



CLAIM DISPOSITION AGREEMENT (CDA) PROCEDURES

CLAIM DISPOSITION AGREEMENTS: PROCESSING TIPS

Some proposed CDAs neglect to fully comply with WCB rules. These proposals result in an addendum letter, requiring supplementation before receiving approval. To avoid future delays in the CDA approval process, parties and practitioners are reminded to double-check their agreement before submitting it for Board approval. As a means to reduce or eliminate these processing problems, the CDA Unit has listed the following common situations that result in addendum letters.

Confidentiality Clause. Some Claim Disposition Agreements (CDAs) contain a provision stating that the terms of the disposition will be kept confidential. An approved CDA constitutes a Board order and, as such, is a public document. Therefore, if the confidentiality provision of a proposed CDA purports to extend beyond the parties (to include the Board), the CDA is not approvable.

In addition, some proposed CDAs containing a “confidentiality” clause will occasionally include a “civil remedy” provision that purports to authorize a carrier to bring a civil action for damages for any breach of the “confidentiality” clause. The Board’s authority to approve CDAs does not extend to matters outside of chapter 656. *Karen A. Vearrier*, 42 Van Natta 2071 (1990). Consequently, if a “confidentiality” clause includes a “civil remedy” provision, the CDA will not be approved.

No vocational/work history. Always provide claimant’s extent of vocational training and a list of occupations that claimant has performed. OAR 438-009-0022(4)(e) and (f). (If claimant is deceased, provide the extent of vocational training and the work history for each of claimant’s beneficiaries. *Id.* If all surviving beneficiaries are minors, guardianship documents should be included.)

No highest education. CDA must include the highest level of education reached by claimant (or if deceased, claimant’s beneficiaries). *See* OAR 438-009-0022(4)(e).

Proceeds inconsistent. The amounts listed on the summary page and in the body of the CDA should be consistent. If a handwritten change has been made to amounts, all references to the amounts should be changed and all provisions in the CDA consistent. All parties or their representatives should initial/date the changes.

Assignment of Responsibility for Installment Payments of Structured Settlements. A carrier may assign its obligations to pay future installments of CDA payments, provided that the carrier remains ultimately responsible in the event that the assignee is unable to fulfill its obligation. *See Thomas H. Kistler*, 55 Van Natta 3310 (2003); *William I. Tarr*, 54 Van Natta 2071 (2002). Last updated 6/11/2015.

Medical Service-Related” Reservation. Parties/practitioners are encouraged to revise any proposed CDA provision that expressly addresses the release of future “aggravation rights,” “new/omitted medical condition claims,” “own motion relief” rights, and penalties/attorney fees (whether in the “summary page” or in the text of the CDA) to clarify that such a release is “partial” because the claimant remains entitled to any “medical service-related” benefits concerning such rights. *See Merritt Hopson*, 67 Van Natta 1426 (2015).

Payment of CDA Proceeds to Someone Other Than Claimant. For CDAs involving a child support lien, 25 percent of the total consideration (prior to the allowance for an attorney fee) is subject to the child support lien. *See* ORS 656.234(2)(b); ORS 656.234(3)(c). In other words, the total consideration is subject to the child support lien, rather than the total consideration after the attorney fee is deducted. *E.g., James F. King, Jr.*, 53 Van Natta 1096 (2001) (based on the total consideration of \$4,000, one fourth of the agreement proceeds, *i.e.*, \$1,000, was subject to child support obligations); *Jerry Ferguson*, 50 Van Natta 240 (1998) (based on the total consideration of \$1,200, one fourth of the agreement proceeds, *i.e.*, \$300, was subject to child support obligations).

Missing signature lines. The CDA should contain signature lines for two Board Members who signed the agreement or the Administrative Law Judge who mediated the agreement (whichever is applicable).

Missing postcard. Provide a postcard for an unrepresented claimant. OAR 438-009-0028(2).

Missing pages. Some submitted CDAs have missing pages, often including the Order paragraph and Board Member signature lines. Before filing the CDA, double check that all pages have been included.

