



News & Case Notes

BOARD NEWS

Board Meeting – October 23, 2025	3
Five-Year Review: OAR 438-015-0125 "Bifurcation of Attorney Fee Award (Board Review)" - Public Comment	2
New Administrative Law Judges Join the Workers' Compensation Board	3
Proposed Rule Amendments to OAR 438-015-0019 "Cost Bill Procedures"	3
Reminder: Retainer Agreements Must be Filed in Every Case	4
Sally Anne Curey to Retire October 1	1

CASE NOTES

COURSE AND SCOPE: Distinguishing <i>Lamb</i> , Board Held That Record Did Not Establish That Injury Occurred in Course of Employment and That "Going and Coming" Rule Applied	4
OFFSET: Carrier Met Burden of Proof to Establish Entitlement to Offset of Overpaid Time Loss Benefits	5

APPELLATE DECISIONS

Update

EXTENT OF PERMANENT IMPAIRMENT: Claimant Not Eligible for Impairment Award Where Findings Were Not Valid and Not Related to Accepted Condition	5
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BOARD NEWS

Sally Anne Curey to Retire October 1

After practicing law for approximately 35 years, Member Curey has decided to retire. The vast majority of those years were spent working for either the State of Oregon, in various agencies, or for Liberty Mutual Insurance.

Member Curey graduated from Oregon State University in 1984 with a bachelor of science degree in political science. While there, she attended the 1984 Democratic Convention with press credentials, but ultimately decided politics wasn't for her. She obtained a juris doctor degree from Willamette University College of Law in 1988.

During undergraduate and law school, and for a while thereafter, Member Curey worked for many State of Oregon agencies, including the Department of Human Services (DHS) learning general administrative functions, DHS Senior and Disabled Services and Senior Services Division, now Aging and Disability Services, learning what services were available to Oregon seniors, and the Building Codes Division (BCD) as a hearings officer. While working for the Senior and Disabled Services office, she wrote and published the Senior and Disabled Services Guide to the State of Oregon. While at BCD, she oversaw the rewriting and editing of most of the Oregon building codes and conducted hearings on the changes. She also worked at an indigent defense law firm in Dallas, during which she decided criminal law "wasn't her cup of tea."

In 1989, Member Curey plunged into the "strange and complex" field of Oregon workers' compensation law, where she worked as a full-time staff attorney for the Oregon Workers' Compensation Board (WCB). What better place to learn who's who in the Oregon workers' compensation bar? She left the Board in June 1991 and started practicing full-time insurance defense litigation for Liberty Mutual, representing hundreds of employers throughout Oregon. While there, she also did some civil practice, including small tort claims cases.

She became an expert in workers' compensation litigation, drafted too many settlement documents to count, including CDAs, DCSs, and stipulated agreements, wrote countless briefs, and mediated hundreds of cases. While at Liberty Mutual, in May 2011, she was the recipient of the Oregon State Bar's Workers' Compensation Section's Douglas W. Daughtry Award of Merit (now the Professionalism and Service Award). She has always remained and remains committed to the highest standards of professionalism, honesty, integrity, and adherence to the highest ethical standards.

After almost 24 years with Liberty, in June 2014, Member Curey accepted the governor's nomination to serve the State of Oregon as a Board member on the Workers' Compensation Board. While at the Board, Member Curey worked

with three different Board chairs, at least three different managing attorneys, and many staff attorneys. She reviewed thousands of cases with her counterparts and participated in reviewing and issuing over 2,500 orders.

Sally is well known in the section, having made outstanding and continuous contributions to the section as a whole throughout her years of practice. She successfully chaired the Oregon State Bar's Workers' Compensation Section's annual conference at Salishan for about 15 years running, where she met practically every member of the section. She presented at CLEs, and assisted with securing speakers for other conferences as well.

After serving more than two terms, over 11 years, she has decided it's time to retire. Sally's retirement plans include being an active grandparent to her grandson, spending more time with her children, and venturing out and about with her best pal, Millie, her Australian labradoodle.

