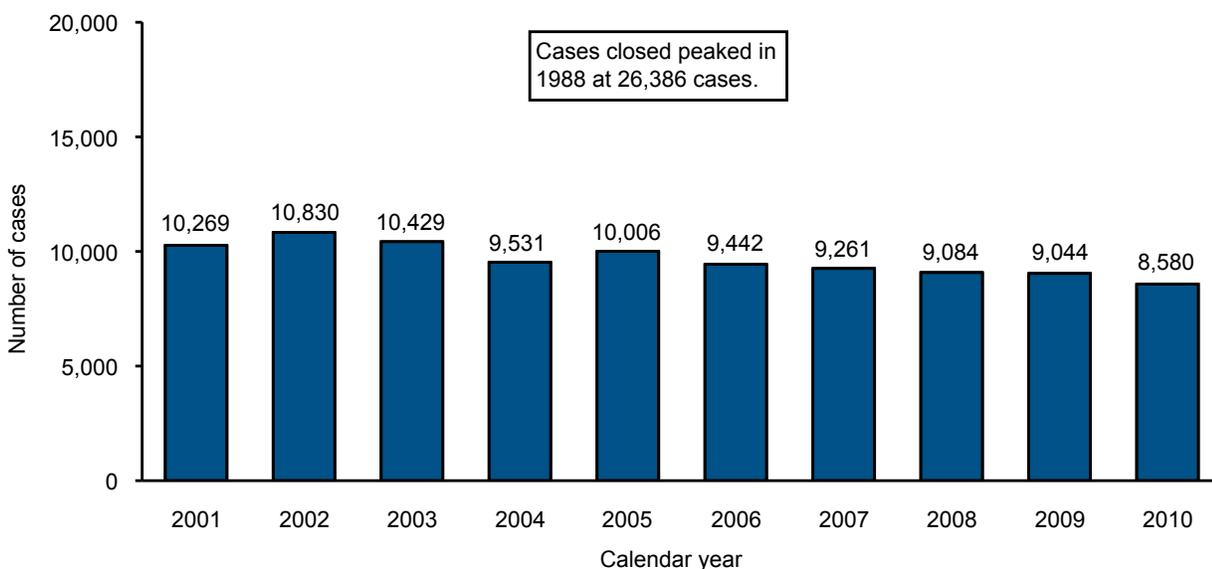
The percentage of cases that involved an administrative law judge's (ALJ) decision on the merits (order types "opinion and order" and "WCD

Figure 1. Requests for hearing, Oregon, 2001-2010



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

Figure 2. Hearing cases closed, all orders, Oregon, 2001-2010



proposed and final order”) was 17.7 percent (Table 1 and Figure 3), greater than 2009’s record-low 17.5 percent. These percentages are due in part to increasing numbers of board-conducted mediations, of which almost 90 percent result in settlement. The percentage of cases closed by dismissal was 28.7 percent. About 71.5 percent of these dismissals were issued because the requester withdrew the hearing request. WCD contested cases are included in the above counts (see “Order types” in the appendix). Unless otherwise stated, counts and analyses, except Figures 1 and 2 and Table 1, do not include the WCD contested-case orders.

The worker filed the request in 86.4 percent of the closed cases (Table 2); this percentage excludes stipulations received without a prior hearing request.

Table 1. Hearing compensation cases closed, by order type, Oregon, 2010

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
Opinion and order	1,439	16.8%	100.0%
Stipulation	1,227	14.4%	26.8%
DCS	3,349	39.2%	73.1%
Order on stipulation	7	0.1%	0.2%
All stipulations	4,583	53.6%	100.0%
Dismissal	274	3.2%	12.0%
Dismiss for CDA	339	4.0%	14.8%
Withdrawal	1,671	19.6%	73.2%
Above dismissals	2,284	26.7%	100.0%
WCD proposed & final order	73	0.9%	30.8%
WCD final order of dismissal	79	0.9%	33.3%
WCD proposed and final order of dismissal	85	1.0%	35.9%
All "WCD orders"	237	2.8%	100.0%
Total Orders	8,543	100.0%	

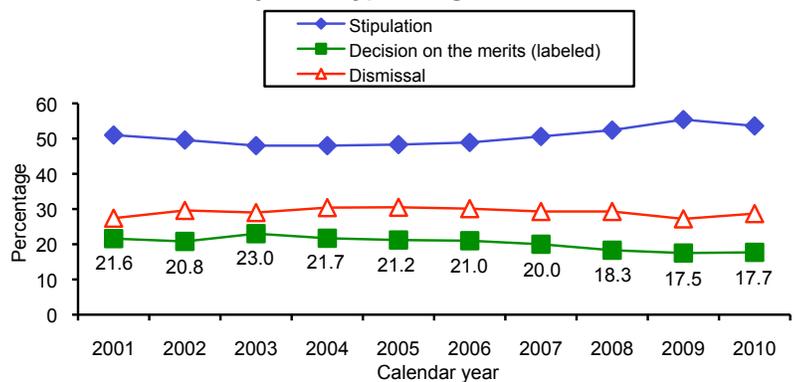
* For example, percentage of “all stipulations” and of “all dismissals.” “Total orders” differs from the Figure 2 count because some cases (e.g., noncomplying employer and civil penalty assessment) are excluded here.