CDA/DCS submissions. Both agreements may be filed simultaneously. The DCS will be held until the CDA is approved; thereafter, notice of their approval will be announced together. If a claimant is unrepresented, the 30-day “cooling off” period under ORS 656.236 (1)(b) applies. Therefore, if the agreements are filed together, they will be held until expiration of the 30-day period.

No Copy Required - Signatures Need Not Be Original. A copy of the CDA is no longer required to be filed. OAR 438-009-0025(1). In addition, signatures of the parties and attorneys may be provided in writing, by FAX, or other electronic means. OAR 438-005-0046(4).

A CDA may include signatures that have been faxed or scanned between the parties/attorneys. However, that CDA must be filed with the Board via the portal, physical delivery to a permanently staffed office or to an ALJ-Mediator, or by means of U.S. Mail.

CDA Approval - On-Line Notification. Notification of approval is provided via the portal. In addition, WCB's website allows parties and practitioners to access information concerning approved Claim Disposition Agreements (CDAs). Specifically, WCB posts a list of approved CDAs, which are compiled on a daily basis. This notification confirms that the listed CDAs have been approved by two Board Members or an ALJ/Mediator. The list is updated daily, including the date of approval, claimant name, and CDA number. A link to the CDA web page can be accessed at:
<http://www.oregon.gov/wcb/board-orders/Pages/index.aspx>.

ALJ-MEDIATOR APPROVAL FOR CDAs

A CDA may be approved by either the Board Members or, if the CDA is a product of a mediation, the Administrative Law Judge (ALJ) who mediated the CDA.

To assist the Board in processing these agreements as expeditiously as possible, parties and practitioners are encouraged to consider the following matters:

1. If a CDA is filed with the Board's Salem office and there is no cover letter nor any indication in the CDA that the parties wish to have the ALJ who mediated their agreement approve it, the CDA will be forwarded to the Board Members for their review and approval.
2. If the parties wish to have the ALJ who mediated their CDA approve it, they can hand deliver the agreement to the ALJ, mail it to the ALJ's home office, mail it to the Board's Salem office in care of the ALJ-Mediator, or file it via the portal with a cover letter expressing their intentions. In this way, WCB staff can readily identify a CDA that is intended to be submitted to the ALJ-Mediator.
3. If the parties are also submitting a Disputed Claim Settlement (DCS) (which resolves a dispute pending at the Hearings Division), along with the CDA, and those agreements have been the product of a mediation, and the parties wish to have the ALJ-Mediator approve both agreements, the parties should deliver the agreements in the manner described in Section 2.
4. An exception to Section 3 arises when the DCS is resolving a dispute that is pending appeal before the court or the Board. Because the Board (rather than the ALJ) has sole authority to review and approve the DCS, the parties should consider filing both agreements with the Board. In this way, the Board can complete its review/approval of the CDA and then immediately proceed to the DCS. Alternatively, if the parties wish to have the CDA approved by the ALJ who mediated the agreement, they can submit the agreements separately; the DCS to the Board and the CDA to the ALJ-Mediator. Because this latter approach will likely delay the review/approval process for the agreements, the parties should consider submitting both agreements to the Board for the Members' review/approval.

Any questions regarding the processing of CDAs may be directed to Nancy Coffelt, the CDA Coordinator, at (503)934-0116. ALJ-Mediator processing questions may be directed to Monte Marshall, Assistant Presiding ALJ, at (503)378-3308.

FREQUENTLY ASKED QUESTIONS

1. When will my CDA be approved?

If claimant is represented by an attorney and is waiving 30 days: It generally takes 7 to 10 days from the date the CDA is received by WCB for the CDA to receive Board approval. Circumstances which can extend the time for approval are Board requests for further information, clarification, or an addendum letter.

If claimant is unrepresented: A CDA involving an unrepresented claimant cannot be approved until the 31st day from the date the CDA is received by WCB. *See* ORS 656.236(1)(a)(C) and (1)(b).