Please join us in congratulating Member Curey on her well-earned retirement.

Five-Year Review: OAR 438-015-0125 "Bifurcation of Attorney Fee Award (Board Review)" - Public Comment

At its September 11, 2025, public meeting, the Board began its five-year review of OAR 438-015-0125 under ORS 183.405. OAR 438-015-0125 allows parties to bifurcate the determination of an attorney fee from a decision regarding the merits of underlying litigation. The rule prescribes the manner in which such bifurcations are requested.

The rulemaking materials (including the Order of Adoption and Statement of Need and Fiscal Impact) from the rule's 2020 adoption are posted on the Board's website at <https://www.oregon.gov/wcb/legal/Pages/5-yr-review.aspx>.

To assist the Members in their review of this rule, they are seeking written comments from the public that address the following questions:

- Did the rule achieve its intended effect?
- Was the anticipated fiscal impact of the rule underestimated or overestimated?
- Have any subsequent changes in the law required that the rule be repealed or amended?
- Is there a continued need for the rule?
- What impact has the rule had on small business?

Notice of this request for public comment was distributed to the members of the advisory committee that assisted in developing the rule and to those individuals and entities who have registered for rule-related notifications at <https://service.govdelivery.com/accounts/ORDCBS/subscriber/new>.

Written comments should be directed to Autumn Blake, Board Review Coordinator, at 2601 25th St. SE, Ste. 150, Salem, OR 97302, by email at autumn.k.blake@wcb.oregon.gov, or by fax at 503-373-1684. The deadline to submit written comments is November 10, 2025.

Proposed Rule Amendments to OAR 438-015-0019 “Cost Bill Procedures”

At its September 11, 2025, meeting, the Board discussed [House Bill \(HB\) 2799 \(2025\)](#) and a [proposed rule concept](#) to amend OAR 438-015-0019 “Cost Bill Procedures.”

The Board moved to refer the cost bill proposal to a rulemaking advisory committee which will also encompass changes made by HB 2799. Once the committee completes its review, the Members will discuss and take public comment on the advisory committee report at a public Board meeting.

Board Meeting – October 23, 2025

The Members have scheduled a public meeting for October 23, 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:

- Proposed rule amendments to OAR 438-022 “Rulemaking Procedures”

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

New Administrative Law Judges Join the Workers’ Compensation Board

WCB is pleased to announce that it will have two new administrative law judges (ALJ) starting in the Portland office.

Christo de Villiers has been a part of the Oregon workers’ compensation community since 2008. Prior to coming to Oregon, he spent approximately 13 years representing employers in employment and labor-related disputes. Mr. de Villiers has practiced Oregon workers compensation law both as a defense attorney, including in-house counsel with Liberty Mutual, and most recently as a claimants’ attorney.

Micah Moskowitz has seven years of experience serving as an ALJ with the Office of Administrative Hearings. He also has approximately seven years of experience working as a criminal defense attorney, including with the Oregon Public Defense Commission.

Reminder: Retainer Agreements Must be Filed in Every Case

Practitioners are reminded to include a signed retainer agreement when filing a notice of representation. Under OAR 438-015-0010(1), attorney fees for attorneys representing claimants shall only be authorized if a retainer agreement has been previously filed with the administrative law judge or Board.

Retainer agreements may be included in a notice of representation, a hearing request, a Board request, or response to issues. These may be filed by mail or fax. In addition, WCB Portal users may file through the portal.

CASE NOTES

COURSE AND SCOPE: Distinguishing *Lamb*, Board Held That Record Did Not Establish That Injury Occurred in Course of Employment and That “Going and Coming” Rule Applied

Quintus L. Hall, Sr., 77 Van Natta 418 (August 21, 2025). The Board affirmed an ALJ’s order that found that the “going and coming” rule applied and that the claimant was not injured in the course of employment.