Table 2. Hearing compensation cases closed, by requester, Oregon, 2010

Requester	Number of cases	Percentage of cases
Claimant	7,378	86.4%
Employer	22	0.3%
SAIF	43	0.5%
Private insurer	188	2.2%
Joint	851	10.0%
Other	61	0.7%
All	8,543	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.

Figure 3. Distribution of hearing cases closed, by order type, Oregon, 2001-2010



Note: Includes WCD cases beginning in 2006.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 439 mediations in 2010 (Table 3). The average mediation required 11.3 work hours on the part of the ALJ. About 91 percent of mediations resulted in a settlement. The average dollar amount for a disputed claim settlement (DCS) resulting from mediation (\$20,400) was nearly 2.3 times as large as the average value of non-mediated DCSs.

Table 3. Workers' Compensation Board mediations, Oregon, 2001-2010

Statistic	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Mean
Completed ¹	248	285	241	268	270	356	346	398	487	439	334
Result settled (%) ²	85	86	86	84	87	88	89	90	89	91	88
Settled by DCS (%) ³	93	85	88	81	82	77	79	76	80	81	82
Mean DCS \$k/case	14.2	10.3	11.2	13.3	11.0	15.1	14.8	22.1	21.4	20.4	15
Disease Claims (%) ⁴	49	42	41	31	67	46	64	72	73	68	55
Issues (%) ⁴											
Claim denial	39	43	41	32	30	28	30	25	26	26	32
Partial denial	70	65	66	74	73	53	62	53	55	58	63
All compensability	99	95	99	97	94	81	81	79	80	83	89
Non-WCB	51	55	45	50	47	42	43	43	44	35	45
ALJ work-hours (mean) ⁵	13	15	15	15	12	12	15	13	12	11	13
Request to mediation ⁶	73	80	79	95	78	73	72	77	69	65	76
Mediation to order ⁶	33	37	39	41	41	47	47	35	34	33	39

Notes:

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

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

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

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

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

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

6. Time lags are median values, in days.

Issues

The 6,022 Opinion & Order and stipulation cases closed in 2010 included a total of 6,593 issues, or 1.09 issues per case (Table 4).

For all order types, partial denial was the most frequent issue, as it has been since 2007. Approximately 47.3 percent of cases were about partial denial, the highest percentage on record. Whole-claim denial was a distant second, with 34.3 percent. The next most frequent issue was insurer penalty, at 6.9 percent of cases. Extent of permanent and temporary disability were issues in 3.5 percent and 2.6 percent of the cases, respectively.

Table 4. Number of issues per hearing compensation case, Oregon, 2010

Number of issues	Percentage of cases*
One	88.4%
Two	10.1%
Three	1.4%
Four	0.1%
Five	0.0%
Six	0.0%
More than one	11.6%

*Based on total cases with issues.

Table 5. Hearing cases by order type, issue, and disposition, Oregon, 2010

Issue	Disposition	Opinion and order			Stipulation		
		Counts	Percentage disposition	Percentage of cases	Counts	Percentage disposition	Percentage of cases
Permanent disability	Affirm	133	71.1%		8	32.0%	
	Decrease	21	11.2%		11	44.0%	
	Increase	33	17.6%		6	24.0%	
	Total cases	187		13.0%	25		0.5%
Temporary disability	Affirm	20	39.2%		5	4.7%	
	Decrease	2	3.9%		0	0.0%	
	Increase	29	56.9%		101	95.3%	
	Total cases	51		3.5%	106		2.3%
Claim denial	Set aside	234	47.9%		292	18.5%	
	Affirm	255	52.1%		1,286	81.5%	
	Total cases	489		34.0%	1,578		34.4%
Partial denial	Set aside	201	42.6%		305	12.8%	
	Affirm	271	57.4%		2,074	87.2%	
	Total cases	472		32.8%	2,379		51.9%
Aggravation denial	Set aside	6	13.0%		15	10.3%	
	Affirm	40	87.0%		131	89.7%	
	Total cases	46		3.2%	146		3.2%
Responsibility	Total cases	47		3.3%	6		0.1%
Premature closure	No	17	54.8%		0	0.0%	
	Yes	14	45.2%		2	100.0%	
	Total cases	31		2.2%	2		0.0%
Insurer penalty	No	107	51.0%		8	3.9%	
	Yes	103	49.0%		197	96.1%	
	Total cases	210		14.6%	205		4.5%
Attorney fee	No	10	27.0%		0	0.0%	
	Yes	27	73.0%		126	100.0%	
	Total cases	37		2.6%	126		2.7%
Subjectivity	No	5	38.5%		5	100.0%	
	Yes	8	61.5%		0	0.0%	
	Total cases	13		0.9%	5		0.1%
Rate of time loss	Affirm	9	75.0%		2	3.9%	
	Decrease	0	0.0%		1	2.0%	
	Increase	3	25.0%		48	94.1%	
	Total cases	12		0.8%	51		1.1%
Other issue	No	146	72.3%		52	31.1%	
	Yes	56	27.7%		115	68.9%	
	Total cases	202		14.0%	167		3.6%
No issues		47		156			
Total issues		1,797		4,796			

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. See the appendix for situations where no issue is recorded for a case.

