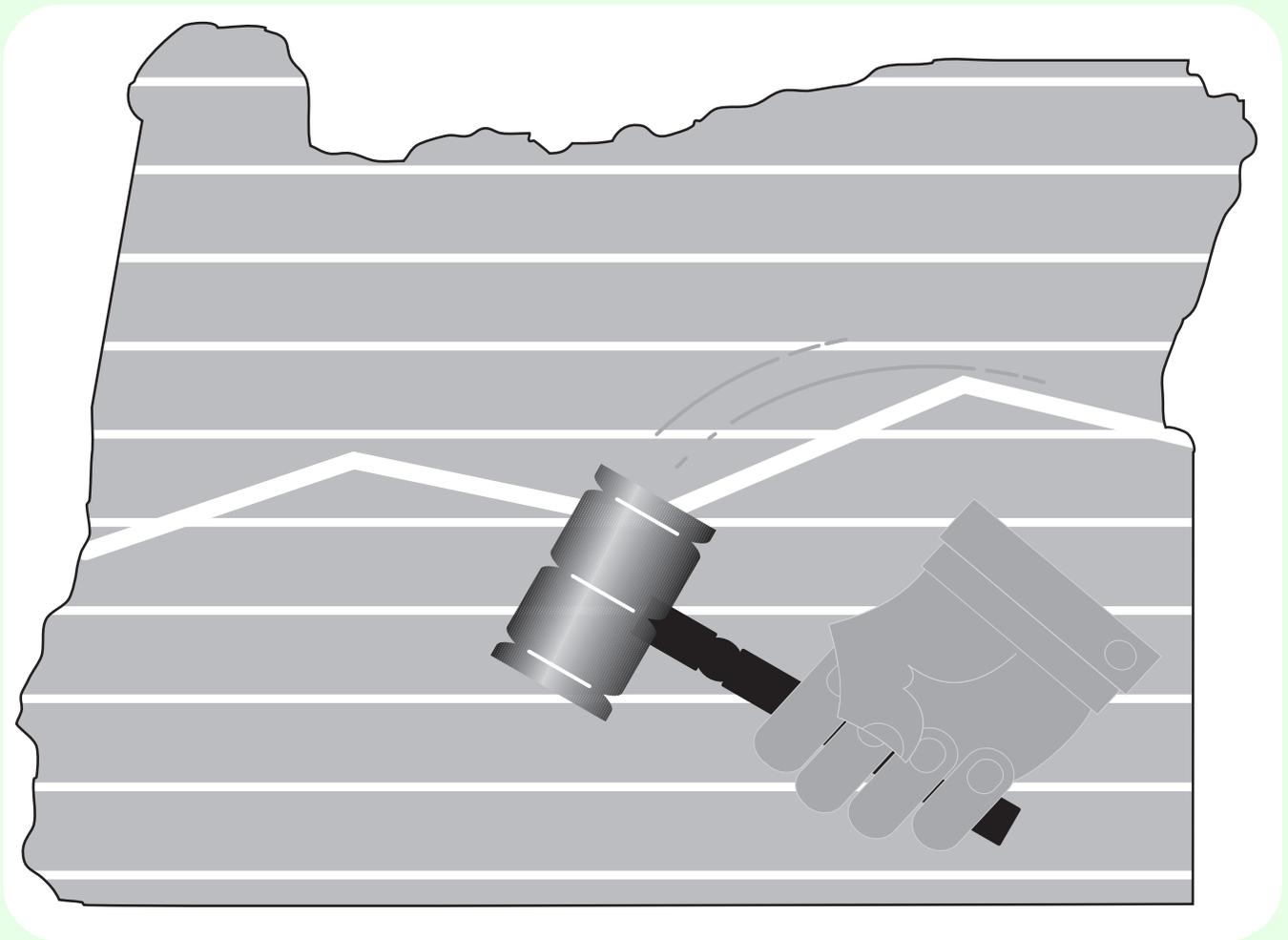


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# Hearings Division Statistical Report Calendar Year 1996



Research & Analysis Section  
Oregon Department of Consumer  
& Business Services



December 1997

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# Hearings Division Statistical Report Calendar Year 1996

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December 1997

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## Introduction

The **Hearings Division** of the Workers' Compensation Board (WCB) provides a forum for appeal in the Oregon workers' compensation system. Hearings administrative law judges (ALJs, or judges) carry out this function. Parties to a workers' compensation claim who are dissatisfied with an insurer or Workers' Compensation Division decision may appeal to the Hearings Division.

This report covers cases for which Hearings orders were written during 1996, regardless of date of injury or date the hearing was requested or held. However, the basic unit of data is the **case**, not the written order. (A case is established and assigned a case number at time of hearing request.) Sometimes an order may close two or more cases, so there will be more cases closed than orders written.

Safety cases (ORS chapter 654) are excluded from this report. With the exception of the number of hearing requests and cases closed, only cases dealing with claimant compensation or directly related issues are included here. Cases where the issue is noncomplying employer status or civil penalty assessment are not included. Also, orders issued subsequent to an opinion and order, stipulation, or

dismissal – such as amendments, reconsiderations, orders of abatement, opinion and orders on remand, and orders of reinstatement – are not included. Inmate injury fund cases are also excluded.

The **data** for this report were collected by the WCB from source documents such as Department of Consumer & Business Services (DCBS) Form 801 (report of occupational injury or disease), orders on reconsideration, hearings requests, and hearings orders. Data were transmitted by magnetic tape to DCBS, Research & Analysis Section, where computer edits were performed and attempts were made to resolve discrepancies, correct errors, and provide missing data.

1978 is the first year with detailed statistical records. Data on some parameters are available for earlier periods. Unless otherwise indicated, trends and record-high/low values are for the period 1978 through 1996.

Note: **Senate Bill 369** became effective when it was signed on June 7, 1995. See the appendix for a list of the law changes that affect hearings frequency, procedures, or results.

## Highlights and Major Trends

In 1996 the Hearings Division received 12,351 **requests** for hearing, a decrease of 16.9 percent from the previous year.

There were 13,341 closing **orders** issued in 1996, about 20.6 percent fewer than in 1995.

The percentage of cases closed by stipulation was the lowest on record, while the percentage closed by dismissal was the second-highest on record.

The worker was the hearing **requester** in 90.8 percent of the cases.

SAIF was the **insurer** in just 35.0 percent of the cases, a record-low percentage.

Administrative law judges completed 128 **mediations** during the last seven months of 1996. About 84.4 percent resulted in settlement.

Extent of permanent and temporary disability were **issues** in 11.5 and 4.6 percent of all cases, while claim denial and partial denial were issues in 38.2 and a record-high 34.4 percent of the cases, respectively.

Fifteen cases included a request for **attorney sanctions** for frivolous appeal. The judge's decision was to grant the sanctions in five cases.

In 1996 **disputed claim settlements**, insurers paid almost \$19.1 million, in 4,001 cases, to workers as

consideration for not contesting denials. Partial denial was the most frequent issue. The average payment was \$4,770.

For **permanent partial disability**, the average scheduled award increase was 11.3 degrees and the average unscheduled increase was 23.3 degrees. The average decreases were 16.0 scheduled degrees and 39.6 unscheduled degrees. The net amount awarded for PPD at hearings in 1996 was \$1.4 million.

There were seven **permanent total disability** grants in 1996, all by opinion and order. There were no rescissions or affirmation of a PTD award, so the *net* number of PTD awards was seven.

For all opinion and order cases, the median **time lag** from hearing request to order was 156 days (5.1 months), six days shorter than in 1995. For cases without a postponement, this time lag was only 115 days; with one or more postponements, it was 282 days.

