

LAW OFFICES OF
JODIE ANNE PHILLIPS POLICH, P.C.

March 5, 2023

Workers' Compensation Board
2601 25th Street SE, Suite 150
Salem, OR 97302-1280
Attn: Katy Gunville - katy.e.gunville@wcb.oregon.gov

Re: 2023 Biennial Review of Attorney Fee Schedule

Dear Board:

Due to a last minute mediation, I am unable to attend the Board meeting scheduled for March 7, 2023 which I had planned to attend. Please accept these written comments in light of my inability to attend this Board meeting.

I have had an opportunity to review and analyze the information contained in the January 19, 2023 Annual Attorney Fee Report. As we all struggle to interpret what the various charts tell us about attorney fees being awarded to attorneys representing injured workers in response to the 2015 legislation passed by the Oregon Legislature, including what data we actually need, I anticipate that stakeholders will interpret this data differently from one another. This biannual review process is intended to allow all stakeholders to express their interpretations to ensure that all perspectives are considered and that all stakeholders have a voice in the process. That said, I remind the Board that the purpose of the 2015 legislative changes was to increase access to attorneys by injured Oregon workers.

The first question I asked myself was at what point should we begin assessing the data in this annual report. I determined that 2015, the year the legislation was enacted, was the appropriate starting point as the data prior to that date was paltry. Not being a math genius of any kind, I took what I believe is a broad overview of the data. I evaluated the increase in the total attorney fees paid to attorneys in 2015 to the total attorney fees awarded in 2021 against the increases in the Oregon average weekly wage published in WCB Bulletin 111. I calculated that the increase in the Oregon average weekly wage during this time period was 36.479%. The increase in the total attorney fees paid to attorneys representing injured workers, like myself, during this same time period was 19.83%. This means that the increase in attorney fees awarded by the Board was less than the increase in the wages of the workers we represent – almost 50% less.

There is no question that the Board has made a sincere and meaningful increase to the attorney fees being awarded since 2015 but we still have ground to gain and to make up for years of gross underpayment of our attorney fees. It remains difficult to attract new attorneys to our practice of law. In part that it is due to the attorney fees, and in part due to the ever-increasing complexity of the issues and claims being litigated in our forum. We have extremely skilled and specialized practitioners, and ALJs, working to fairly resolve entitlement to benefits under Chapter 656. This type of work is attractive to a small number of practitioners.

As part of the legislative effort to increase attorney fees the attorney fees allowed for CDAs and DCSs were increased to 25% of the first \$50,000 and 10% of any amounts over that. Applying the increase in the Oregon average weekly wage since the change in 2015 would result in an increase to \$68,000.00. An increase in attorney fees in this arena is a sensitive one to stakeholders as this is an increase in attorney fees taking out of compensation due to Oregon injured workers. It is the Board's responsibility to consider and evaluate the appropriate balance of how claimant's attorneys are compensated to ensure access to attorneys for injured Oregonians. This is a challenging task that may require hard decisions by the Board that will leave some stakeholders disappointed. However, the strength of this agency is in its ability to gather evidence and make decisions based on the evidence before it. That evidence is brought by all stakeholders, and I am confident the Board is up to this challenge.

Thank you for considering these comments.

Sincerely,



Jodie Phillips Polich
Attorney Representing Injured Workers

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