

5-Year Rule Review Report

Rule number: OAR 438-015-0048 (Attorney Fee for Reclassification)

Date adopted: December 16, 2015

Advisory Committee used? Yes No

If yes, identify members. After completing its review, the agency must provide advisory committee members a copy of its report. ORS 183.405(3).

Advisory Committee Members: Nelson Hall, William Replogle, M. Kathryn Olney, Marybeth Wosko. Presiding Administrative Law Judge Joy Dougherty served as facilitator.

1. Did the rule achieve its intended effect? Yes No

a. What was the intended effect?

OAR 438-015-0048 implements ORS 656.386(3), a statutory amendment which provides for an assessed attorney fee award when the claimant prevails in a dispute regarding claim reclassification. The fee may be awarded by the Administrative Law Judge, Board or court.

b. How did the rule succeed or fail in achieving this effect?

The rule implements the statute allowing for an attorney fee when a claimant prevails in a claim reclassification dispute. In the five years since this rule was adopted, the Board has conducted a comprehensive review of all attorney fees, and there has been no expressed concern with this rule among the stakeholder community.

2. Was the fiscal impact statement underestimated or overestimated or just about right or unknown? (Check one).

a. What was the estimated fiscal impact? The Board Members noted there would be an impact to workers' compensation carriers. However, the impact is a result of the statutory amendments to ORS 656.386, not as a result of the rule.

b. What was the actual fiscal impact? Precise fiscal impact is not determinable at this time, but there is no reason to believe the rule itself had any additional fiscal impact beyond the statutory requirement.

c. If the answer to question 2 is unknown, briefly explain why.

3. Have subsequent changes in the law required the rule be repealed or amended?

____ Yes X No If yes, explain.

4. Is the rule still needed? X Yes ____ No Explain.

OAR 438-011-0048 is still necessary to implement ORS 656.386(3).

Dated this 12 day of March, 2021.

Workers' Compensation Board

by: Constance L. Wold
Constance L. Wold, Board Chair

Sally Anne Curey
Sally Anne Curey, Board Member

Roger Ousey
Roger Ousey, Board Member

Barbara Woodford
Barbara Woodford, Board Member