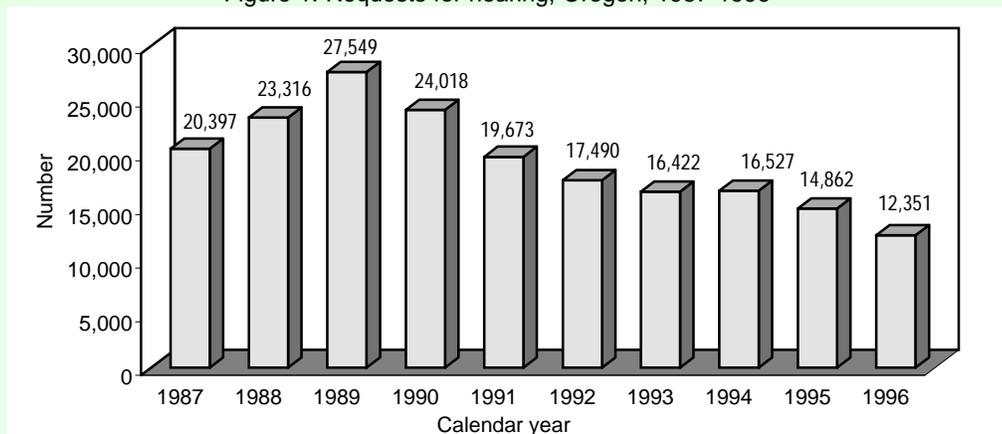
Claimant **attorney fees** totaling \$9.1 million were approved for payment out of worker compensation or assessed against insurers in 1996 hearings orders, about 16.2 percent less than in 1995. The average fee was \$1,376.

## Requests for Hearing

In 1996 the Hearings Division received 12,351 requests for hearing, a decrease of 16.9 percent from the previous year and the fewest requests since 1984.

See Figure 1. The number of requests in 1996 includes 859 "received stipulations," stipulations that are received without a prior hearing request.

Figure 1. Requests for hearing, Oregon, 1987-1996



## Cases Closed

There were 13,341 closing orders issued in 1996, about 20.6 percent fewer than in 1995 (Figure 2).

Table 1 provides data on cases closed, by order type. An opinion and order (O&O) is written when a hearing is conducted and the judge decides the issues. A stipulation is an order written to record and approve an agreement between the parties; stipulations include disputed claim settlements (DCSs). In a dismissal, the judge dismisses the request and there generally is no hearing; dismissals include withdrawals and cases where a judge rules to dismiss for untimely filing, lack of jurisdiction, or other legal basis. Dismissals also include cases where the Workers' Compensation Board approves a claim disposition agreement (CDA) that disposes of all contested issues in a pending hearing request. A few dismissals are written when a judge finds there is no substantial evidence to support a responsibility finding against a particular insurer, per ORS 656.308(2)(c). An arbitrator's decision is a judge's resolution of a dispute involving responsibility when no insurer denies compensability, usually after designation of a paying agent per ORS 656.307.

The percentage of cases **closed by O&O** increased from 1995's near-record-low value. The percentage closed by stipulation was the lowest on record (for the fifth consecutive year), while the percentage closed by dismissal was the second-highest on record. See Figure 3. About 67.1 percent of the dismissals were issued because the requester withdrew the hearings request.

Figure 2. Hearings cases closed, all orders, Oregon, 1987-1996

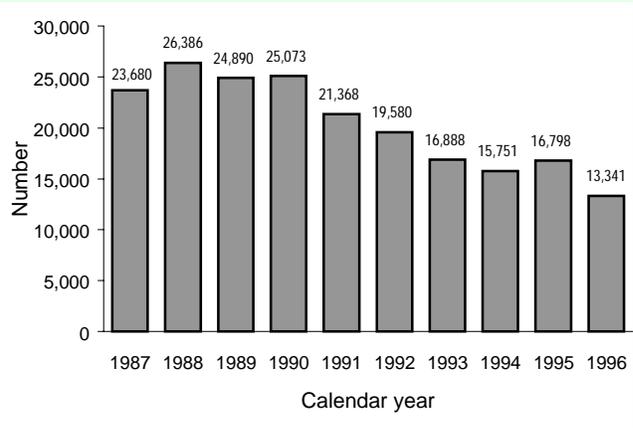
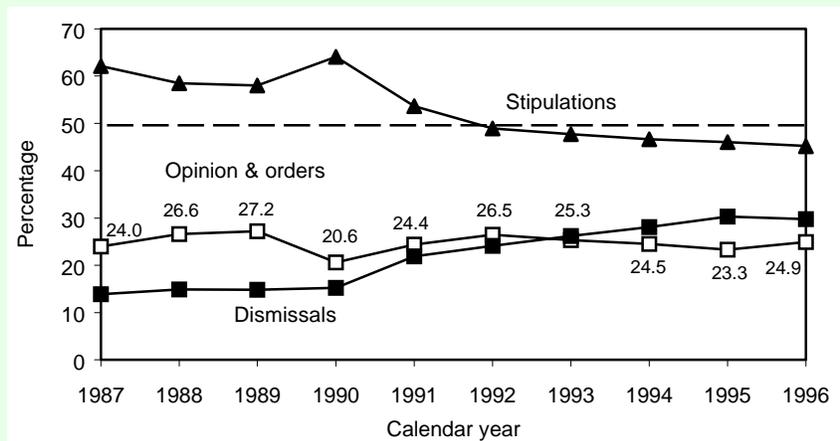


Table 1. Hearings compensation cases, by order type, Oregon, 1996

Type of order	Number	Percentage
Opinion & order	3,278	24.9
Stipulation	5,960	45.2
Dismissal	3,929	29.8
Arbitrator's decision	9	0.1
<b>Total</b>	<b>13,176</b>	<b>100.0</b>

Figure 3. Distribution of hearings cases, by order type, Oregon, 1987-1996



The breakout of cases by **requester** is given in Table 2. The worker filed the hearing request in 90.8 percent of the cases. Joint requests usually involve a stipulation received with no prior hearing request. Requests

by the director, Department of Consumer & Business Services (“director”) are often for responsibility disputes that may be resolved by arbitrator’s decision.

Table 2. Hearings compensation cases, by requester and order type, Oregon, 1996

Requester	Opinion & order		Stipulation		Dismissal		Total cases	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Claimant	3,140	95.8	5,005	84.0	3,811	97.0	11,960	90.8
Employer	20	0.6	24	0.4	27	0.7	71	0.5
Joint	—	—	844	14.2	6	0.2	850	6.5
Insurer	108	3.3	70	1.2	80	2.0	259	2.0
Director	10	0.3	17	0.3	5	0.1	36	0.3
TOTAL	3,278	100.0	5,960	100.0	3,929	100.0	13,176	100.0

Note: Due to rounding, the sum of percentages may not equal 100. Total cases includes arbitrator’s decisions.

SAIF was the **insurer** in just 35.0 percent of the cases, the sixth successive annual decrease in that percentage and the fifth successive record-low value. The 16.2 percent for self-insured employers represented a decrease from 1995’s record-high 16.9 percent. See Table 3 and Figure 4. Note that responsibility disputes

are treated as multiple cases, each with a different insurer. Many of the cases with the insurer classified as “unknown” are appeals of department non-subjectivity determinations (disputes about whether the worker is subject to workers’ compensation law).

