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BOARD NEWS

Board Meeting – August 14, 2025

The Members have scheduled a public meeting for August 14, 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:

- ALJ hiring consultation. ORS 656.724(1).

A [formal announcement](https://service.govdelivery.com/accounts/ORDCBS/subscriber/new) regarding this meeting has been electronically distributed to those individuals, entities, and organizations who have registered for these notifications at <https://service.govdelivery.com/accounts/ORDCBS/subscriber/new>

Retirement Celebration – Kirk Spangler

As was previously [announced](#), ALJ Kirk Spangler will be retiring as of September 1, 2025. We will be hosting a retirement party to celebrate his 35-plus years of service to the Workers’ Compensation Board on September 10, 2025, in the Salem office. More details to come.

CASE NOTES

BACK-UP DENIAL: Back-up Denial Set Aside Because Record Did Not Establish Material Misrepresentation

CEASES DENIAL: Record Did Not Establish Existence of Combined Condition

EVIDENCE: No Abuse of Discretion in Admitting Post-Hearing Report Into Record

PENALTIES: Carrier Had Legitimate Doubt Regarding Back-Up and “Ceases” Denials, but Not Regarding Failure to Pay TPD

Jeremy Orozco, 77 Van Natta 372 (July 23, 2025). The Board reversed those portions of an Administrative Law Judge’s (ALJ) order that upheld the carrier’s back-up, combined condition “ceases,” and new or omitted medical condition claim denials for right knee conditions, and declined to award a penalty for untimely payment of temporary disability benefits before the combined condition “ceases” denial. The Board affirmed those portions of the ALJ’s order

that declined to award penalties and penalty-related attorney fees for allegedly unreasonable back-up and combined condition “ceases” denials and failure to pay temporary disability benefits following the combined condition “ceases” denial. Additionally, the Board did not find an abuse of discretion when the ALJ admitted a post-hearing medical report without redaction.

Regarding the evidentiary issue, the claimant challenged portions of a post-hearing medical report that addressed the existence of a combined condition rather than the carrier’s combined condition “ceases” denial. Citing *Brown v. SAIF*, 51 Or App 389, 394 (1981), the Board stated that ALJs have broad discretion concerning admissibility of evidence and that the existence of a combined condition was central to the “ceases” denial issue. Thus, the Board found no abuse of discretion.

Addressing the back-up denial, the Board applied ORS 656.262(6)(a) and *Greenbriar Ag. Mgmt. v. Lemus*, 156 Or App 499, 504 (1998), *rev den*, 328 Or 594 (1999), finding that the record did not establish a material misrepresentation supporting the carrier’s denial. At the time of acceptance, the carrier did not have a 2015 chart note that referenced claimant’s prior right knee symptoms. The claims adjuster testified that he would have processed the claim differently if he was in possession of the chart note. However, the chart note itself did not attribute right knee symptoms to a right knee injury, condition, diagnosis, treatment, or surgery, but rather tight hamstrings. Additionally, at the time of acceptance, the carrier did not pursue additional information even though it had a right knee MRI showing degeneration and an interview summary with the claimant indicating “Yes, not related” concerning his relevant medical history/prior claims. Nevertheless, the Board found that the carrier did not act unreasonably in issuing the back-up denial because the carrier performed a reasonable investigation and the 2015 chart note raised a legitimate doubt.

Having set aside the back-up denial, the Board then analyzed the combined condition “ceases” denial. Under ORS 656.262(6)(c), it found that the record did not persuasively support the existence of the accepted combined condition such that a preexisting condition could cease to be the major contributing cause of the claimant’s need for treatment or disability. Consequently, the Board set aside the carrier’s combined condition acceptance and “ceases” denial. However, it did not find the “ceases” denial unreasonable because the carrier obtained an IME before issuing the denial. The Board reasoned that, even though that opinion was ultimately found unpersuasive, the carrier was entitled to pursue its denial for the Board’s determination regarding the persuasiveness of that opinion.

The Board also set aside the carrier’s denial of the claimant’s new or omitted medical condition claims for right knee conditions relying on the persuasive medical opinions of the treating surgeon and a worker-requested medical exam that explained that the work event was a material and the major contributing cause of the claimant’s need for treatment of the claimed right knee conditions.

As a result of setting aside the carrier’s new or omitted medical condition claim, back-up, and combined condition “ceases” denial, as well as the record establishing ongoing temporary disability authorizations during the period in

question, the Board awarded temporary disability benefits post-“ceases” denial. Nevertheless, the Board did not find the carrier’s nonpayment of temporary disability benefits for this period unreasonable because it also found the “ceases” denial was not unreasonable.

Finally, the Board awarded a penalty and penalty-related attorney fee for unreasonable claim processing related to the untimely payment of temporary disability payments because the carrier did not have a legitimate doubt that it owed those benefits.

APPELLATE DECISIONS COURT OF APPEALS

OCCUPATIONAL DISEASE: Board Order Supported by Substantial Evidence

Reed v. Helmsman Management Services, Inc., 341 Or App 629 (July 2, 2025). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board’s order in *Robert Reed, Sr., 75 Van Natta 193 (2023)* that found that the claimant’s occupational disease claim for a right wrist condition was not compensable. Reviewing the Board’s order for substantial evidence and errors of law, the court agreed with the Board that an IME physician’s opinion constituted substantial evidence to support that the claimant’s work conditions did not contribute to the claimed right wrist condition. Finally, the court held that the Board did not commit legal error in concluding that the last injurious exposure rule (LIER) did not apply because substantial evidence supported the Board’s finding that the claimant had not met his burden to prove that employment conditions at more than one employment was the major contributing cause of his wrist condition.