Opinion and Orders

Hearings ALJs decided 1,797 issues in 1,439 O&O cases, an average of 1.25 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 5. The percentage of cases about permanent disability was 13.0 percent. Whole claim denial, at 34.0 percent, was the most frequent issue, as it’s been since 1989. Partial denial was the second most frequent issue in O&Os, at 32.8 percent. About 14.6 percent of O&O cases had the issue of insurer penalty.

Table 6 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 2010, workers’ disability awards were increased in 62 cases (the sum of the last three table columns), about 27 percent of the 227 O&O disability-issue cases.

The “percentage disposition” column of Table 5 provides information about the disposition of issues in O&O cases.

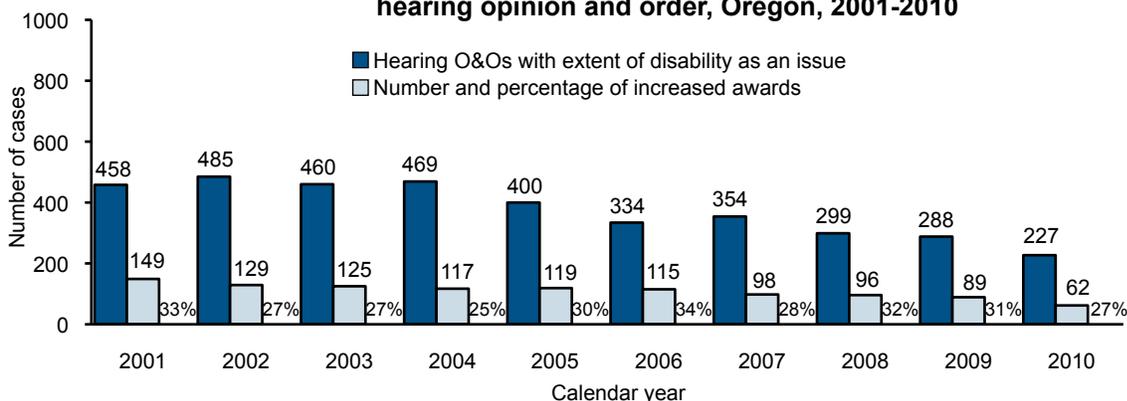
Figures 5 and 6 provide historical values of O&O dispositions on extent of disability. The percentage

Table 6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 2001-2010

Calendar year	Extent of disability issue	PPD award	PTD award	TD increase with no PPD increase
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
2009	288	53	0	36
2010	227	33	0	29

“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, 2001-2010



of disability cases decided in favor of the claimant (includes insurer appeals in which the award is affirmed) for permanent and temporary disability were 34.2 percent and 60.8 percent, respectively.

The “set-aside-denial” rate for whole claim denial, 47.9 percent, was the highest since 1994 (Figure 7). The “set-aside” rate for partial denial was 42.6 percent. For aggravation, the “set-aside” rate, 13.0 percent, was the lowest on record (Figure 7); denials were affirmed in 87.0 percent of 2010 O&O aggravation cases. The “yes” rate for insurer penalty was 49.0 percent (Figure 8).

In seven cases, six insurers and one worker requested sanctions against opposing attorneys for appeals that were considered frivolous, filed in bad faith, or for

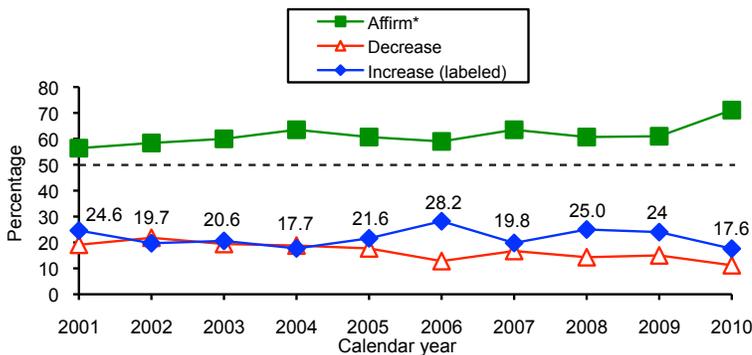
harassment purposes (ORS 656.390). ALJs denied sanctions in all cases.