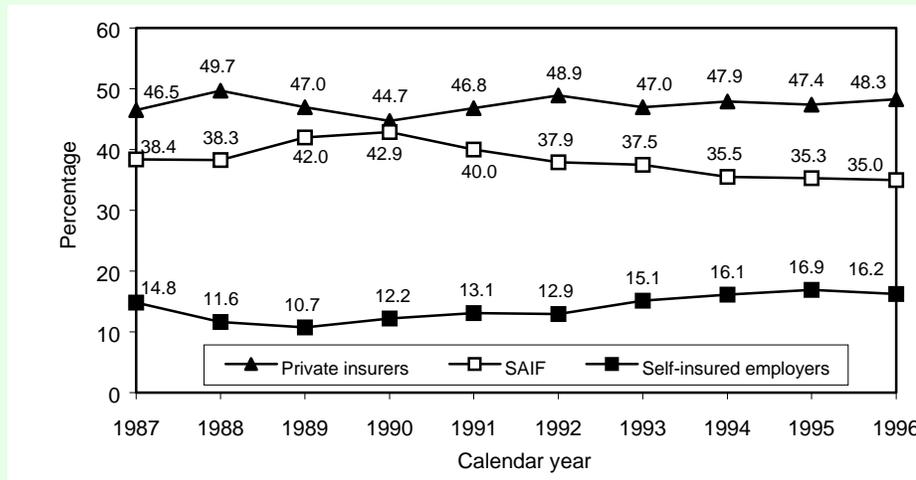
Table 3. Hearings compensation cases, by insurer and order type, Oregon, 1996

Insurer	Opinion and Order		Stipulation		Dismissal		Total cases	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
SAIF	1,231	37.6	1,943	32.6	1,435	36.5	4,614	35.0
Private	1,426	43.5	3,096	51.9	1,846	47.0	6,370	48.3
Self-insured	605	18.5	912	15.3	616	15.7	2,135	16.2
Non-complying	2	0.1	2	*	3	0.1	7	0.1
Multiple	5	0.2	—	—	4	0.1	9	0.1
Unknown	9	0.3	7	0.1	25	0.6	41	0.3
TOTAL	3,278	100.0	5,960	100.0	3,929	100.0	13,176	100.0

Note: Due to rounding, the sum of percentages may not equal 100. Total cases includes arbitrator’s decisions.

\* Indicates percentage is less than 0.05 percent.

Figure 4. Distribution of hearings cases, by insurer, Oregon, 1987-1996



## Mediations

To help settle disputes without litigation, the board's administrative law judges completed 128 mediations during the last seven months of 1996. About 84.4 percent of these mediations resulted in settlement. About four fifths of the settlements were in the form of a disputed claim settlement. (Not all of these cases were settled *in 1996*.)

About half of mediated cases settled were about disease claims, as opposed to injury claims. (For *all* stipulations, only about 22 percent were about diseases.) In about 30 percent of the cases, the claim was about mental or psychological conditions. The average consideration amount for mediated cases

that were settled by DCS was about \$8,000, much greater than the average of \$4,770 for all DCSs. The issues settled were partial denial, 47 percent; claim denial, 42 percent; claim denial and responsibility, 8 percent; and other issue, 3 percent. (The statistics in this paragraph and the next are based on a sample of 36 cases).

The average mediation was held 21 days after the request, and the closing order was issued 46 days after the mediation (these values are medians).

## Issues

These 12 issues are recorded for hearings:

- (1) extent of permanent disability — the number of degrees of permanent partial disability or whether the worker is permanently and totally disabled.
- (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.
- (3) claim denial — denial of a new claim, denial of the whole claim.
- (4) partial denial — denial of part of a claim, denial of a new condition in an accepted claim as not being caused by the injury or accepted conditions.
- (5) aggravation — worsening after the latest award of compensation, whether the claim should be reopened.
- (6) responsibility — which insurer should accept the claim and pay benefits.
- (7) premature closure — claim closure before claimant is medically stationary.

(8) medical services — whether the insurer should provide or pay for medical treatment when the underlying issue is *not* whether the condition to be treated is compensable (work-related).

(9) vocational services — eligibility for assistance to allow return to work, or whether insurer must pay for same.

(10) penalties — “additional amounts” paid by the insurer to the worker, usually for unreasonable claims processing conduct.

(11) attorney fees — whether claimant's attorney should be awarded fees, and how much, for efforts or results achieved *outside* of hearings.

(12) other issue — any issue not specified above.

**Claim denial** includes denial for failure of the worker to cooperate, per ORS 656.262(15), but does not include subjectivity disputes (ORS 656.027).

**Partial denial** includes consequential conditions (conditions caused in turn by the compensable injury, not directly by the industrial accident); flare-up of a preexisting condition due to a compensable injury; and “scope of acceptance” disputes per ORS 656.262(6)(d).

The issue of **responsibility**, even though raised, is *not* recorded (1) in disputed claim settlements (it is really the *compensability* denials that are being sustained), and (2) when it is determined that the claim is not compensable (the issue of responsibility is not reached).

The issue of claimant **attorney fees** is not recorded when fees are requested *due to a hearings outcome*. (Otherwise, virtually every case where the claimant is represented by counsel would involve this issue.)

O&Os and stipulations may contain any of the 12 issues. Arbitrator’s decision cases involve the issue of responsibility, may also include the penalty issue, but rarely contain any additional issues.

The 9,238 O&O and stipulation cases in 1996 included a total of 11,360 issues, or 1.23 issues per case. Only issues that are resolved (decided by the judge, or stipulated by the parties) are recorded for a case. See Table 4 for data on the numbers of issues in cases. **No issue** is recorded when: (1) all raised issues are “reserved” or “preserved” to be decided later, (2) all issues are withdrawn at hearing in an order *not* captioned as a dismissal, and (3) the number of cases exceeds the number of distinct denials.

Table 4. Number of issues per hearings compensation case, Oregon, 1996

Number of issues	Cases
One	7,303
Two	1,438
Three	305
Four	55
Five	8
Six	1
<b>Total cases</b> (O&O + stipulation)	9,238
More than one issue	1,807
No issues	128

Considering both O&Os and stipulations, extent of **permanent and temporary disability** were issues in 11.5 and 4.6 percent of all cases, respectively; both percentages have increased somewhat from the record-low values of 1995. **Claim denial and partial denial** were issues in 38.2 and a record-high 34.4 percent of the cases, respectively. Claim denial has been the most common issue in hearings since 1989, when it replaced extent of permanent disability. The recent increase in frequency of partial denial as an issue is due, in large part, to new situations or types of denials that we classify as partial denial, as mentioned above. **Responsibility** was an issue in 284 opinion & order and stipulation cases, in addition to the 9 arbitrator’s decision cases (which constituted two responsibility disputes).

## Opinion and Orders

Hearings administrative law judges in 1996 decided 4,541 issues in 3,278 O&Os. That’s an average of 1.39 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 5. The most frequent issues in O&Os were claim denial, partial denial (highest relative frequency on record), and permanent disability (highest relative frequency since 1990).

Table 6 and Figure 5 provide current and historical information about the number of O&O cases with extent of disability (temporary and/or permanent) at issue and the types of disability increase. In 1996, the worker’s disability award was increased in 383 cases (the sum of the last four columns of the table), about 46 percent of the 840 disability-issue cases.

The right column of Table 5 provides information about the disposition of issues in O&Os. Figures 6 through 9 provide historical data on O&O dispositions for the various issues.

The percentage of cases decided in favor of the claimant for permanent and temporary disability cases were 48.8 (almost 5 percentage points above the figure for 1995) and 58.4 percent, respectively. These values reflect the number of cases where the judge increased the award (40.7 and 56.3 percent for permanent and temporary disability, respectively) plus cases with no change in the award when the insurer or employer requested the hearing.

