



News & Case Notes

<u>Subject</u>	<u>Claimant</u>	<u>40 NCN Issue</u>
<u>AGGRAVATION</u>		
Forms Signed by NP and PA Were Insufficient to Perfect the Claim - Record Did Not Establish that MCO Contract Allowed Providers to Be Attending Physician - Carrier Did Not Have Obligation to Process Claim or Pay TTD	Lori L. Sabin	5
<u>ATTORNEY FEE</u>		
"386(1)" - Rule Factors Now Include Consideration of Necessity of Allowing Broadest Access to Attorneys, Defense Fees, Contingent Nature of Practice, and Contingent Hourly Rate	Karista D. Peabody	4
Fee Determined by Considering Hours and Contingent Rate in Light of Other Factors Because Claimant Asserted Hours and Contingent Rate and Submitted Information Regarding Those Factors - Overall "Time Devoted" Was Considered Excessive	Karista D. Peabody	4
"386(1)" Fee Not Awarded For Services on Reconsideration, Judicial Review, or Remand - Only Issue Was Claimant's Attorney Fee Argument - Claimant Had "Finally Prevailed" on Compensability at Initial Board Review	Karista D. Peabody	4
Fee for Services in Obtaining a Rescission of a Denial - Rule-Based Factors Analyzed - Claimant Asserted Hours Spent and a Contingent Hourly Rate	Christopher Taylor	5
Responsibility Dispute - Fee Awarded Under ORS 656.308(2)(d) - Although No "307" Order Issued, Parties Agreed at Hearing that Responsibility Was the Only Issue	Bruce D. Wilson	5
Fee Request Included Hours Spent and Contingent Hourly Rate - Starting Point for Application of Rules - Based Factors	Elvia Garcia-Solis	6
Counsel's Fee Request Included Hours Spent and Contingent Hourly Rate - OAR 438-015-0010(4) - Based Factors Applied	Randy G. Simi	6

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“Bifurcation” of Board Award Under “386(1)” - Separate Case Number Assigned - Determination of Specific Amount of Award Deferred Until Merits of Compensability Decision Becomes Final - “015-0125”	Dick A. Veldsma	8
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Oral Report to Supervisor of Work Incident W/ 90 Days - Carrier Did Not Overcome Presumption of Timely/Sufficient Notice - “265(4)”	Robert E. Suacci	8
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Carrier’s Alleged Violation of “Simultaneous Notification” Statute/Rule (“331(1)(b)”/“060-0015(2)”) Did Not Invalidate Denial - Alleged Violation Was “WCD” Matter for Possible Civil Penalty	Alma Gomez	8
<u>CLASSIFICATION</u>		
Carrier Reclassified Claim to Disabling, While Claimant's Hearing Request from WCD's "Nondisabling Classification" Order Was Pending - Reclassification "Finally Determined" by Board Order - Entitlement to Attorney Fee Award	Carol J. Braun	4
<u>COMBINED CONDITION</u>		
“Ceases” Denial - “Change of Condition/ Circumstances” Not Established - “262(6)(c)”	Paul A. Harvey	1
Symptomatic Exacerbation of Preexisting Condition - Not Two “Separate Conditions” - Carrier Did Not Establish Existence of “Combined Condition” - “005(7)(a)(B)”/“266(2)(a)”	Daniel Earhart	8
Carrier Does Not Meet Burden of Proof – Opinions Lacked Definition of Work Injury and How It Combined with Pre-Existing Condition	Ariel Fillinger	10

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CONSEQUENTIAL CONDITION

Compensable Knee Surgery Major Cause of Claimed Knee Infection - "005(7)(a)(A)"	Ted W. Stallsworth	1
Swelling From Accepted Bee Sting Worsened Ulnar Neuropathy – <i>Vasquez</i> Cited	Laurie L. Whitley	10
Ganglion Cyst a Result of Arthritis from Accepted Condition and Surgery – No Requirement to Weight Subsequent Work Activities Where No Opinion Suggested Such Activities Contributed – <i>Wehren</i> Cited	Jose A. Oliva-Aguilera	10