Stipulations, Disputed Claim Settlements

In 2010, disputing parties settled 4,796 issues in 4,583 stipulated cases, about 1.05 issues per case. Claim denial and partial denial were by far the most frequent issues (Table 5), which is typical. Dispositions of “affirm” for compensability issues are always high because stipulations include DCSs, where the denial is sustained.

In 2010, insurers paid almost \$32.8 million to workers in 3,349 disputed claim settlement cases (Table 7 and Figure 9), exceeding 1991’s then-record \$32.6 million (which was from 6,021 cases). The average

Figure 5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 2001-2010



* Remands are coded as "Affirm"

Figure 6. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 2001-2010

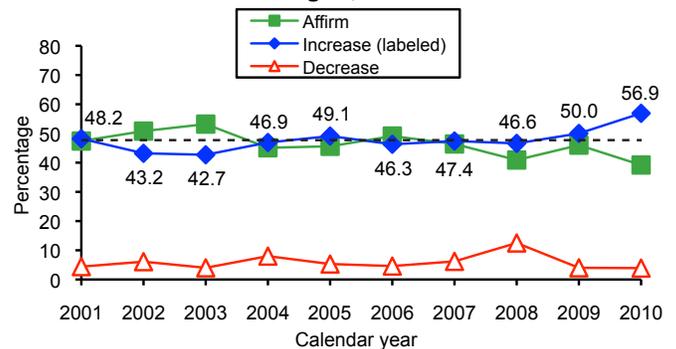


Figure 7. Set-aside-denial rates for compensability cases, hearing opinion and order, Oregon, 2001-2010

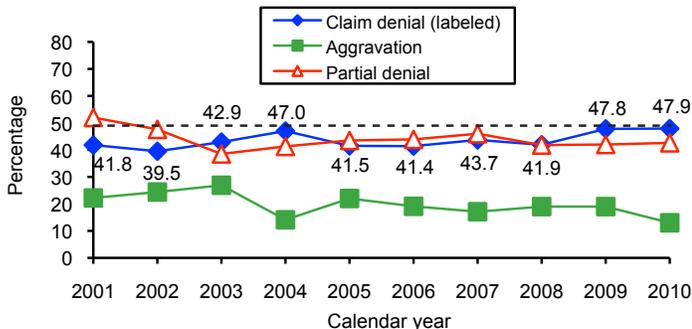
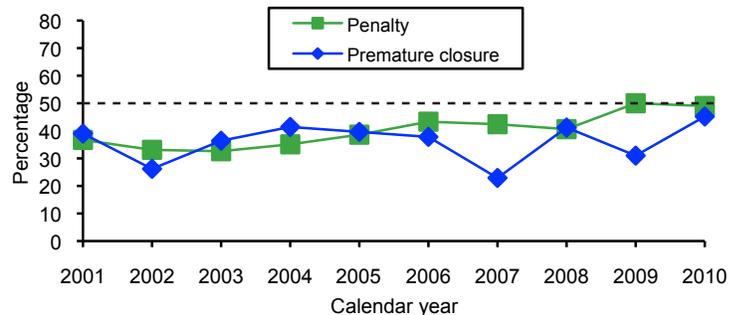


Figure 8. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 2001-2010



DCS amount was \$9,789 and the median amount was \$5,000 (compared to \$4,600 in 2009). The largest amount paid in a single settlement was \$400,000; the most frequent amount was \$5,000 (the same as in 2009). The DCS amount was unspecified in one case.

The percentage of DCS cases about partial denial, 61.2 percent, was 4 percentage points greater than in 2009 and the highest on record. DCSs accounted for 73.1 percent of all stipulations, 39.2 percent of

all closing hearing orders, and 82.3 percent of all claims denied at hearing (excludes aggravations).

DCSs accounted for claimant attorney fees of over \$5.8 million, 50.4 percent of all fees at hearing. The average DCS fee was \$1,958 (considering only non-zero out-of-proceeds fees). About 99.5 percent of DCS fees were paid out of the DCS consideration.