Table 5. Opinion and order cases, by issue, disposition, and insurer, Oregon, 1996

Issue & Disposition	Insurer				Percentage of cases	Percentage disposition
	All insurers	SAIF	Private	Self-insured		
<b>Permanent disability</b>						
Total cases	695	254	297	143	21.2	
Increase	283	95	128	59		40.7
Decrease	63	20	25	18		9.1
Same	349	139	144	66		50.2
<b>Temporary disability</b>						
Total cases	197	67	90	40	6.0	
Increase	111	38	49	24		56.3
Decrease	1	-	1	-		0.5
Same	85	29	40	16		43.1
<b>Claim denial</b>						
Total cases	1,114	448	449	215	34.0	
Accept	461	195	189	77		41.4
Deny	653	253	260	138		58.6
<b>Partial denial</b>						
Total cases	811	299	344	166	24.7	
Accept	391	128	186	76		48.2
Deny	420	171	158	90		51.8
<b>Aggravation</b>						
Total cases	234	66	119	49	7.1	
Accept	84	25	41	18		35.9
Deny	150	41	78	31		64.1
<b>Responsible insurer?</b>						
Total cases	255	92	150	13	7.8	
Yes	110	37	65	8		43.1
No	145	55	85	5		56.9
<b>Premature closure</b>						
Total cases	83	31	33	19	2.5	
Yes	24	10	10	4		28.9
No	59	21	23	15		71.1
<b>Penalties</b>						
Total cases	501	173	233	95	15.3	
Yes	218	74	102	42		43.5
Denied	283	99	131	53		56.5
<b>Attorney fees</b>						
Total cases	195	60	93	42	5.9	
Yes	94	23	47	24		48.2
No	101	37	46	18		51.8
<b>Other issue</b>						
Total cases	456	159	205	79	13.9	
Yes	289	97	135	54		63.4
No	167	62	70	25		36.6
<b>No issues*</b>						
Total cases	64	20	33	11	2.0	-
Total issues	4,541	1,649	2,013	861	-	-
Total cases	3,278	1,231	1,426	605	-	-

Notes: "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 will exceed 100. "Percentage disposition" gives the breakout of how the issues were decided; for each issue, the sum of these percentages will equal 100 (except for rounding). "All insurers" includes 16 cases with multiple insurers, no insurer, or unknown insurer. One case remanded to the director on extent of permanent disability was coded as "same."

\* See the *Issues* section for situations where no issues are recorded for an order.

Table 6. Disability issues and type of disability increase, hearings opinion and order, Oregon, 1987-1996

Calendar year	Extent of disability as an issue	PPD awards increased over previous award	PPD awards, no previous PPD award	PTDs awarded	TTD award increase and no increased PPD award
1987	2,682	1,053	491	118	299
1988	2,931	1,215	442	119	345
1989	2,674	1,086	532	78	410
1990	1,649	717	243	45	265
1991	1,218	428	113	32	277
1992	1,237	391	103	23	257
1993	895	228	58	7	149
1994	822	167	61	11	143
1995	782	169	46	6	108
1996	840	217	59	7	100

Figure 5. Disability issues and award increases, hearings opinion and order, Oregon, 1987-1996

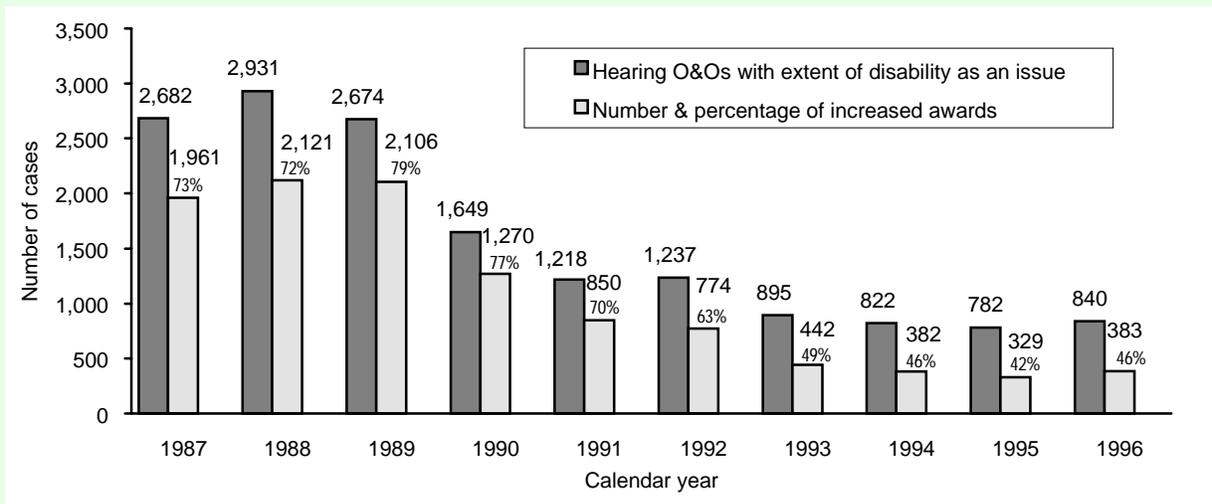


Figure 6. Disposition of extent of permanent disability cases, hearings opinion and order, Oregon, 1987-1996

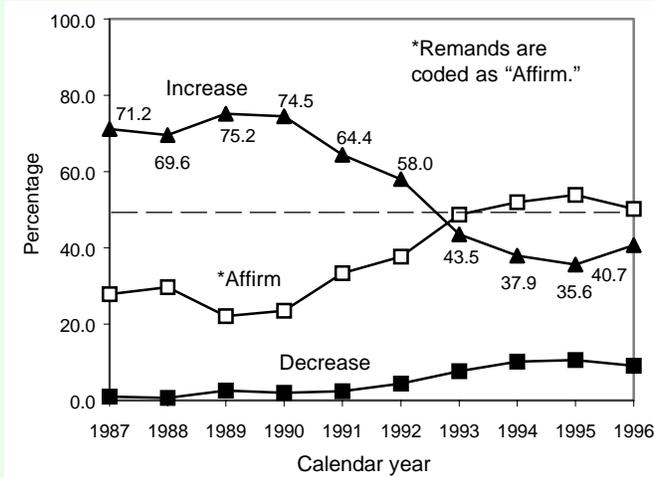


Figure 7. Disposition of extent of temporary disability cases, hearings opinion and order, Oregon, 1987-1996

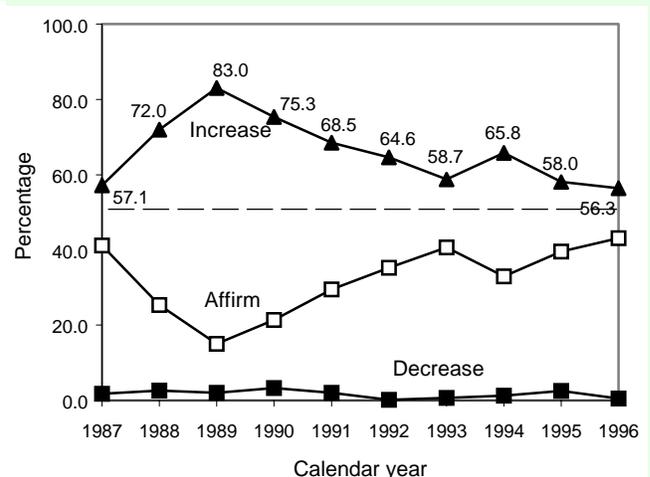


Figure 8. Acceptance rates for compensability cases, hearings opinion and order, Oregon, 1987-1996