COURSE & SCOPE

"Course Of" Employment - "Parking Lot" Exception to "Going and Coming" Rule Applied - Employer Had Sufficient Control Over Shared Parking; "Arising Out Of" Employment - Occurred During Normal Ingress/Egress From Workplace	Brian J. Schnell	6
"Greater Hazard" Exception to the Going and Coming Rule – Customary Ingress/Egress – Tripped Due to Insufficient Lighting – Walkway Not Used By the General Public	Stephanie Tingle	11
"Special Errand Exception" to the Going and Coming Rule – Worker Called to Work on Off Day – MVA Accident While Returning to the Employer – Modified Banking Errand to Assist Transaction	Jeff E. White	11

DE FACTO DENIAL

Where Claim Initially Accepted as an "Injury" and Later Designated an "Occupational Disease," the Initial Acceptance Did Not "De Facto Deny" an "Occupational Disease" Claim, and the Later Designation Did Not "Back-Up Deny" the Accepted Injury Claim	Carol J. Braun	4
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DISMISSAL ORDER

Failure to Appear at Hearing - No ALJ "Show Cause" Order - Claimant's "Post-ALJ Order" Explanation on Board Review Constituted "Postponement" Motion - Remand for ALJ Consideration of Explanation/Motion - "006-0071(2)"	Brian P. Howell	8
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EVIDENCE

No Abuse of Discretion in Admitting IME Report	Thomas S. Cardoza	7
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EXTENT

Impairment Findings - "AP" Opinion Sufficient to Establish "Significant Limitation" - "Chronic Condition" Value Awarded	Brit L. Broeke	4
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Permanent Impairment - "ROM" Loss Entirely Attributable to Denied Conditions - No "Combined Condition" Identification - No PPD Award Granted	Shanda Pedroza	8
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Additional Impairment Awarded – Surgical Report Noted Partial Acromion Resection – Materially Related to Compensable Injury – <i>Caren</i> and <i>Robinette</i> Applied – "Chronic Condition" Not Awarded – Unexplained Inconsistency	Carl C. Stiefbold	11
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FILING

Untimely Filing - Employer Rebutted Presumption of Timely Filing - Persuasive Testimony that Notice of Claim Was Not Provided Within 90 Days of Work Injury	Matthew Graham	5
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"Good Cause" for Untimely Filing – Change in Office Procedures Due to COVID-19 – Exceptional Circumstances Lead to Mistake	Jason Eddie	11
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JURISDICTION

Hearing Request Limited to Solely Penalties/ Attorney Fees - Did Not Seek "Enforcement Action" - WCB Lacked Authority	Craig M. Selbee	1
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Request for Hearing on Wage Rate Filed More Than 2 Years After Initial Calculation - Carrier Had Ongoing Obligation to Determine Accuracy of Payments - "Same Wage" Calculation by Employer Did Not Include Overtime Hours	Justin A. Swint	6
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Appeal Filed More Than 180 Days After the Denial – No Showing That Claimant Lacked Mental Competency to Timely File Appeal – Hearing Request Dismissed	Jessica S. McQueen	9
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Hearing Request for Penalties and Attorney Fees Dismissed – Aggravation Rights Have Expired – Claimant Can Seek Own Motion Relief	Timothy Joy	9
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LUMP SUM

Payment Not Required When Closure Not Final By Operation of Law, Even Though Payment Requested and Appeal Waived	Vern E. Giltner	4
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MEDICAL OPINION

“Attending Surgeon” Deference - Based on “Surgical Observations” (As Subsequently Clarified)	Scott J. Hanson	1
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Medically Complex Case Requires Persuasive Opinion - <i>Fiester</i> Distinguished - No Opinion Supports Compensability	Joseph A. Seganos	5
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MEDICAL SERVICES