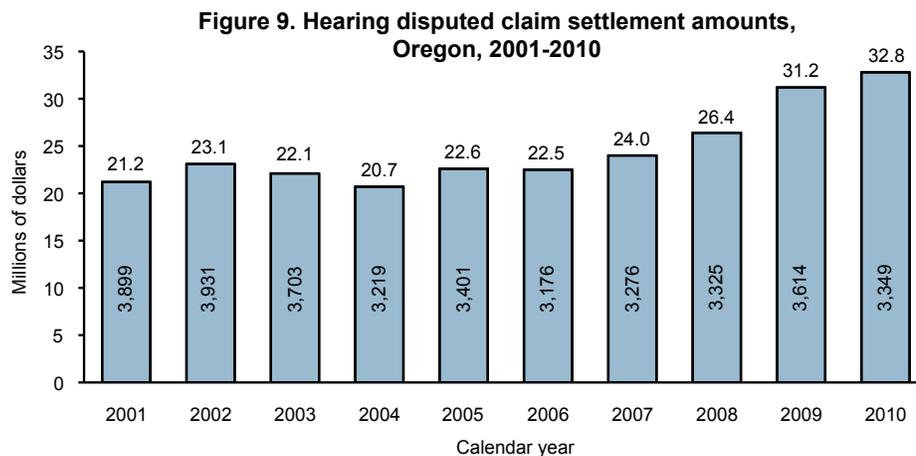
Permanent Disability

Table 7. Hearing disputed claim settlements, by principal issue, Oregon, 2010

Principal issue	Number of cases	Percentage of cases	Total DCS amount (\$k)	Average amount (\$)	Total fees* (\$k)
Claim denial	1,269	37.9%	12,881	10,151	2,399
Partial denial	2,049	61.2%	19,555	9,544	3,391
Aggravation denial	23	0.7%	113	4,893	22
Other issues	8	0.2%	236	29,522	31
All issues	3,349	100.0%	32,785	9,789	5,843

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.



Note: Numbers within bars are case counts.

Pre-2005 scheduled and unscheduled disability:

In 2010, there were only 12 hearing cases about permanent disability where the injury date was before January 2005. Awards were increased in three cases and decreased in two cases. The result was a net increase in awards of about \$8,000.

Whole-body impairment and work disability:

Cases about permanent disability with injury date in 2005 or later constituted about 94 percent of all 2010 hearings permanent-disability cases. Table 8 provides data about these cases. For example, of cases closed by opinion and order, 30 increased disability (shaded section of the table). Of these cases, 20 cases increased impairment and 22 cases increased work disability (both counts include 12 cases with both impairment and work-disability increases). The average impairment increase was 7.9 percent. See Appendix for explanation of the

Table 8. Hearings PPD award changes, Oregon, 2010

Increases	Opinion and order		All order types	
	Type of PPD award	Number of cases	Average change*	Number of cases
Impairment (%)	20	7.9	25	7.4
Work disability (%)	22	17.0	23	16.9
(number with both types)	(12)		(12)	
Total cases	30		36	

Decreases	Opinion and order		All order types	
	Type of PPD award	Number of cases	Average change*	Number of cases
Impairment	14	8.4	24	8.3
Work disability	10	8.2	14	11.7
(number with both types)	(4)		(8)	
Total cases	20		30	

*Includes only PPD cases in claims with injury date in 2005 or later, where impairment or work disability, or both, are changed. "Average change" awards are in units of percentages. A case may have award changes in both impairment and work disability (see counts in parentheses). Cases where an award of PPD is granted or rescinded are not included.

change in how PPD is determined.

Of the 22 O&O work-disability-increase cases mentioned above, nine had been previously awarded impairment and were awarded work disability at hearings for the first time. Another 10 O&O cases reduced work disability, and two reduced it to zero; both cases still allowed impairment. So, ALJs in at least 11 (9+2) cases reversed the department in the determination of whether the worker returned to regular work.

Permanent disability was decreased by stipulation in 10 cases. Disability was reduced to zero in six of

these cases, and five of the six settlements were in conjunction with a claim disposition agreement.

All disability cases:

In all, 212 cases involved extent of permanent disability in 2010, a record-low 3.5 percent of all cases. The case count was just 3.0 percent of the 7,007 permanent-disability cases resolved at hearings in 1990. Case dispositions were as follows (these figures include stipulations): increase the award, 18.4 percent; decrease the award, 15.1 percent; and affirm the award, 66.5 percent. See Table 9 for case counts by order type and disposition.

The net amount awarded for PPD at hearing

Table 9. Disposition of hearing permanent disability cases, by order type, Oregon, 2010

Order type	Dispositions			
	Increase	Decrease	Affirm	All
Opinion and order	33 17.6%	21 11.2%	133 71.1%	187 100.0%
Stipulation	6 24.0%	11 44.0%	8 32.0%	25 100.0%
All orders	39 18.4%	32 15.1%	141 66.5%	212 100.0%

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.