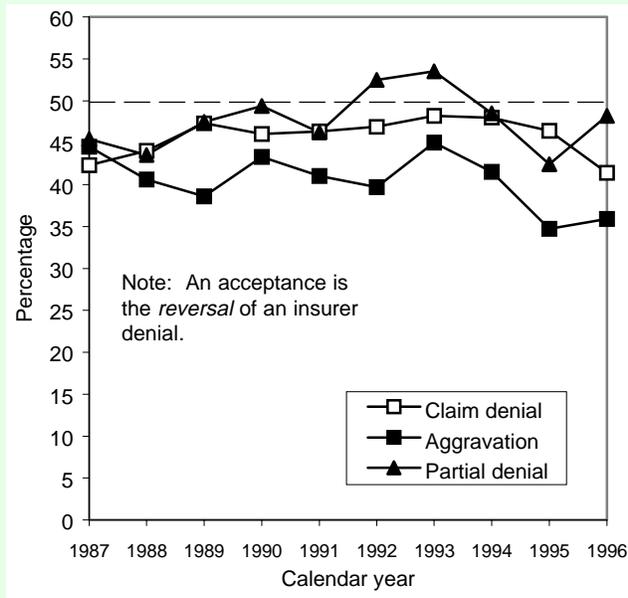
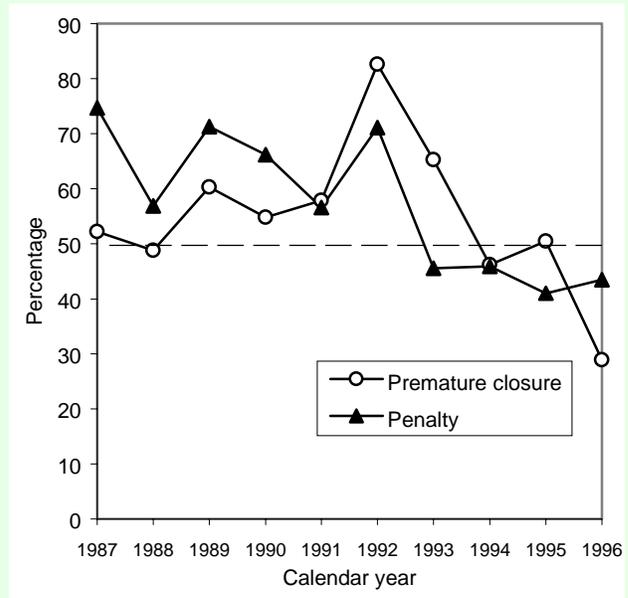


Figure 9. Percentage of decisions favorable to claimants for miscellaneous issues, hearings opinion and order, Oregon, 1987-1996



Fifteen cases included a request for **attorney sanctions** for frivolous appeal. See item 20 in the appendix. The request was made by the insurer or employer (or their representative) in all but one of these cases, and all were decided by O&O. The judge's decision was

to impose sanctions in five cases (one third of the requests), though in one of these five cases the decision was reversed on reconsideration in 1997. Sanction amounts totaled \$1,257 for an average of \$251 per case; the amounts ranged from \$50 to \$500.

## Stipulations

Disputing parties settled 6,819 issues in 5,960 stipulations in 1996. Table 7 gives information about issue relative frequency and disposition for stipulation cases. Claim denial and partial denial were the most frequent stipulated issues, each included in about 40 percent of all cases. Dispositions of "accept" for the compensability issues (claim denial, partial denial, and aggravation) are low because stipulations include disputed claim settlements, where the denial is always sustained.

There were five cases with the issue of medical services that were settled in 1996. See item 7 in the appendix. All were settled in the favor of the worker. In two cases the medical issue was the "compensability of medical services *on a diagnostic basis*." Three of the five cases included a compensability issue, as well as the medical issue.

### Disputed claim settlements

In 1996, insurers paid almost \$19.1 million, in 4,001 cases, to workers as consideration for not contesting

denials. See Table 8. For the first time ever, partial denial was the most frequent issue in DCSs. Of the seven DCSs with the issue coded as "other," four were disputes over subjectivity. For all issues, the average payment was \$4,770, about 4.7 percent less than in 1995. The largest amount paid in a single settlement was \$85,000 (1995's largest amount was over \$155,000). The DCS amount was unspecified (usually, the insurer will pay medical bills and the amount is not mentioned in the order) in 24 cases.

DCSs accounted for 67.1 percent of all stipulations, the largest percentage on record. They also constituted 30.4 percent of all hearings closing orders and 72.7 percent of all claims denied at hearings (excludes aggravation). Figure 10 provides historical information on DCSs.

DCSs accounted for claimant attorney fees of over \$3.8 million, 42.0 percent of all fees at hearings. About 99.0 percent of these fees were paid out of the DCS consideration amount.

Table 7. Stipulation cases, by issue, disposition, and insurer, Oregon, 1996

Issue & Disposition	Insurer				Percentage of cases	Percentage disposition
	All insurers	SAIF	Private	Self-insured		
<b>Permanent disability</b>						
Total cases	368	101	196	71	6.2	
Increase	294	79	160	55		79.9
Decrease	25	7	11	7		6.8
Same	49	15	25	9		13.3
<b>Temporary disability</b>						
Total cases	227	63	131	33	3.8	
Increase	217	62	123	32		95.6
Decrease	1	-	1	-		0.4
Same	9	1	7	1		4.0
<b>Claim denial</b>						
Total cases	2,414	848	1,179	386	40.5	
Accept	480	202	220	58		19.9
Deny	1,934	646	959	328		80.1
<b>Partial denial</b>						
Total cases	2,365	754	1,269	341	39.7	
Accept	319	117	149	53		13.5
Deny	2,046	637	1,120	288		86.5
<b>Aggravation</b>						
Total cases	488	108	302	78	8.2	
Accept	81	29	41	11		16.6
Deny	407	79	261	67		83.4
<b>Responsible insurer?</b>						
Total cases	29	10	16	3	0.5	
Yes	14	3	8	3		48.3
No	15	7	8	-		51.7
<b>Premature closure</b>						
Total cases	11	5	5	1	0.2	
Yes	8	4	3	1		72.7
No	3	1	2	-		27.3
<b>Medical services</b>						
Total cases	5	-	2	3	0.1	
Yes	5	-	2	3		100.0
No	-	-	-	-		0.0
<b>Vocational services</b>						
Total cases	1	1	-	-	0.0	
Yes	1	1	-	-		100.0
No	-	-	-	-		0.0
<b>Penalties</b>						
Total cases	276	77	173	26	4.6	
Yes	263	73	168	22		95.3
Denied	13	4	5	4		4.7
<b>Attorney fees</b>						
Total cases	136	37	76	22	2.3	
Yes	122	31	72	19		89.7
No	14	6	4	3		10.3
<b>Other issue</b>						
Total cases	499	152	253	85	8.4	
Yes	456	136	240	77		91.4
No	43	16	13	8		8.6
<b>No issues*</b>						
Total cases	64	31	25	8	1.1	-
Total issues	6,819	2,156	3,602	1,049	-	-
Total cases	5,960	1,943	3,096	912	-	-

Notes: "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 will exceed 100. "Percentage disposition" gives the breakout of how the issues were settled; for each issue, the sum of these percentages will equal 100 (except for rounding). "All insurers" includes nine cases with multiple insurers, no insurer, or unknown insurer.

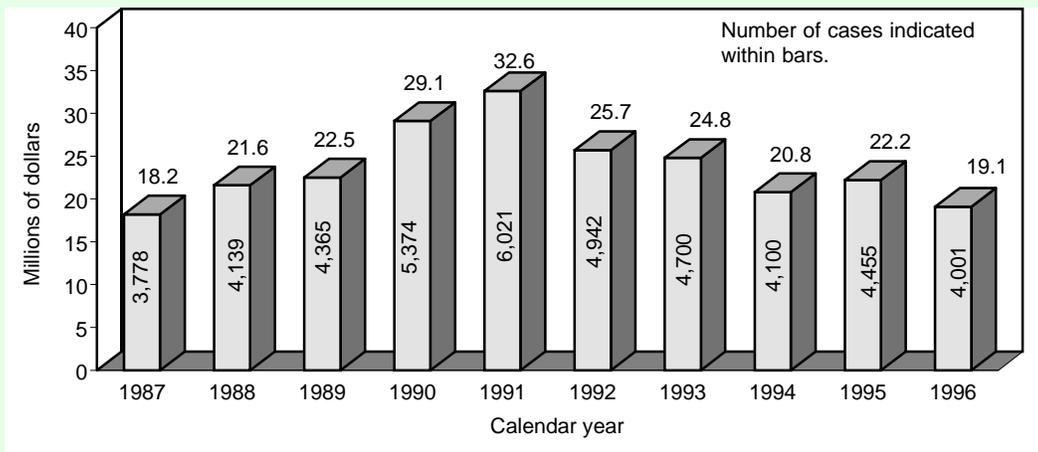
\* See the *Issues* section for situations where no issues are recorded for an order.