2. What are circumstances that may delay Board approval of the CDA?

The CDA may include an omission or ambiguity, which requires the issuance of an addendum letter to the parties to amend, supplement, or clarify the CDA.

3. Why does the CDA need to be reviewed? I read it and agree with it the way it is.

The Board or the ALJ-Mediator are required by law to confirm that the CDA complies with the law and that there are no errors, inconsistencies, or ambiguities.

4. Why can't an unrepresented claimant waive the 30 days?

The Board or the ALJ-Mediator are required by law to give unrepresented claimants 30 days from the date of receipt of the CDA an opportunity to withdraw the CDA if they change their minds.

5. Can I hand deliver a CDA or addendum?

Yes, you can file a CDA through the portal or physically deliver a CDA or addendum at any of WCB's staffed offices. The addresses for WCB's staffed offices are:

Salem: 2601 25th St. SE, Ste. 150

Portland: 16760 SW Upper Boones Ferry Rd., Ste. 220

Medford: 115 W Stewart Ave., Ste. 102

6. Can you expedite my CDA?

The Board or the ALJ-Mediator will be notified of your request. However, when claimant is unrepresented, approval cannot be granted until the 31st day after receipt of the CDA.

7. When will I get my check?

The carrier has 14 days after the CDA is approved to issue a check, unless otherwise stated in the agreement. Concerns regarding late payment should be directed to the Benefit Consultation Unit at the Workers' Compensation Division at 1-800-452-0288 or (503)947-7840 in Salem.

CLAIM DISPOSITION AGREEMENT CHECKLIST

NAME: _____ C

OK/CK***

UNREP NO WVR

WAIVER Summary

NEED UNREP PC

Body

1. **SUMMARY PAGE/CAPTION/IDENTIFY BENEFITS TO BE RELEASED**
2. **PREFERRED WORKER**
3. **ATTORNEY FEES/PENALTIES**
4. **ATTORNEY FEE/AND WITHIN AMOUNT ALLOWED**
6. **CLAIMANT CONSIDERATION/AMOUNT CORRECT**
7. **CDA PROVIDES TOTAL CONSIDERATION _____**
8. **IDENTIFIES ACCEPTED CONDITIONS SUBJECT OF CDA _____**
9. **DATE OF FIRST CLAIM CLOSURE IF APPLICABLE _____**
10. **PERMANENT DISABILITY AWARD IF APPLICABLE _____**
11. **PROVIDES WHETHER CLAIMANT HAS RETURNED TO WORK FORCE _____**
12. **PROVIDES WORKER'S AGE _____**
13. **PROVIDES HIGHEST EDUCATION LEVEL _____**
14. **PROVIDES VOCATIONAL TRAINING _____**
15. **PROVIDES WORK HISTORY _____**
16. **PROVIDES SPECIFIC IDENTIFICATION OF BENEFITS, RIGHTS & OBLIGATIONS TO BE RELEASED (EXCLUDING MEDICAL BENEFITS)**
17. **RECITES THAT CLAIMANT PROVIDED INFORMATIONAL FLYER**
-AND/OR-
ATTACHES FLYER AS INCORPORATED BY REFERENCE
18. **PROVIDES NOTICE IN PROMINENT OR BOLD FACE TYPE**
-AND/OR-
ATTACHES NOTICE TO CLAIMANT AS INCORP BY REF
19. **PROVIDES SIGNATURES OF ALL REQUIRED PARTIES**
20. **PROVIDES ORDER PARAGRAPH**
21. **PRIOR APPROVAL OF DIRECTOR - IF REQUIRED FOR REIMBURS**

RECOMMENDATIONS

DISAPPROVAL (DRAFT ORDER ATTACHED)

DISAPPROVAL REQUESTED BY CLAIMANT/CARRIER
CDA IS RESULT OF "INTENTIONAL MISREPRESENTATION"
CDA IS "UNREASONABLE AS MATTER OF LAW"

COMMENTS:

APPROVAL : _____

COMMENTS: _____

MEMBER DECISION

1ST MEMBER (STAMP APPROVED): _____ DATE: _____

COMMENTS: _____

2ND MEMBER (STAMP APPROVED): _____ DATE: _____

COMMENTS: _____

BEFORE THE WORKERS' COMPENSATION BOARD OF

THE STATE OF OREGON

In the Matter of the Compensation) CDA No. _____
) WCB Case No. _____
) Claim No. _____
 of) DOI _____
) WCD File No. _____
) Insurer/Employer _____
)
 _____, Claimant) CLAIM DISPOSITION AGREEMENT

TYPE OF RELEASE

ISSUE/BENEFIT RELEASED

Full

Partial

<input type="checkbox"/>	<input type="checkbox"/>	Temporary Disability
<input type="checkbox"/>	<input type="checkbox"/>	Permanent Disability
<input type="checkbox"/>	<input type="checkbox"/>	Vocational Assistance
<input type="checkbox"/>	<input type="checkbox"/>	Survivor's Benefits
<input type="checkbox"/>	<input type="checkbox"/>	Other: All rights under ORS Chapter 656 other than those related to medical services under ORS 656.245 and eligibility for preferred worker status.

AMOUNT OF DISPOSITION

\$ _____ Total Due Attorney
(Subject to WCB approval)

\$ _____ Total Due Claimant

METHOD OF PAYMENT (check one)

☐ Lump Sum
☐ Structured Settlement
☐ Both of the Above

WAIVER OF "30-DAY" PERIOD

☐ YES
☐ NO

1. Claimant's name and address: _____
2. Employer's name and address: _____
3. Carrier's name and address: _____
4. Claimant's attorney's name and address _____
5. Employer's/Insurer's attorney's name and address: _____
6. The accepted conditions subject to this claim disposition agreement are: _____
7. This claim was first closed on: _____
8. The total amount (percent) of permanent disability benefits awarded on the claim is:

9. The worker ☐ has / ☐ has not ever been able to return to the work force following the industrial injury or occupational disease.
10. The worker's age is _____ and highest educational level is _____.
The extent of vocational training (or, if the worker is deceased, the age, highest education level, and the extent of vocational training of the worker's beneficiary(ies)) is/are

11. The following is a list of occupations that the worker has performed (or, if the worker is deceased, a list of occupations that each of the deceased worker's beneficiaries has performed): _____
12. Pursuant to ORS 656.236, in consideration of the payment of \$ _____ by the insurer/employer, claimant releases the right to the following workers' compensation benefits: _____ and all other rights under ORS Chapter 656 other than those related to medical services under ORS 656.245.
The insurer's/employer's obligation to provide these benefits is also released.
13. Out of the above consideration, claimant's attorney shall receive an attorney fee in the amount of \$ _____ (which the parties confirm is consistent with OAR 438-015-0052).
 - a. If the attorney fee exceeds the Board's rule (OAR 438-015-0052), the extraordinary circumstances that justify this fee are _____.
 - b. If the agreement is to be paid in installments beyond one year, the cost of the annuity or the present value of the agreement is \$ _____.

14. Claimant retains the right to medical service-related benefits for the compensable injury (including medical services allowed under ORS 656.245, ORS 656.273 and ORS 656.278, as well as penalties/attorney fees related to such medical service claims) and eligibility for preferred worker status.
15. Claimant was given a written informational enclosure, separate from the agreement, in the form prescribed by the Board pursuant to OAR 438-009-0022.
16. [The following notice must either be included in the claim disposition agreement or incorporated by reference into the agreement].