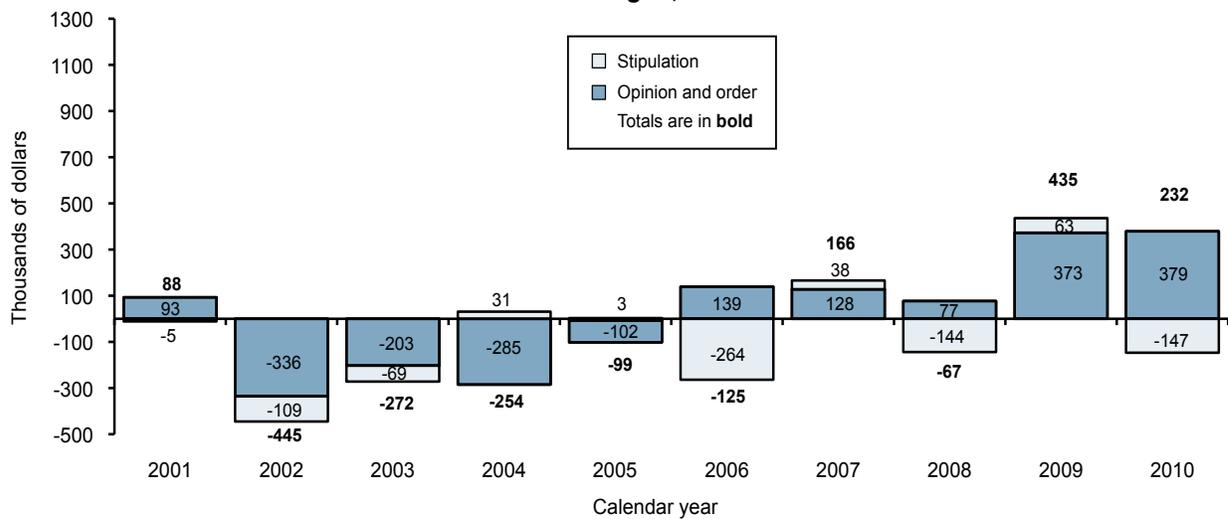
in 2010 was plus \$232,000 (Figure 10). O&Os increased awards by about \$379,000 and settlements decreased awards by \$147,000. Some stipulations are a compromise between the parties; they award an increase (or sometimes decrease) that's smaller than that requested by the petitioner. Stipulated awards 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 2010 (Figure 11), and no rescissions. So, the net number of PTD awards at hearing was zero.

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

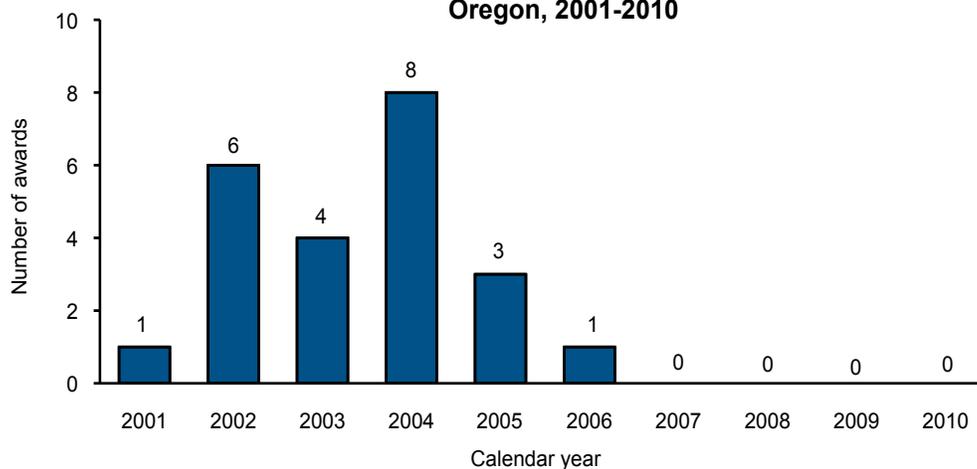
- Decreasing numbers and severity of injuries, and fewer accepted disabling claims

Figure 10. Net hearing PPD awards by order type, Oregon, 2001-2010



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

Figure 11. PTD awards granted at hearing, Oregon, 2001-2010



- 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 2010 (Table 10), the median time from injury to hearing request was 370 days (12.2 months), and the median request-to-order time for all order types was 134 days (4.4 months). The request-to-order time lag for a withdrawal or settlement overstates a 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 230 days (7.6 months). For O&O cases without a postponement, the median request-to-order time was 153 days (5.0 months). The percentage of O&Os with at least one postponement was 45.6 percent, the highest percentage on record.

O&O request-to-order time lags include time that the record was kept open, after the hearing concluded. The median hearing-to-close time lag was 38 days, while the most frequent time lag was zero (the case closed on the hearing day). The median close-to-order time lag was 28 days.

Claimant Attorney Fees

Claimants were represented by counsel in at least 93.8 percent of O&O cases and 88.7 percent of all cases (excludes WCD contested cases).

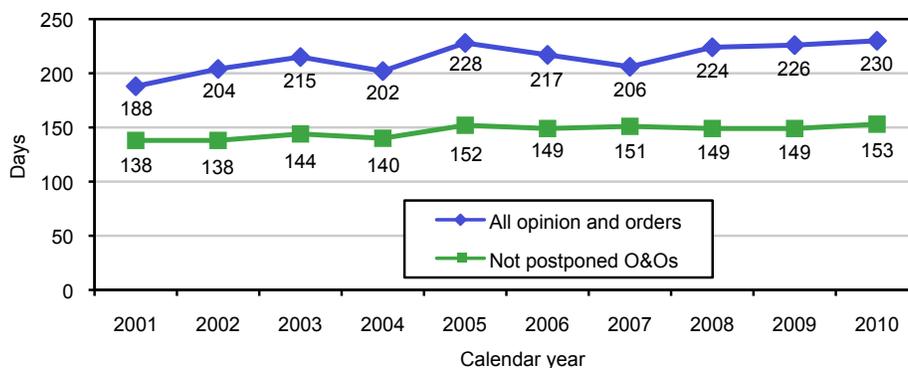
Claimant attorney fees totaling \$11.6 million were