Table 8. Hearings disputed claim settlements, by principal issue, Oregon, 1996

Principal issue*	Number of cases	Percentage of cases	Total amount	Average amount	Total fees
Claim denial	1,881	47.0	\$9,151,000	\$4,865	\$1,824,000
Partial denial	1,978	49.4	9,343,000	4,723	1,869,000
Aggravation	135	3.4	573,000	4,244	129,000
All other issues	7	0.2	18,000	2,503	4,000
All issues	4,001	100.0	19,084,000	4,770	3,825,000

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

Figure 10. Hearings disputed claim settlement amounts, Oregon, 1987-1996



## Permanent Disability

There were 1,063 cases involving extent of permanent disability in 1996. That is about 11.5 percent of all cases, a reversal of the downward trend in this percentage. Case dispositions were as follows: increase the award, 54.3 percent (the smallest percentage on record); decrease the award, 8.3 percent; and no change in the award, 37.4 percent.

The number and size of permanent disability awards, by most measures, have generally been decreasing over the past 10 years, particularly since 1990. There seem to be two primary reasons for this change. The first reason is annual decreases in the number of accepted disabling claims. The second reason is the law changes enacted in May 1990 by Senate Bill 1197. Required reconsideration, medical arbiters for impairment disputes, limitations on new evidence, "tighter" disability standards, and claim disposition agreements have all probably contributed to this trend.

Two changes made in SB-369 may have also contributed to the reduction of disability awarded at hearings: the limitation of evidence at hearing (item 14 in the appendix) and the limitation on disability when a worker returns to work (item 21).

### Permanent partial disability

Information about cases where PPD awards were increased is provided in Tables 9 and 10 for cases with and without a prior award, respectively. "No prior award" means that there had been no previous award of PPD, either scheduled or unscheduled, at the time of the hearings award. The average scheduled award increase was 11.3 degrees and the average unscheduled increase was 23.3 degrees. Combining scheduled and unscheduled disability, the average award increase was 18.5 degrees, an increase over 1995's record-low 17.8 degrees.

There were 52 and 45 cases with scheduled and unscheduled award decreases, respectively. The average decreases were 16.0 scheduled degrees and 39.6 unscheduled degrees. The net amount awarded for PPD at hearings in 1996 (the total dollar value of all award increases, less the value of decreased awards) was \$1.4 million, the ninth consecutive decrease in that total and the smallest value on record. See Figure 11. The value of each degree of disability is based on the date of injury.

Table 11 depicts the overall disposition of hearings PPD cases. Here, the dollar value of scheduled and

unscheduled awards are considered in determining whether the case is classified as increase or decrease when there's an increase in one award type and a decrease in the other.

### Permanent total disability

There were seven PTD grants in 1996, as shown in Figure 12. All were by opinion and order. There were no rescissions or affirmations of a PTD award, so the *net* number of PTD awards was seven. The average previous award was 237 degrees (combined scheduled and unscheduled), compared to 279 degrees in 1995.

Table 9. Hearings PPD award increase over previous award, by order type, Oregon, 1996

Type of order					Unscheduled disability				Total hearing \$ increase
	Number of cases	Average prior award	Average hearing award	Total hearing \$ increase	Number of cases	Average prior award	Average hearing award	Total hearing \$ increase	
Opinion & order	89	18.4	13.5	\$407,000	144	49.0	24.7	\$428,000	\$835,000
Stipulation	96	20.8	8.4	273,000	139	47.4	18.0	295,000	569,000
All orders	185	19.7	10.9	680,000	283	48.2	21.5	724,000	1,404,000

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

Table 10. Hearings PPD awards, no previous award, by order type, Oregon, 1996

Type of order	Scheduled disability			Unscheduled disability			Total dollar award
	Number of cases	Average hearing award	Total dollar award	Number of cases	Average hearing award	Total dollar award	
Opinion & order	22	18.9	\$141,000	38	38.1	\$167,000	\$308,000
Stipulation	32	8.6	95,000	33	22.1	83,000	178,000
All orders	54	12.8	236,000	71	30.6	251,000	486,000

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

Table 11. Disposition of hearings PPD cases by order type and prior award, Oregon, 1996

Order type	No prior award		Prior award			All cases			All
	Increase	Affirm	Increase	Decrease	Affirm	Increase	Decrease	Affirm	
Opinion & order	59 26.5%	164 73.5%	217 46.7%	63 13.6%	185 39.8%	276 40.1%	63 9.2%	349 50.7%	688
Stipulation	65 83.3%	13 16.7%	229 79.0%	25 8.6%	36 12.4%	294 79.9%	25 6.8%	49 13.3%	368
All orders	124 41.2%	177 58.8%	446 59.1%	88 11.7%	221 29.3%	570 54.0%	88 8.3%	398 37.7%	1,056

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

Figure 11. Net hearings PPD awards, by order type, Oregon, 1987-1996

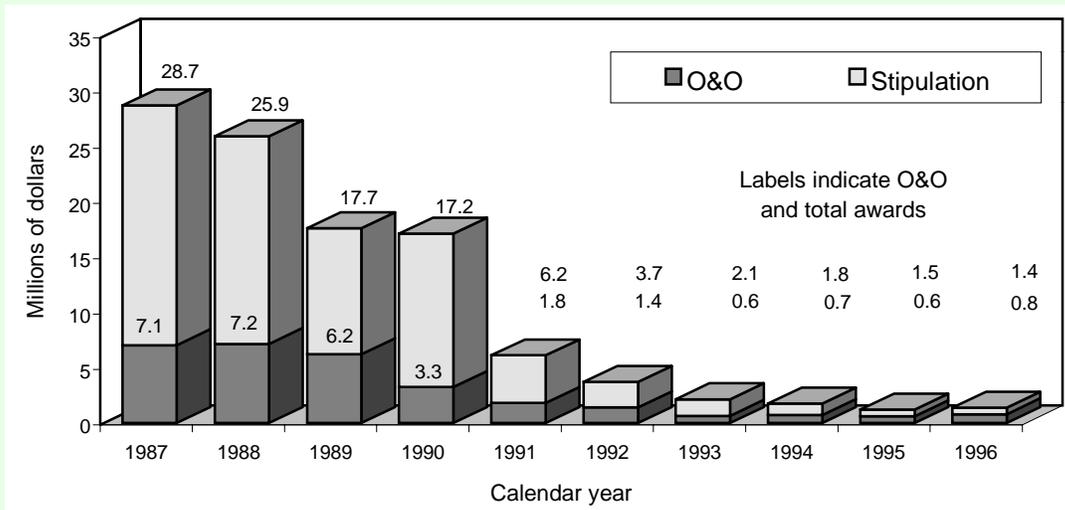
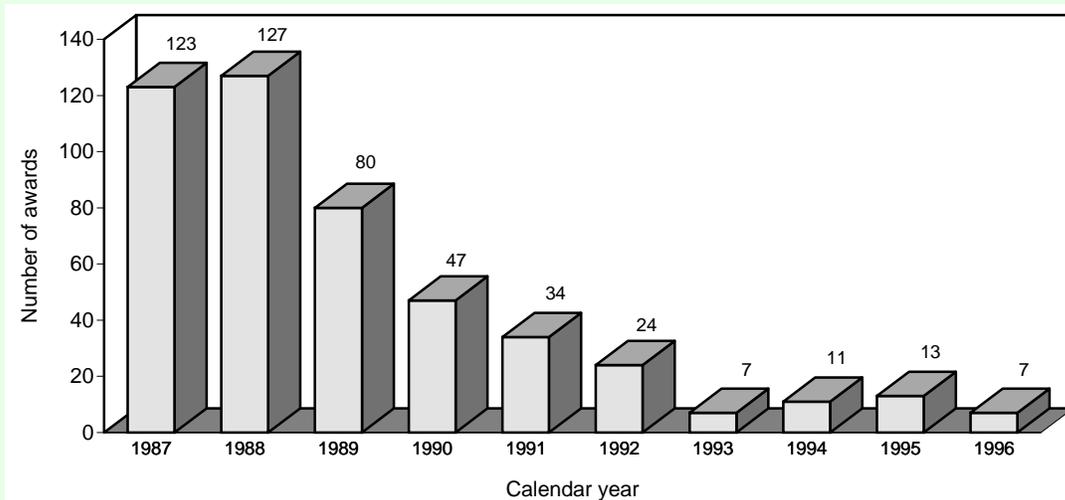


Figure 12. PTD awards granted at hearings, Oregon, 1987-1996



## Time Lags

For all hearings orders in 1996, the median time from **injury to hearing request** was 353 days, 33 days shorter than in 1995. Table 12 provides various time lags by order type and insurer classification.

