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BOARD NEWS

Bulletin 1 (Revised) - Annual Adjustment to Attorney Fee Awards Effective July 1, 2025

The maximum attorney fee awarded under ORS 656.262(11)(a), ORS 656.262(14)(a), and ORS 656.308(2)(d), which are tied to the increase in the state average weekly wage (SAWW), will increase by 6.427 percent on July 1, 2025. On June 4, 2025, the Board published Bulletin No. 1 (Revised), which set forth the new maximum attorney fees. The Bulletin can be found on the Board's website at <https://www.oregon.gov/wcb/Documents/wcbbulletin/bulletin1-2025.pdf>.

An attorney fee awarded under ORS 656.262(11)(a) shall not exceed \$6,357 absent a showing of extraordinary circumstances. OAR 438-015-0110(3).

An attorney fee awarded under ORS 656.262(14)(a) shall be \$485 per hour. OAR 438-015-0033. This rule concerns the reasonable hourly rate for an attorney's time spent during a personal or telephonic interview or deposition conducted under ORS 656.262(14)(a).

An attorney fee awarded under ORS 656.308(2)(d) shall not exceed \$4,585, absent a showing of extraordinary circumstances. OAR 438-015-0038; OAR 438-015-0055(5).

These adjusted maximum fees apply to attorney fees awarded under ORS 656.262(11)(a) and ORS 656.308(2)(d) by orders issued on July 1, 2025 through June 30, 2026, and to a claimant's attorney's time spent during a personal or telephonic interview or deposition under ORS 656.262(14)(a) between July 1, 2025 and June 30, 2026.

Quarterly Board Meeting – June 24, 2025

The Members have scheduled a public meeting for June 24, 2025, at 10 a.m., which will be held in Hearing Room A at the Board's Salem office (2601 25th St. SE, Ste. 150). The agenda for the Board meeting will be:

- Five-year rule review of OAR 438-015-0115 "Fees for Attorneys Representing Insurers and Self-Insured Employers" under ORS 183.405
- Statutory minor corrections to chapter 438 rules

A formal announcement regarding this Board meeting has been electronically distributed to those individuals, entities, and organizations who have registered for these notifications at service.govdelivery.com/accounts/ORDCBS/subscriber/new.

Board Member Jenny Ogawa to Celebrate Retirement

The Workers' Compensation Board will host a gathering to celebrate Member Jenny Ogawa's retirement. Festivities will take place following the Board's meeting from approximately 10:30 a.m. to noon on June 24, 2025, at the Board's Salem location: 2601 25th St, Ste 150, Salem, OR 97302.

Member Ogawa will be retiring on July 1 following her 40-year career within the workers' compensation system, and more than 25 years in state service. She has been a Board Member since October 2022 and served as acting Board Chair from July 2023 until October 2023. Before her appointment to the Board, she was an ALJ for 17 years.

Member Ogawa received her juris doctor degree from Lewis and Clark Law School. Following law school, she clerked for SAIF Corporation, worked as a WCB staff attorney, was the legal issues coordinator at the Workers' Compensation Division, and represented insurers and employers at the hearing and appellate levels.

Member Ogawa served as a member of the Executive Committee of the Oregon State Bar (OSB) Workers' Compensation Section from 2014 to 2022. She was also on the OSB Legal Publications Department's editorial review board for the Workers' Compensation Bar books. In 2023, she received the section's Professionalism and Service Award.

CASE NOTES

TPD: Claimant Did Not Establish Entitlement to Additional TPD - Rate Correctly Calculated at Zero Where Sole Proprietor's Gross Income Was Greater than His Wages at Injury

Kristian A. McLain, 77 Van Natta 237 (May 23, 2025). Analyzing OAR 436-060-0030(1)(b), the Board held that the claimant was not entitled to additional temporary disability benefits because the record did not establish that the employer incorrectly calculated his temporary partial disability (TPD) rate at zero. The Board explained that the record did not establish that the claimant's post-injury wages as the sole proprietor of his own business were less than his wages with the employer at the time of injury. ORS 656.212 (TPD payments are based on "that proportion of the payments provided for [TTD] which the loss of wages bears to the wage used to calculate [TTD]").

In reaching that conclusion, the Board distinguished *Mir Iliaifar*, 57 Van Natta 1915 (2005), *aff'd* 217 Or App 104 (2007), in which the worker's post-injury wages as an independent contractor working for someone else's company did not include expenses paid to the company for the use of the company's vehicles. The Board explained that, unlike in *Iliaifar*, the claimant owned his own company, was the sole proprietor, and made payments for vehicles that he owned. Accordingly, the Board concluded that the claimant's gross business income was "actual wages earned" under OAR 436-060-0030(1)(b).

APPELLATE DECISIONS
COURT OF APPEALS

**JURISDICTION: Authority to Assess “262(11)(A)”
Penalty Determined by Authority Over Originating
Issue**

Hibbs v. Sedgwick CMS, 340 Or App 421 (May 14, 2025). The court affirmed a Board order that transferred the claimant’s penalty request under ORS 656.262(11)(a) to the director. The court analyzed the director’s authority to impose penalties for a medical services dispute when the parties had a separate, unrelated matter pending before the Board’s Hearings Division.

Citing ORS 656.704(3) and *Mantle v. SAIF*, 330 Or App 8 (2024), the court reiterated that the underlying medical services dispute was not a “matter concerning a claim” and, therefore, appropriately before the director. Applying *Icenhower v. SAIF*, 180 Or App 297 (2002), the court concluded that jurisdiction of the ORS 656.262(11)(a) penalty request lay with the director where, at the outset, jurisdiction over the medical services dispute properly lay with the director and the subsequent narrowing of issues did not relieve the director of jurisdiction once established. The court explained that this result was consistent with the legislative history of ORS 656.262(11)(a), as reviewed in *Icenhower*, which reflect a legislative intent to prevent the hearings process from becoming “clogged up with ‘penalty only’ issues.”

Accordingly, the court affirmed the Board’s order that the jurisdiction of a penalty request under ORS 656.262(11)(a) properly lay with the originating jurisdiction in the underlying matter.

**JURISDICTION: “325” Disputes Under Jurisdiction of
the Director When Not Involving Matters Concerning a
Claim**

Hibbs v. Sedgwick CMS, 340 Or App 431 (May 14, 2025). The court affirmed a Board order that transferred the claimant’s hearing request to the director regarding an allegedly improperly requested independent medical examination by the carrier under ORS 656.325(1)(a) and related penalties and attorney fees. Analyzing ORS 656.325(6), the court determined whether disputes arising under ORS 656.325 that do not involve “matters concerning a claim” are under the authority of the director or the Board. Applying the principles of statutory construction, the court concluded that the text and context of ORS 656.325(6) directs “matters concerning a claim” to the Board and “matters not concerning a claim” to the director, as dictated by ORS 656.283(1) and ORS 656.704.

Because the dispute did not involve a matter concerning a claim, the court affirmed the Board’s order.