Surgery Directed at Accepted “Combined Condition” - “245(1)(a)”	Paul A. Harvey	1
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On Remand From the Supreme Court - Psychological Evaluation Compensable For Condition Caused in Material Part by the “Work Injury”	Elvia Garcia-Solis	6
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“Consequential Condition” - Compensable Injury & Prior C5-6 Disc Fusion Surgery - Major Cause of Worsened C6-7 Disc Degeneration (Transitional Disc Syndrome) - “245(1)(a),” “005(7)(a)(A)”	Tommy S. Arms	12
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MEDICAL OPINION

Reasonable Change of Opinion – Based on Further Workup Including Examination Findings and Injections	Adrian Silva-Zavala	10
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MENTAL DISORDER

Consequential Somatic Symptom Disorder – Attributed to Loss of Vocational Ability, Mobility, and Sleep from Compensable Injury	Rosa A. Perez-Reynoso	10
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NEW/OMITTED CONDITION

Greater Weight to Treating Chiropractor and Family Physician Opinions - Opportunity to Evaluate Claimant Multiple Times - Neurologist Not More Persuasive Based Simply on Qualifications - Post-Incident Medical Records Documented Increased Complaints	Heather K. Tobey	5
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NEW/OMITTED CONDITION (cont.)

Existence/Causation Established - Broader Diagnosis Described Condition Despite More Specific Diagnoses - Employment Conditions Were Major Cause of Claimed Conditions	Carol J. Braun	4
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OCCUPATIONAL DISEASE

"Preexisting Condition" Was Not "Mere Susceptibility"/"Passive Contributor"; Was Active Cause To Be Weighed	David Dunn	2
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Series of Work-Related Injuries Establish Compensability of O.D. - 656.802(1) - "Employment Conditions" Include Discrete Injuries	Randy G. Simi	6
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Opinion That Claimant Had a New "Injury" Ultimately Not Inconsistent with Occupational Disease Claim – Physician Consistently Attributed Major Cause to Employment Conditions and Work Activity	Alexis Whittemore	9
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All Employment Exposures Considered (Even Employment With "DCS'd" Employer) - "802(2)(a)"	Lloyd R. Fleming	12
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Chronic Mold Toxicity - Reasonable Inference of Casual Connection - "266" - Supported by Industrial Health Report and Co-Worker Testimony	Jean E. Runkle	12
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"Firefighter Presumption" - "Rebuttable Presumption" that Cancer Related to Firefighting - Not Rebutted by "Clear & Convincing" Evidence - "802(5)(b)"	Robert M. Shannon	12
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"Firefighter Presumption" - "Rebuttable Presumption" that Cancer Related to Firefighting - Not Rebutted by "Clear & Convincing" Evidence - "802(5)(b)"	Maurice Stadel	12
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OWN MOTION

