



MEMORANDUM

October 17, 2019

To: Workers' Compensation Board

From: Steve Lanning

Subject: Rule Concept for Consideration During Biennial Review of Attorney Fees

I am introducing the following rule concept associated with the Board's biennial review of attorney fees. See attached Appendix A for the proposed rule concept in the complete section of the rules.

438-015-0010

General Principles

(6) Consistent with the legislative mandate in ORS 656.388(5) to consider the contingent nature of the practice of workers' compensation law in establishing the Board's schedule of attorney fees awarded under chapter 656, the "contingent nature of the practice" factor prescribed in section (4)(g) shall include consideration of claimant attorney's annual average loss/win ratio multiplied by the average hourly rates charged by attorneys representing insurers and self-insured employers multiplied by the number of hours claimant's attorney has spent on the case. This contingent formula is to serve as a general guideline with other factors in determining a reasonable assessed attorney fee.

Appendix A

438-015-0010

General Principles

(1) Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board.

(2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382, 656.383 and 656.386.

(3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.

(4) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:

(a) The time devoted to the case for legal services;

(b) The complexity of the issue(s) involved;

(c) The value of the interest involved;

(d) The skill of the attorneys;

(e) The nature of the proceedings;

(f) The benefit secured for the represented party;

(g) The risk in a particular case that an attorney's efforts may go uncompensated and the contingent nature of the practice; and

(h) The assertion of frivolous issues or defenses.

(5) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

(6) Consistent with the legislative mandate in ORS 656.388(5) to consider the contingent nature of the practice of workers' compensation law in establishing the Board's schedule of attorney fees awarded under chapter 656, the "contingent nature of the practice" factor prescribed in section (4)(g) shall include consideration of claimant attorney's annual average loss/win ratio multiplied by the average

hourly rates charged by attorneys representing insurers and self-insured employers multiplied by the number of hours claimant's attorney has spent on the case. This contingent formula is to serve as a guideline with other factors in determining a reasonable assessed attorney fee.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.307, 656.382, 656.383, 656.386 & 656.388

History:

WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02

WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90

Reverted to WCB 2-1989, f. 3-3-89, ef. 4-1-89

WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90