"NOTICE TO CLAIMANT: UNLESS YOU ARE REPRESENTED BY AN ATTORNEY AND YOUR CLAIM DISPOSITION AGREEMENT INCLUDES A PROVISION WHICH WAIVES THE 30-DAY "COOLING OFF" PERIOD, YOU WILL RECEIVE A NOTICE FROM THE WORKERS' COMPENSATION BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT TELLING YOU THE DATE THIS AGREEMENT WAS RECEIVED BY THEM FOR APPROVAL. YOU HAVE 30 DAYS FROM THE DATE THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT RECEIVES THE AGREEMENT TO REJECT THE AGREEMENT, BY TELLING THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT IN WRITING. DURING THE 30 DAYS ALL OTHER PROCEEDINGS AND PAYMENT OBLIGATIONS OF THE INSURER/SELF-INSURED EMPLOYER, EXCEPT FOR MEDICAL SERVICES, ARE STAYED ON YOUR CLAIM. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY DISCUSS THIS AGREEMENT WITH THE BOARD IN PERSON WITHOUT FEE OR CHARGE. TO CONTACT THE BOARD, WRITE OR CALL: WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1280, TELEPHONE: (503) 378-3308, TOLL-FREE AT 1-877-311-8061, 8:00 TO 5:00, MONDAY THROUGH FRIDAY.

"YOU MAY ALSO DISCUSS THIS AGREEMENT WITH THE OMBUDS OFFICE FOR OREGON WORKERS, WITHOUT FEE OR CHARGE. TO CONTACT THE OMBUDS OFFICE, WRITE OR CALL: OMBUDS OFFICE FOR OREGON WORKERS, LABOR & INDUSTRIES BUILDING, 350 WINTER STREET NE, SALEM, OR 97310, TELEPHONE: TOLL-FREE AT 1-800-927-1271, 8:00 TO 5:00, MONDAY THROUGH FRIDAY.

"YOU MAY ALSO CALL THE WORKERS' COMPENSATION DIVISION'S INJURED WORKER HOTLINE, TOLL-FREE, AT 1-800-452-0288."

17. Payment of the disposition shall be made no later than the 14th day after notice of the Board's approval has been mailed or distributed to the parties or their representatives under OAR 438-009-0030(5) and (6) by means of an order, posting on WCB's website, electronic distribution through WCB's website portal, or postcard. *See* OAR 438-009-0028; OAR 438-009-0030(7).

18. On Board approval of this agreement, the following requests for hearing/review pending before the Hearings Division, Board, or Court shall be dismissed: WCB Case No(s).
-
19. Claimant acknowledges having reviewed the description of benefits, as described in this agreement and the informational enclosure prescribed in OAR 438-009-0022, and has had an opportunity to ask questions of an attorney or the insurer/employer to further understand the consequences of signing this agreement.
20. [This item applies if the parties are waiving "cooling off" period.] Claimant is represented by an attorney and all parties agree to waive the "30 day" waiting period under ORS 656.236(1)(a)(C) for Board approval of the agreement.

IT IS SO STIPULATED AND AGREED.

Claimant

Date

Claimant's Attorney

Date

Insurer/Employer

Date

Insurer's/Employer's Attorney

Date

THIS AGREEMENT IS IN ACCORDANCE WITH THE TERMS AND CONDITIONS PRESCRIBED BY THE BOARD. SEE ORS 656.236(1). ACCORDINGLY, THIS CLAIM DISPOSITION AGREEMENT IS APPROVED. AN ATTORNEY FEE PAYABLE TO CLAIMANT'S ATTORNEY ACCORDING TO THE TERMS OF THIS AGREEMENT IS ALSO APPROVED.

IT IS SO ORDERED.

DATED THIS _____ DAY OF _____, 20____.

Board Member or Administrative Law Judge Who Mediated the Agreement

Board Member

NOTICE TO ALL PARTIES: THIS ORDER IS FINAL AND IS NOT SUBJECT TO REVIEW. ORS 656.236(2).

CLAIM DISPOSITION AGREEMENT INFORMATIONAL ENCLOSURE

Under ORS 656.236, you may settle a workers' compensation claim except for medical benefits. Such a settlement is usually called a "claim disposition agreement" or "CDA." If you are thinking about settling your claim in this way, there are things you should know.

WHAT DO I GET? WHAT DO I GIVE UP?