"Notice of Closure" - Invalid - Copy Not Mailed to Claimant's Attorney - "012-0055" Permanent Impairment - Arbiter's Findings Ambiguous - "AP" Findings More Accurate - "035-0007(5)"	Monika M. Gage	1
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"Worsened Condition" Claim - "Reopening" Denied - "Epidural Injection" Did Not Satisfy "Surgery," "Hospitalization," "Other Curative Treatment" Requirements - "278(1)(a)"	Thomas J. McMackin	1
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<u>OWN MOTION (cont.)</u>		
Hearing Referral (“PTD” Issue) Not Warranted - Claimant’s Veracity Concerning “Limitations/ Willingness to Work” Not Challenged - “Documentary” Record Sufficiently Developed; “PTD” Not Established - “Non-Compensable” Conditions Cannot Be Considered	James P. Suter	2
Premature Closure - Condition “Med Stat” - Claimant Declined Surgery - “005(24)”; “Medical Arbiter” Request - Not For “Worsened Condition” - “278(1)(a)”	Nancy L. Popma	2
“Sufficient Information” to Close Claim - “Qualifying Statement” - “AP” Concurrence With Examining Physician’s “No Permanent Impairment” Opinion - “AP” Unequivocal Work Release - “268(1)(a),” “30-0020(2)(a)”	Stephanie Sherman	2
Penalties/Attorney Fees - Unreasonable Delay in Claim Closure - Discovery Violations - “262(11)(a),” “012-0055,” “012-0017(1),” “012-0110(1)”	Dean R. Allen	3
Residual Functional Capacity (RFC) is “Sedentary” - Work Capacity Evaluation (WCE) Established “Sedentary/Light” with “Restrictions” - PPD Redetermined Pursuant to ORS 656.278(2)(d) Limitation	Elena L. Pena	5
Review of Closure – Additional Impairment for Sensory Loss – No Reevaluation of ROM Loss – Arbiter Attributed ROM Loss to Previously Accepted Arthritis	Randol Pachtl	10
On Reconsideration, No Permanent Disability for Facet Cyst – Arbiter Report Ambiguous – AP Report Used for Rating – <i>Caren</i> Inapplicable – Declined to Remand for Clarifying Report	Monika M. Gage	10
Worsened Condition Closure was Premature – Attending Physician’s Post-Closure Clarification Indicated Reasonable Expectation of Improvement – Carrier Had Legitimate Doubt – Penalties and Fees Not Awarded	Collin D. Stringer	11
Temporary Disability Benefits Awarded – Open-Ended Authorization – Surgery Recommended – Delay in Scheduling Does Not Prevent TTD Award – Penalties and Attorney Fees For Unreasonable Delay	James F. Beyl	11

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PENALTIES

"268(5)(f)" - Lack of "Chronic Condition" Award in NOC Unreasonable - Carrier Did Not Have "Legitimate Doubt" at Claim Closure - Carrier's Question Form Could Not Reasonably Be Interpreted As Consistent With the WCD's Rule or "Industry Notice" for "Significant Limitation"	Keith J. Wiggins	4
"268(5)(f)" - Lack of "Chronic Condition" Award in NOC Unreasonable - Carrier Did Not Have "Legitimate Doubt" at Claim Closure - Carrier's Question Form Could Not Reasonably Be Interpreted As Consistent With the WCD's Rule or "Industry Notice" for "Significant Limitation"	Brit L. Broeke	4
No "Legitimate Doubt" When Carrier Denied Claim Without Conducting a Reasonable Investigation - OAR 436-060-0140(1) - Although a Delay in Seeking Treatment Raised Doubts, Carrier Did Not Make "Good Faith Effort" to Ascertain the Facts - Denial Issued Five Days After Claim Was Received	Hobby L. Brooks	6
Penalty and Attorney Fee Awarded for Failure to Pay ORS 656.262(14)(A) Attorney Interview Fee - Carrier Mailed Check But Claimant Attorney Did Not Receive It - Claimant Not Required to Complete "Replacement Check" Form - Carrier Did Not Respond to Multiple Inquiries Regarding Payment	Robert P. Kelly	6

PREMATURE CLOSURE

"Sufficient Information" to Close Claim - "Qualifying Statement" - "AP" Concurrence With Examining Physician's "No Permanent Impairment" Opinion - "AP" Unequivocal Work Release - "268(1)(a)," "30-0020(2)(a)"	Stephanie Sherman	2
Concurrence with MCO Letter Was Not Supported by the Medical Record - Not a Qualifying Statement of No Permanent Disability	David L. Kelly	7
"AP" Concurrences Did Not Constitute "Qualifying Statements" of "No Permanent Disability" - Conflicting Opinions Concerning Claimant's Restrictions/Limitations Required Clarification Before Claim Closure - Insufficient Info to Close Claim - "030-0020(1)(a), (b)"	Kevin S. Affeld	8

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PREMATURE CLOSURE (cont.)