For opinion and order cases, the median time from hearing **request to order** was 156 days (5.1 months), six days shorter than in 1995. See Figure 13. These

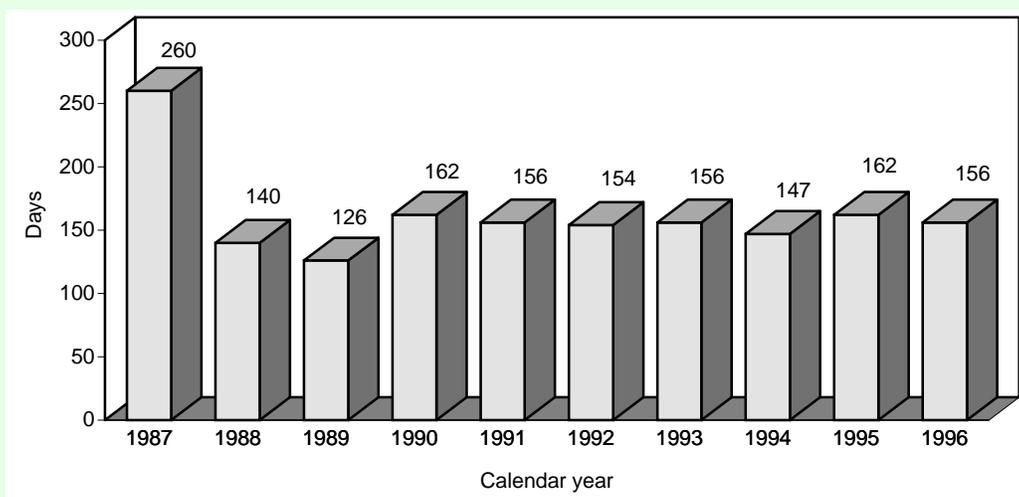
figures are for all O&O cases, regardless of whether there had been a postponement. For cases without a postponement, the median request-to-order time was only 115 days, while it was 282 days for cases with one or more postponements. Similarly, the overall O&O **request-to-held** lag was 89 days, while this lag for cases with and without postponements was 84 and 236 days, respectively.

Table 12. Median hearings time lags, by insurer and order type, Oregon, 1996

Lag periods	Opinion & order				Stipulation				Dis-missal	Arbitra-tor's decision	All cases
	SAIF	Private insurer	Self-insured employer	All cases	SAIF	Private insurer	Self-insured employer	All cases			
Injury date to request date	289	373	389	343	243	274	289	267	433	452	353
Injury date to order date	507	563	624	549	427	460	506	455	593	750	532
Request date to order date	142	154	187	156	113	115	133	116	105	297	120
Request date to held date	89	89	94	89	-	-	-	-	-	268	89
Held date to closed date	0	0	0	0	-	-	-	-	-	0	0
Closed date to order date	27	27	27	27	-	-	-	-	-	29	27

Note: Dashes indicate that time lags are not applicable. Lag time segments do not add to total lag times because figures are medians.

Figure 13. Median time lags, hearing request to order, opinion and order cases, Oregon, 1987-1996



## Claimant Attorney Fees

Claimant attorney fees totaling \$9.1 million were approved for payment out of worker compensation or assessed against insurers in 1996 hearings orders, about 16.2 percent less than in 1995. See Table 13. About 49.2 percent of these fees were paid out of compensation. The average fee was \$1,376, about 2.1 percent larger than in 1995. Figure 14 depicts average fees, by source, for the past 10 years, and Figure 15 does the same for total fees.

The percentage of claimants represented by counsel was about 96.1 percent for O&O cases and 91.7 percent for all cases.

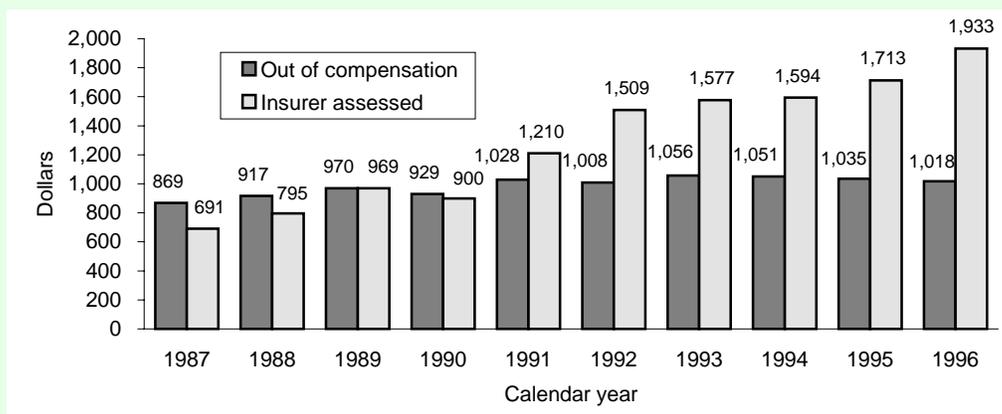
Attorneys representing workers receive fees for (1) getting a denial overturned, (2) getting an increase in compensation for their clients, and (3) for preventing a reduction in compensation. Most of the fees were determined at hearings (decided by the judge or stipulated by the parties and approved by the judge) for attorney efforts and results on issues *raised at hearings*. Other fees are determined by hearings judges for attorney efforts or results achieved *outside of hearings*. They include 331 cases where claimant attorney fees was an issue at hearings, and also fees decided in 48 “order awarding attorney fees” cases.

Table 13. Claimant attorney fees, by order type and source, Oregon, 1996

	Opinion and order	Stipulation	Dismissal	Arbitrator's decision	Order awarding atty fees	Total cases
<b>Out of claimant compensation</b>						
Cases with fees	381	3,980	1	0	37	4,399
Total fees	\$391,000	\$4,065,000	\$1,424	\$0	\$22,000	\$4,479,000
Average fee	\$1,025	\$1,021	\$1,424		\$582	\$1,018
<b>Assessed against insurer</b>						
Cases with fees	1,154	1,230	2	2	3	2,391
Total fees	\$3,136,000	\$1,476,000	\$1,500	\$5,300	\$1,390	\$4,621,000
Average fee	\$2,718	\$1,200	\$750	\$2,650	\$463	\$1,933
<b>From both sources</b>						
Cases with fees	1,478	5,090	3	2	40	6,613
Total fees	\$3,527,000	\$5,542,000	\$2,924	\$5,300	\$23,000	\$9,100,000
Average fee	\$2,386	\$1,089	\$975	\$2,650	\$573	\$1,376

Notes: Fees were paid both out of compensation and assessed against the insurer in 117 cases, so the number of cases for each source will not add to the number from both sources. Fees may not add to totals due to rounding.