In return for an agreed upon amount of money, you may give up or "release" your right to such things as:

- Present and future time loss benefits, which is money paid to compensate you for temporary lost wages related to your industrial injury or occupational disease.
- Present and future permanent disability awards, which is money paid for permanent impairment and/or lost earning capacity related to your industrial injury or occupational disease.
- Monthly payments for permanent total disability, which is money paid for permanent and total incapacity, as a result of your industrial injury or occupational disease, from regularly performing work at a gainful and suitable occupation.
- Vocational assistance benefits, which is a vocational evaluation and possible retraining to assist you in returning to the work force.
- Survivor benefits, which is money paid to a deceased worker's family.
- Penalties and attorney fees, which is money paid as a result of an employer's/insurer's unreasonable claim processing practices or for prevailing against an employer's/insurer's claim denial.

There are only two things you are not allowed to release in a CDA. You cannot release your rights to medical service-related benefits and you cannot waive your eligibility for preferred worker status. ORS 656.236(1)(a); ORS 656.622(4)(b).

If your permanent disability award has not been fully paid, you could lose any unpaid award by signing a CDA, unless the CDA provides for full payment of your award or you ask the insurer for a "lump sum" payment of the award prior to submission of the CDA to the Workers' Compensation Board.

If you are disabled under social security, contact the Social Security Administration to learn how a CDA affects your disability benefits. If the amount of the CDA is offset from your social security payments, you could receive no income from social security until the offset is complete.

If you are paying child support, moneys payable from the CDA are subject to an order to enforce child support obligations.

REQUIREMENTS AND RESTRICTIONS

There are requirements and restrictions that apply if you decide to settle your claim.

The CDA must identify released benefits.

The CDA must tell you exactly what benefits are being released. This helps you compare the benefits you could normally expect to receive for your claim with the dollar amount being offered you.

You must be informed about the meaning of a CDA.

This enclosure has been prepared by the Workers' Compensation Board to explain the basic meaning of claim disposition. However, you may want more specific information.

If you do not have an attorney, you may consult the Ombuds Office for Oregon Workers, whose job it is to help injured workers. You also have the right to personally meet and discuss the proposed CDA with the Workers' Compensation Board. There are no fees or charges for these services.

You have the right to an attorney.

If you wish, you may retain an attorney. The attorney may charge a fee if the CDA is approved by the Workers' Compensation Board or the Administrative Law Judge (ALJ) who mediated the CDA. The fee will be subtracted from the CDA. You also may have to pay the attorney for costs incurred while working on the CDA, even if no agreement is reached.

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MEDICAL BENEFITS/PREFERRED WORKER STATUS

Because you cannot release your right to medical benefits or waive your eligibility for Preferred Worker status, the Workers' Compensation Division can continue to help you and your doctor resolve problems.

If you have any questions about your rights to medical benefits, call the Benefit Consultation Unit at the numbers shown at the end of this notice.

WHAT IF I CHANGE MY MIND?

After you sign the CDA, it will be sent to the Workers' Compensation Board or the ALJ who mediated the CDA. Once the Board or the ALJ who mediated the CDA receives it, the CDA cannot be approved for 30 days unless you are represented by an attorney and the CDA includes a provision waiving the 30-day "cooling off" period. Unless the CDA states otherwise, no benefits will be paid to you during this 30-day "cooling off" period. If the first day after the expiration of the 30-day "cooling off" period is on a weekend or state holiday, the CDA cannot be approved until the next business day.

If you change your mind before the 30 days are up or before the CDA is approved, you must write the Board or the ALJ who mediated the CDA and ask that the CDA be disapproved. If you do not request disapproval, the CDA will be approved unless the Board or the ALJ who mediated the CDA finds it unreasonable as a matter of law or the result of misrepresentation. Once approved, the CDA is final and cannot be appealed.

If the CDA does not comply with all applicable rules, the Board or the ALJ who mediated the CDA may ask that the CDA be amended. This process can sometimes delay approval of the CDA. Once the written CDA amendment is filed, review will continue. If the CDA is approved, you have 10 days to ask for reconsideration. If the CDA is disapproved, the insurer must resume paying your benefits if they are due. If the CDA is disapproved, the parties have 30 days to appeal the decision to the Court of Appeals.

