



MEMORANDUM

December 3, 2018

To: Workers' Compensation Board

From: Steve Lanning

Subject: Option B Rule Concepts for Consideration During Biennial Review of Attorney Fees

I am introducing the following Option B rule concepts associated with the Board's biennial review of attorney fees. See attached Option B for the proposed rule concepts in each 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 a "multiplier" for a claimant's attorney fee that is approximately twice the average hourly fee for the attorney representing the insurer or self-insured employer in the proceeding as reported to the Administrative Law Judge or the Board under OAR 438-015-0115.

438-015-0033

Attorney Fee Award Under ORS 656.262(14)(a)

- (1) In accordance with ORS 656.262(14)(a), a reasonable hourly rate for an attorney's actual time spent during a personal or telephonic interview or deposition conducted under that statute is \$[275] **400**.

438-015-0115

Attorney Fee for Attorney Representing Insurer or Self-Insured Employer

(1)An attorney representing an insurer or self-insured employer is authorized to submit to the attorney's client a bill for legal services that is consistent with their retainer agreement and is for a reasonable amount considering the factors set forth in OAR 438-015-0010(4) insofar as those factors are applicable.

(2)An attorney representing an insurer or self-insured employer in a proceeding before an Administrative Law Judge and the Board shall file written notification of the hourly rate of the fee the attorney either has, or will, charge its client for legal services performed in the proceeding in the following manner:

(a)For services performed at the hearing level, such notification shall be filed on or before the closure of the record before the Administrative Law Judge; or

(b)For services performed on Board review or on remand from the court, such notification shall be filed on or before the last appellate brief filed by the attorney for the insurer or self-insured employer.

Option B

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 a "multiplier" for a claimant's attorney fee that is approximately twice the average hourly fee for the attorney representing the insurer or self-insured employer in the proceeding as reported to the Administrative Law Judge or the Board under OAR 438-015-0115.

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

438-015-0033

Attorney Fee Award Under ORS 656.262(14)(a)

- (1) In accordance with ORS 656.262(14)(a), a reasonable hourly rate for an attorney's actual time spent during a personal or telephonic interview or deposition conducted under that statute is \$[275] **400**.
- (2) If the claimant is represented by an attorney, the insurer or self-insured employer shall pay a reasonable attorney fee award, which is based upon the hourly rate prescribed in section (1) multiplied by the actual time spent by the attorney during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a).
- (3) To obtain the attorney fee described in section (2), the claimant's attorney shall submit a bill to the insurer or self-insured employer within 30 days of completion of the personal or telephonic interview or deposition. The bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:
 - (a) An itemization of the actual time spent by the claimant's attorney during the personal or telephonic interview or deposition;
 - (b) The claimant's attorney's signature confirming that the claimed time was actually spent during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a); and
 - (c) A copy of the executed retainer agreement, unless previously provided.
- (4) If the parties disagree regarding the attorney's bill under section (3), a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.
- (5) Unless it files a request for hearing, the insurer or self-insured employer must pay the attorney fee described in section (3) as an award under this rule within 30 days of its receipt of the bill.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.262(14)(a)

History:

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

438-015-0115

Attorney Fee for Attorney Representing Insurer or Self-Insured Employer

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- (2)An attorney representing an insurer or self-insured employer in a proceeding before an Administrative Law Judge and the Board shall file written notification of the hourly rate of the fee the attorney either has, or will, charge its client for legal services performed in the proceeding in the following manner:**
 - (a)For services performed at the hearing level, such notification shall be filed on or before the closure of the record before the Administrative Law Judge; or**
 - (b)For services performed on Board review or on remand from the court, such notification shall be filed on or before the last appellate brief filed by the attorney for the insurer or self-insured employer.**

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

WCB 5-1987, f. 12-18-87, ef. 1-1-88