Discrepancies in Work-Release Opinion from Attending Physician – Record Lacked Claimant’s Work History and Education	Apolonio Arias-Jasso	11
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RECONSIDERATION PROCEEDING

“Recon” Proceeding: “Recon” Request Untimely Filed With “ARU” - “NOC” Mailed to Claimant/Attorney More than 60 Days Before Request Filed - “60-Day” Period Began With Mailing of “NOC” to Claimant/Attorney (Not Their Receipt)	Monique Devin	3
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ARU Authorized to Issue "Abate, Withdraw & Republish" Reconsideration Order, Even After Hearing Request from Order on Reconsideration Filed, Because the Second Order Issued Within 30 Days of First Order	Vincente S. Martinez	4
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REMANDING

Hearing Record Insufficiently Developed - Record Did Not Establish that <i>Pro Se</i> Claimant was Aware of Rights Concerning the Hearing Process	Gabriela Pacheco-Martinez	4
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Hearing Was Not Recorded – Parties Could Not Reach Stipulation Regarding Events at Hearing – Remanded to Reopen Record	Justin Martinez	9
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RESPONSIBILITY

“308(1)” Applied - Later Work Injury Involved “Same Condition” as Earlier Accepted Claim - “OCI” For Later Carrier Not Major Cause of Disability/Need for Treatment for “Combined Condition” - No “New Compensable Injury”	John W. Miller	3
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SCOPE OF ACCEPTANCE

Currently Claimed Condition Same as Previously Accepted Condition - Carrier’s Denial Set Aside	John W. Miller	3
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SETTLEMENT

Board Declined to Set Aside Approved Disputed Claim Settlement (DCS) or Remand for Further Development of the Record	Daniel C. Carroll	7
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STANDARDS

Work Disability - No "Release to Regular Work" - "AP's" Initial Release Did Not Include All of Claimant's "Customary" Tasks - "214(1)(d)," "726(4)(f)(E)," "035-005(14)"	Joseph L. Hunter	2
Work Disability - Record Did Not Establish "Release to Regular Work"- "AP's" "Regular Work Release" Concurrence Based on Inaccurate Information/ Inconsistent with "AP's" Other Reports - "214(2)," "726(4)(f)(E)," "214(1)(d)," "035-0005(15)"	Jeff L. Davis	3

SUBJECT WORKER

Delivery Driver Not Excluded From Coverage - "Right to Control" and "Nature of the Work" Tests Analyzed	Kevin A. McCallum	12
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SURVIVOR'S BENEFITS

Decedent and Claimant Had Not Cohabitated in Oregon for More Than One Year - Claimant was Legally Married to Another at Time of Work Accident - Not "Unmarried" for Purposes of the Statute	Antonio A. Mendoza	7
Deceased Worker's Spouse Entitled to Benefits - Evidence Insufficient to Support that Decedent and Claimant Were Living in "Abandonment" - "005(2)(B)(A)" - Insurer Had Legitimate Doubt - No Penalty/Fee for Unreasonable Resistance to Payment	Maribeth T. Corrigan	12

TEMPORARY DISABILITY

Continuous Benefits Awarded from Date of Injury to Medically Stationary Date - <i>Lederer And Dederer</i> Cited - Open-Ended Authorization was Not Affirmatively Halted by New Attending Physicians	Frank A. Monta	5
Nurse Practitioner Approved Physical Therapy and Off Work Status After Declaring Claimant Medically Stationary – Carrier Did Not Strictly Comply With Rules on Terminating Benefits – Penalty and Attorney Fee Awarded	Robert M. Haskin	10

WORK DISABILITY

Work Restrictions Did Not Preclude Claimant From Returning to Regular Work – Chronic Condition Limitation Did Not Establish Inability to Walk/Stand for <i>Up To</i> Two-Thirds of the Time	Erin E. Farr	9
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Subject Claimant 40 NCN Issue

WORKER REQUESTED MEDICAL EXAMINATION

Denial Issued Prior to IME Was Not “Based On” an IME Report - Worker Not Entitled to WRME	Thomas S. Cardoza	7
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