WAIVER OF 30-DAY "COOLING OFF" PERIOD

If the CDA waives the 30-day "cooling off" period and complies with all applicable rules, it will receive approval within approximately 14 days after the CDA is filed.

PAYMENT OF CDA

Payment of the CDA must be made no later than the 14th day after approval unless otherwise stated in the CDA. If payment is not made, you should contact the insurer, or your attorney. If you need further assistance you may contact the Benefit Consultation Unit, or the Ombuds Office for Oregon Workers. The Board or the ALJ who mediated the CDA is unable to assist you with nonpayment of the CDA.

QUESTIONS -- CALL THESE NUMBERS:

Benefit Consultation Unit Injured Worker Hotline:

Toll free...1-800-452-0288

Ombuds Office for Oregon Workers:

Toll free...1-800-927-1271

Workers' Compensation Board

Claim Disposition Agreement Unit:

Toll free...1-877-311-8061

Salem(503)934-0116

**Notice to Spanish Speaking Claimants*

Aviso Para El Reclamante: Este es un documento importante que puede afectar su caso. Usted es urgido fuertemente a conseguir ayuda inmediata con respecto al significado de este documento y sus derechos y responsabilidades en relación con ello. Tal ayuda puede ser obtenida por comunicarse con el Representante de la Compensación para Trabajadores en Español línea gratis 1-800-927-1271.



DISPUTED CLAIM SETTLEMENT (DCS) PROCEDURES

**DISPUTED CLAIM SETTLEMENT (DCS) AND STIPULATION
PROCESSING TIPS
FOR CASES ON BOARD REVIEW**

Periodically, the Board receives proposed settlements that do not comply with applicable rules or raise questions requiring further clarification. Because these situations can result in amended or supplemented agreements, which inevitably lead to delays in the review/approval process, the following tips have been compiled to assist practitioners in submitting proposed settlements.

1. Immediately notify the Board (by calling (503)934-0103, or using the Board's online settlement notification process) if the parties have agreed to resolve a dispute that is pending Board review. The notifying party must confirm the settlement in writing.
2. A proposed settlement should be accompanied by a cover letter that clearly indicates the parties' intentions. Also, if the settlement is resolving disputes at multiple levels, the letter should make that point.
3. All WCB case numbers should be included in the caption of the settlement. The proposed agreement should be submitted to the litigation level where the dispute is currently pending (Hearings Division or Board). If there are disputes at multiple levels, agreements should be directed to the Board's Salem office.
4. Settlements should recite the procedural posture of the case, including a description of any relevant litigation decisions. The Board has authority to approve a DCS that resolves issues before the court. ORS 656.298(9)(a); *Rebecca E. Seelye*, 60 Van Natta 332 (2008).
5. A DCS must contain the information required by OAR 438-009-0010(1).
6. Settlements should identify all disputes being resolved. For instance, if a DCS includes a current condition denial, but is also resolving a dispute regarding a prior denial litigated before an ALJ and on appeal before the Board, the DCS should refer to both denials.
7. A DCS concerns the resolution of bona fide disputes over compensability. ORS 656.289(4); OAR 438-009-0010(2). Occasionally, a DCS is combined with a stipulation that resolves other issues, such as temporary or permanent disability. Such agreements are permissible, provided that the parties' intentions are apparent and the applicable administrative rules are satisfied.
8. When reimbursement of medical bills in a DCS exceeds the statutory reimbursement formula in ORS 656.313(4), the agreement must contain claimant's express consent to such a reimbursement. *See Charles E. Munger*, 46 Van Natta 462 (1994).