Table 10. Median hearing time lags, by order type, Oregon, 2010

Lag period (dates)	Opinion and order	Received stipulation	Other stipulation	Dismissal, withdrawal	All orders
Injury – request	367	476	291	430	370
Injury – order	683	481	519	595	581
Request – order	230	7	149	105	134
Request – hearing	99				
Hearing – closed	38				
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” refers to 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, 2001-2010



approved for payment out of worker compensation awards, from disputed claim settlements, or assessed against insurers in 2010 hearing orders (Table 11). The average fee of \$2,552 was about 8.3 percent more than in 2009 (Figure 13). Total fees were the highest since 1992 and 2.7 percent more than in 2009 (Figure 14). Data here exclude fees in WCD cases.

About 51.7 percent of the fees were paid out of compensation or DCS consideration, the highest since 2002.

Figure 13. Average claimant attorney fees by type, Oregon, 2001-2010

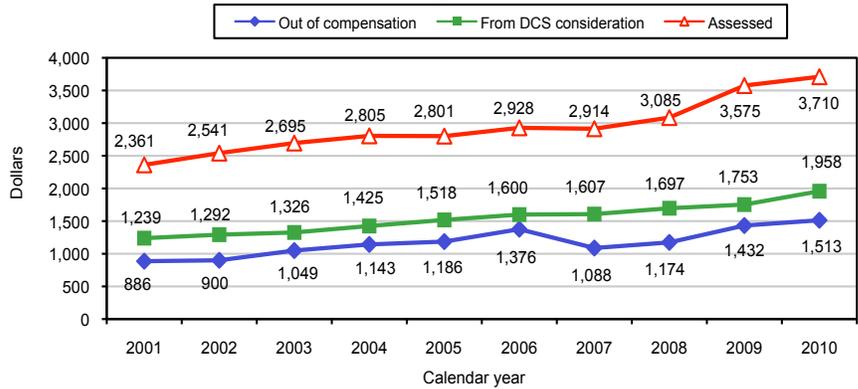


Figure 14. Total hearing claimant attorney fees, Oregon, 2001-2010

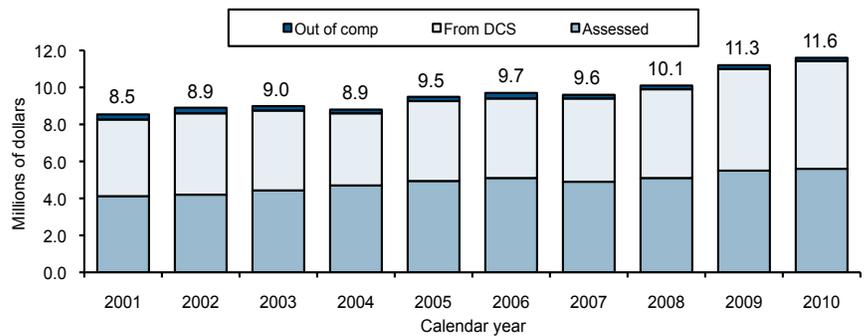


Table 11. Claimant attorney fees, by order and fee type, Oregon, 2010

Fee type	Order type				Percentage of all fees
	Opinion and order	Stipulation	Dismissal	All types	
Out of compensation:					
Total (\$)	124,000	50,000		174,000	1.5%
Average (\$)	2,033	926		1,513	
Cases	61	54		115	
DCS consideration:					
Total (\$)		5,830,000		5,830,000	50.2%
Average (\$)		1,958		1,958	
Cases		2,977		2,977	
Assessed:					
Total (\$)	3,068,000	2,528,000	2,500	5,598,500	48.3%
Average (\$)	5,459	2,673	2,500	3,710	
Cases	562	946	1	1,508	
All types:					
Total (\$)	3,192,000	8,408,000	2,500	11,602,500	100.0%
Average (\$)	5,242	2,136	2,500	2,552	
Cases	609	3,936	1	4,546	

DCS fees are those from DCS consideration only. Fees may not add to totals due to rounding. Cases may not add to all-types cases because some cases have more than one fee type. Occasionally DCSs include assessed fees; they are included here as assessed fees. Attorney fees allowed in claim disposition agreements approved by judges are not included here.

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. 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. Some orders close more than one case.

Excluded from this report are (1) safety cases, per Oregon Revised Statutes Chapter 654; (2) inmate injury fund cases; and (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].

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.

Terminology

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 (ALJ) – a WCB Hearings Division judge. Formerly called “referees,” ALJs conduct hearings, decide cases, write opinion and orders, dismiss hearing requests, 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.