Claimant, a bus driver, would park his personal vehicle in a public parking lot and walk to a public bus stop where the employer’s shuttle would provide transportation to the employer’s garage. On the date of injury, he slipped on an icy sidewalk and fell on his back before he had clocked in for work. The Board found that the “going and coming” rule applied because the injury occurred before he had started his shift, and he was not required to take the shuttle by his employer.

The Board distinguished the case from *Tri-Met, Inc. v. Lamb*, 193 Or App 54 (2004), in which the claimant, also a bus driver, was injured while returning to the employer’s garage after being relieved by another driver (an activity known as “road relief”). The Board explained that the court did not apply the “going and coming” rule because the claimant had not yet ended her work day and the road relief activity was part of the claimant’s job description and collective bargaining agreement for which she received an allowance.

The Board stated that, unlike in *Lamb*, the claimant had not yet started his shift, was not receiving wages for his time, and the activity was not part of his job description or a collective bargaining agreement. Therefore, the Board found that the “going and coming” rule applied and that the claimant did not establish that the injury occurred in the course of employment.

Member Ceja dissented. Applying *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 596 (1997), Member Ceja would have found that the claimant’s injury was “in the course of” employment and that the “going and coming” rule did not apply because the claimant’s injury was reasonably incidental to his employment, the injury occurred within a reasonable time before his shift, the employer’s shuttle

was for employees only, it was common for bus drivers to take the shuttle, and the claimant was in a place where the employer could reasonably expect him to be. Alternatively, he would have found that the “employer’s conveyance” exception would overcome the “going and coming” rule because the worker was waiting for a vehicle under the employer’s control to take him to work.

Member Ceja also would have found that the claimant’s injury “arose out of” his employment because the slip and fall was a neutral risk, as agreed to by the parties, and was a risk to which the work environment exposed him.

OFFSET: Carrier Met Burden of Proof to Establish Entitlement to Offset of Overpaid Time Loss Benefits

Johnny A. Stacey, 77 Van Natta 425 (August 22, 2025). The Board affirmed an ALJ’s order that authorized the self-insured employer’s offset for an alleged overpayment of temporary disability benefits and declined to award penalties and attorney fees for allegedly unreasonable claims processing. Applying *Metro Rigging v. Tallent*, 94 Or App 245, 248 (2008) and *Nyla J. Vanalstine*, 67 Van Natta 510, 510 (2015), the Board found that the employer had met its burden of proof in establishing sufficient evidence of the overpayment. The record included the employer’s audit calculation, payment ledger, and testimony from the claims adjuster that the claimant continued to receive temporary total disability payments after he had returned to modified work. Additionally, the claimant did not provide rebuttal evidence.

The Board declined to award penalties and attorney fees for unreasonable claim processing because it found that the employer was authorized to recover the overpayment and there was no evidence that it had unreasonably delayed, refused to pay, or resisted payment of compensation. See ORS 656.262(11); ORS 656.382(1).

Member Ousey dissented in part. While he agreed that no penalties or attorney fees were awardable in this case, he disagreed that the self-insured employer had met its burden of proof in establishing the overpayment. He would have found that the employer’s evidence did not explain how the amount of the overpayment was calculated and that the inclusion of a “TTD/TPD Calculator” was insufficient.

APPELLATE DECISIONS UPDATE

EXTENT OF PERMANENT IMPAIRMENT:

Claimant Not Eligible for Impairment Award Where Findings Were Not Valid and Not Related to Accepted Condition

Marholin v. SAIF, 343 Or App 135 (August 27, 2025). In a nonprecedential memorandum opinion, the Court of Appeals affirmed a Board order that determined that the claimant was not eligible for an impairment award for his shoulder condition. The court found that the Board correctly applied OAR 436-

035-0007(11) and that its interpretation of the medical arbiter's report was supported by substantial evidence. The court found that neither the arbiter panel nor the claimant's attending physician supported an award of permanent impairment. Additionally, the court reaffirmed that the claimant is not owed permanent partial disability based on findings of loss unrelated to the accepted condition. See *Robinette v. SAIF*, 369 Or 767 (2022).