9. If the attorney fee provided in a DCS exceeds the “standard” amount, the agreement must contain an acknowledgment and description of the “extraordinary circumstances” warranting such an attorney fee. Agreements describing the following “extraordinary circumstances” have previously received Board approval: complex issues (procedurally and/or substantively); protracted litigation; a voluminous record; extraordinary hours performed by claimant’s counsel; and a claimant’s counsel’s prior success at the hearing and/or Board review level, which had previously resulted in an attorney fee award.
10. A DCS of a claim involving a previously accepted condition must contain a provision that addresses the claimant’s entitlement to future benefits arising under ORS 656.245, ORS 656.273, ORS 656.278 and ORS 656.340. OAR 438-009-0010(4)(b).
11. Some DCSs contain a statement that claimant agrees to waive all rights to pursue a civil action against the employer. The Board’s approval of a DCS does not extend to such a provision. *See Claude A. Benson*, 55 Van Natta 3935 (2003).
12. Some DCSs contain a provision that provides for reimbursement of an insurance carrier’s lien. Such a provision is considered an assignment of claimant’s share of the DCS proceeds and is permissible. *See Michele Groth*, 61 Van Natta 2788 (2009).
13. If a carrier assigns an ongoing obligation to make settlement payments to another entity, the carrier must retain potential responsibility for payments under the agreement should that entity not fulfill its obligations. *See Jeff Shaddon*, 58 Van Natta 1354 (2006).
14. In cases involving stipulations concerning temporary and permanent disability or penalties and attorney fees, parties should ensure that the applicable attorney fee, temporary and permanent disability rules and statutes are satisfied. *See e.g.*, ORS 656.262(11)(a); OAR 438-015-0050.
15. When considering settlements involving structured installment payments, include a provision quantifying the present value or value of the annuity for attorney fee purposes. OAR 438-015-0052.
16. Parties may resolve issues such as permanent disability, temporary disability, penalties and attorney fees that are pending before the Hearings Division or on Board review by means of a CDA. In such cases, the CDA should include a provision that, on approval of the CDA, the request for hearing or Board review will be dismissed.
17. In cases involving accepted conditions, parties may choose to resolve all outstanding issues by means of a “global settlement,” in which the parties submit both a DCS and a CDA. Such agreements are permissible, provided that all settlement documents comply with applicable administrative rules, statutes and legal precedent.

18. When one or more of the multiple agreements require Board Member approval, parties/practitioners are encouraged to submit all proposed agreements to the Board's Salem office (to ensure uniform, centralized, and expedited processing).

DCS CHECKLIST

- _____ Make sure any interlineations in an agreement been initialed by the parties and their attorneys and claimant.
- _____ The attorney fee in a DCS should conform to OAR 438-015-0050. (Absent extraordinary circumstances, 25 percent of the first \$50,000, 10 percent of the remaining proceeds.)
- _____ The settlement must contain the date on which the terms of settlement were reached. (*See* OAR 438-009-0010(2)(h).)
- _____ Does the document contain a list of medical service providers' bills in the carrier's possession on the settlement date, including the specific amount each provider will receive and the parties' acknowledgment that the reimbursement is in accordance with ORS 656.313(4)? (OAR 438-009-0010(g).)
- _____ If reimbursement to medical providers is in excess of 40 percent of the present value of the disputed claim settlement and/or if the providers are being reimbursed at more than 50 percent of the adjusted amounts, has claimant knowingly consented to the higher-than-required payments? (*See Charles E. Munger*, 46 Van Natta 462 (1994).)
- _____ If the denial was of aggravation, or of current condition, or of a condition on the grounds that it is not related to an accepted injury, does the settlement document recite that claimant retains those rights that may later arise under ORS 656.245, ORS 656.273, ORS 656.278, and ORS 656.340? (*See* OAR 438-009-0010(4)(b).)
- _____ If claimant is unrepresented, the DCS should recite that claimant has been orally advised of his right to an attorney at no cost for attorney fees, informed of the existence of the Ombuds office, and advised of the "medical bills" reimbursement schedule and his/her potential responsibility for any remaining outstanding balance. (*See* OAR 438-009-0010(5).)
- _____ Does the document recite that claimant has been orally advised of the information listed in detail at OAR 438-009-0010(6)?
- _____ Does the document contain the language concerning claim disposition agreements, which language is required by OAR 438-009-0010(8)?