Types of attorney fees:

- Out of compensation – fees that are taken out of 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 of fee.

During the year covered by this report, Oregon law or WCB rules placed these restrictions on claimant attorney fees at hearings (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 – \$2,500 in a responsibility dispute, and \$3,000 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.

Favorable-to-worker 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 an ALJ 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). Class may be unknown when a claim is processed by a third-party administrator (TPA).

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. 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. ORS 656.210 and 656.212.

(3) Claim denial – denial of a new claim, denial of the whole claim for reasons of work-relatedness (“course and scope”); this issue excludes denial because the worker failed to cooperate (ORS 656.262(14)), the worker or employer is not subject to workers’ compensation law (ORS 656.027), another insurer is responsible (ORS 656.307), the insurer didn’t provide coverage on the date of injury, and the claim was not timely. Flare-up of a pre-existing condition due to work activities is considered to be this issue.

(4) Partial denial – denial of part of a claim, denial of a new condition in an accepted claim. This issue includes consequential conditions, flare-up of a pre-existing condition due to a compensable injury, scope of acceptance disputes in accordance with ORS 656.262(6) (d), current condition disputes, new medical condition claims, and disputes about whether there’s a causal relationship between medical services and a compensable injury.

(5) Aggravation – worsening of the compensable condition since the most recent award. It raises the question of whether the claim should be reopened. ORS 656.273.

(6) Responsibility – which insurer should accept a claim and pay benefits. This issue, even though raised, is not recorded in a DCS (it’s really the compensability denial that is sustained). Also, it isn’t coded when the claim is found not compensable (the responsibility issue is not reached). ORS 656.307.

(7) Premature closure – whether the claim was closed before the worker was medically stationary. ORS 656.268.

(8) Penalties – “additional amounts” paid by the insurer to the worker and/or worker’s attorney, usually for unreasonable claims processing conduct. ORS 656.262(11) and (12), 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. ORS 656.262(11), 656.291(2), 656.307(5), 656.308(2), 656.382, 656.386, and 656.388.

(10) Subjectivity – whether the worker or employer is subject to Oregon workers’ compensation law. ORS 656.027. This issue was first coded in 2000; previously, it was coded as “other” issue.

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

(12) Other issue – any issue not specified above.

No issue is recorded for a case when (1) all raised issues are “reserved” or “preserved” to be resolved later, (2) the hearing request is dismissed in an order captioned as an opinion and order, (3) all issues are withdrawn at hearing in an order not captioned as a dismissal, and (4) the numbers of cases exceeds the number of distinct denials.

Mediation – a process in which the Workers’ Compensation Board provides (without cost) facilities and a mediator (a specially trained administrative law judge) to settle disputes without formal litigation. Mediations are held only when 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:

(1) Dismissal – an order by an ALJ 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).

(2) 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). ORS 656.289(4). DCSs are a type of stipulation. DCSs affirm a compensability denial, but 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.

(3) 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 decide the case on the written record alone.

(4) 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.

(5) 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.”

(6) WCD/Proposed and final order – An ALJ’s decision on the merits of the case, usually about medical or vocational services. Appeal of this order is to WCD (not board review), and the subsequent review level is the Court of Appeals.

(7) WCD/Final order of dismissal – A dismissal, usually due to withdrawal by the petitioner. In most WCB reports, these are treated as withdrawals.

(8) WCD/Proposed and final order of dismissal – A dismissal, usually due to a settlement. In most WCB reports, these are treated as dismissals.

Permanent disability:

Permanent total disability (PTD) – the loss of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation. ORS 656.206.

Permanent partial disability (PPD), ORS 656.214:

(1) Impairment (injuries in or after 2005) – 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 example, for injuries between July 1, 2007, and June 30, 2008 (typical of cases at hearing in 2010), \$756.80 is paid for each percentage of impairment.

(2) Work disability (injuries in or after 2005) – awarded if a worker cannot return to regular work at the job held at injury. 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 percentage 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).

(3) Scheduled disability (injuries before 2005) – awarded for loss of use or function of arms, legs, extremities, eye sight, or hearing. It's measured in degrees (maximum degrees depends on the body part), and the amount paid for each degree depends on the injury date.

(4) Unscheduled disability (injuries before 2005)

– awarded based on loss of earning capacity, for body parts other than scheduled parts, above. It's measured in degrees (maximum of 320 degrees), and paid at a rate that depends on the injury date and the number of degrees awarded.

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. ORS 656.307 and 656.308.

Sanction – a payment to an opposing party that a judge may order against an attorney for an appeal that is frivolous, filed in bad faith, or for the purpose of harassment. ORS 656.390. Data are not automatically collected about attorney sanctions.

Time lag, request to order – the time from the original hearing request to the closing order. It includes the time from the request to the scheduled time of the hearing, the time from the hearing to record closure (i.e., it includes time that the record is kept open after the hearing was concluded), and the time required for the ALJ to write the order. Postponements greatly extend this time.



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