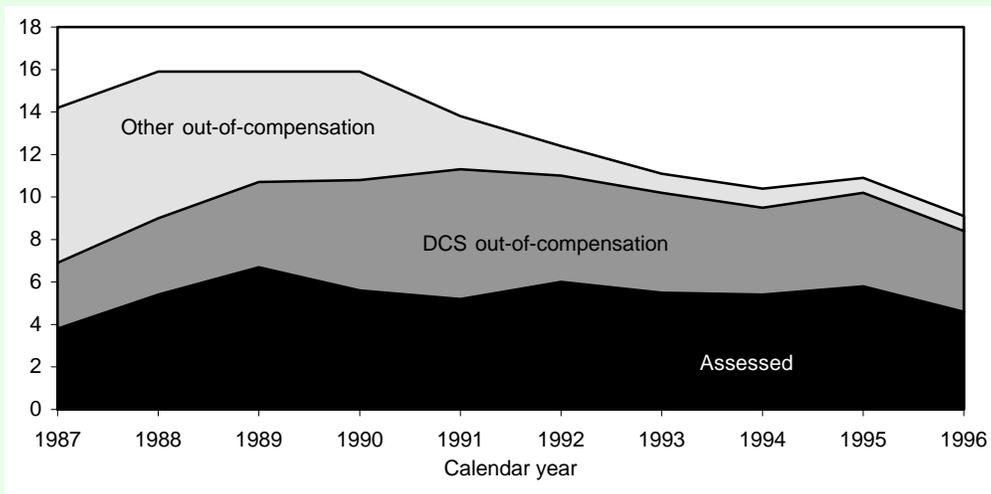
Figure 14. Average claimant attorney fees, by source, Oregon, 1987-1996



Attorney fees that are recorded for hearings cases are not necessarily the actual amounts paid. For example, in cases where the period of temporary disability is extended and the ending date is not specified, the fees recorded are the maximum allowable amount (\$1,050). In other cases, fees are reversed (reduced or eliminated) when the judge's decision in favor of the claimant is reversed or modified by the board or courts.

Attorney fees are missing (could not be determined from information in the published order) in about 60 cases. Most of these fees are based on insurer penalties. The total amount of these unknown fees is probably less than a half percent of the total value of known fees.

Figure 15. Total hearings claimant attorney fees (\$M), Oregon, 1987-1996



## 1995 Workers' Compensation Law Changes

On June 7, 1995, the governor signed Senate Bill 369, enacting (effective immediately) many changes to Oregon workers' compensation law. The most significant changes that directly affected litigation frequency, procedures, or results are listed here.

1. Changed the title of the Hearings Division referees, who conduct hearings and decide cases, to "**administrative law judge**" (ALJ).
2. Clarified compensability of **combined conditions**; added new closure procedures; required written denial when the accepted injury is no longer the major contributing cause of the combined condition before the claim may be closed; applied 656.005(7) standards to new injury/disease occurrence under 656.308 (responsibility). 656.005(7)(a)(B), 656.262, 656.268, 656.308(1).
3. Changed the definition of **objective findings** to exclude "physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable." 656.005(19). See Suzanne Robertson, 43 van Natta 1505 (1991).
4. Required that the law be **interpreted in an impartial and balanced manner**. 656.012(3). Previous court decisions have supported the long-standing rule that ambiguities in the law be liberally construed in favor of the worker [Fossum v. Saif, 289 Or 787 (1980)].
5. Deleted the law provision that **temporary partial disability rates** be based on loss of "earning power at any kind of work." 656.212(2). Stone v. Whittier Wood Products, 124 Or App 117 (1993), had invalidated department rules, based on this (now-deleted) language.
6. Increased **permanent partial disability awards** (dollars per degree), and extended the law provisions through 12-31-2000. 656.214.
7. Gave jurisdiction for **medical treatment disputes** to the director of the Department of Consumer and Business Services:
  - a. Changed the law to state that a party who believes that "medical treatment, not subject to ORS 656.260 [managed care organizations], that the injured worker has received, is receiving, will receive or is proposed to receive is excessive, inappropriate, ineffectual or in violation of rules ... shall request review of the treatment by the director...." Appeal is as a contested case before the director. 656.327. Court decisions [Jefferson v. Sam's Cafe, 123 Or App 464 (1993) and Meyers v. Darigold, 123 Or App 217 (1993)] had interpreted the law to give the board jurisdiction for *proposed* medical treatment and in cases where no party *wishes* director review.
  - b. Added that a director's decision to exclude medical treatment that is unscientific, unproven, outmoded, or experimental is subject to review only as a contested case. 656.245(3).
  - c. Provided that denial of a claim for medical services, except for non-compensability of the underlying condition, is subject to director administrative and contested case review. 656.245(6).
  - d. Clarified that disputes regarding nonpayment of medical bills, just as fee disputes, are subject only to director administrative and contested case review. 656.248(13).
  - e. Reinforced these changes by amending 656.283 and 656.704. The latter states that "disputes arising under ORS 656.245, 656.248, 656.260, 656.327, and other provisions directly relating to the provision of medical services..." are *not* "matters concerning a claim" that are subject to board jurisdiction.
8. Changed the **standard of proof**, from clear and convincing evidence to a preponderance of the evidence, by which insurers must prove that a claim is not compensable (or the insurer is not responsible) after a "back-up" denial based on new evidence. 656.262(6)(a).
9. Required workers believing that a condition has been omitted from a notice of acceptance to notify the insurer and not merely allege a **defacto denial** in a hearing request. 656.262(6)(d).
10. Allowed an insurer to deny a claim for **failure of a worker to cooperate**. Required a worker to establish at an expedited hearing that he/she has cooperated, that non-cooperation was for reasons beyond worker control, or that investigative demands were unreasonable before proceeding to a hearing on the merits of the claim. 656.262(15).
11. Required a **request for hearing** on a reconsideration to be made within 30 days of the date of the reconsideration order (was 180 days of the notice of closure/determination order). 656.268(6)(f).

12. Prohibited contesting an **issue at hearings** that was not raised at reconsideration or did not arise out of the reconsideration order. 656.268(8) and 656.283(7). This change is a reversal of *Leslie v. U.S. Bancorp*, 129 Or App 1 (1994).
13. Changed appeal of a director's decision on **vocational assistance disputes** from the Hearings Division to contested case review within the department. 656.283(2). This change obviates the decision in *Colclasure v. Washington County School District*, 317 Or 526 (1993), which allowed the hearings referee to make independent findings of fact in vocational disputes.
14. Prohibited submission of **evidence at hearing** that was not submitted at reconsideration. 656.283(7). This change negates the court decision in *Safeway Stores v. Heather Smith*, 122 Or App 160 (1993).
15. Provided for resolution of responsibility disputes by **private party mediation or arbitration**. 656.307(6). Both the settlement stipulation and the arbitration decision are binding, and are filed with the board. Stipulations based on mediation may have issues other than responsibility if the worker has attorney representation; such stipulations are subject to board approval.
16. Limited claimant **attorney fees in responsibility disputes** to cases where the attorney actively and meaningfully participated *in finally prevailing*. 656.308(2)(d).
17. Added that a hearing on **failure to process** or correctly process a claim must be filed within 2 years of the alleged failure. 656.319(6).
18. Prohibited administrative law judges from awarding **penalties or attorney fees** for matters arising under the review jurisdiction of the director. 656.385(5).
19. Limited claimant **attorney fees for reversal of a denial prior to a hearings decision** to cases where the denial is based on *compensability*. Stated that such a denial is not presumed by failure to timely pay compensation for an accepted condition. 656.386(1). Reverses *Allen v. Saif*, 320 Or 192 (1994).
20. Allowed administrative law judges and the board to impose an **attorney sanction** for appeals that are frivolous, made in bad faith, or for harassment purposes. Previously, only the courts could do so. Defined "frivolous" as not supported by substantial evidence or initiated without reasonable prospect of prevailing. 656.390(1).
21. Made impairment the only **disability consideration when the worker returns to regular work**, or is released to do so. 656.726(3)(f)(D). This change reverses *England v. Thunderbird*, 315 Or App 633 (1993).
22. Allowed an ALJ to **dismiss** an insurer or self-insured employer **from a responsibility dispute**, upon written request, "if the record does not contain substantial evidence to support a finding of responsibility against that party." 656.308(2)(c).

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