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BOARD NEWS

Board Meeting – March 19, 2025

The Members have scheduled a public meeting for March 19, 2025, at 10 a.m. The meeting will be held in Hearing Room A at the Workers’ Compensation Board’s (WCB) Salem office (2601 25th St. SE, Ste. 150).

The agenda for the Board meeting will be:

- Consideration of the [advisory committee report](#) on OAR 438-015-0019 “Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute”
- Modernization update and discussion

A [formal announcement](#) regarding this Board 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>.

CASE NOTES

COURSE AND SCOPE: Parking Lot Exception to Going and Coming Rule Applied – Work Environment Exposed Claimant to Neutral Risk

Christina Cornell, 78 Van Natta 76 (February 3, 2026). Applying ORS 656.005(7)(a) and ORS 656.266(1), the Board held that the claimant’s injury arose out of and occurred within the course of her employment. Assessing the “in the course of” prong, the Board found that the parking lot exception to the going and coming rule applied because the claimant was injured on the employer’s premises and the employer exercised some control over the area where the claimant slipped and fell. Considering the “arising out of” prong, the Board determined that the claimant’s injury arose out of a neutral risk to which the work environment exposed her because she fell minutes after finishing her shift, while using the exit designated by the employer. Accordingly, the Board set aside the denial.

RECONSIDERATION PROCEEDING: Reconsideration Request Untimely Filed

Matthew J. Prendergast, 78 Van Natta 88 (February 5, 2026). The Board held that the claimant did not timely file a request for reconsideration of a notice of closure. Analyzing OAR 436-030-00145(1)(a), the Board reasoned that because the claimant’s mailed reconsideration request was postmarked the day after the 60-day deadline to request reconsideration, the claimant did not timely request reconsideration. Citing OAR 436-030-0005(10) and *Ashley A. Rehfeld*,

62 Van Natta 1722, 1725 (2010), the Board also found that the faxed reconsideration request was untimely because it was sent to the wrong fax number.

The Board declined to consider the claimant's arguments, raised for the first time on review, that the record did not establish that the notice of closure was mailed on the date determined by the Workers' Compensation Division's Appellate Review Unit and that the marking on the envelope containing the request was not an official postmark.

APPELLATE DECISIONS UPDATE

OCCUPATIONAL DISEASE: Board Order Regarding ORS 656.802(7)(b) Presumption Supported by Substantial Evidence and Reason

Smicz v. Deschutes County 911 Service Dist., 347 Or App 28 (February 11, 2026). Reviewing for legal error and substantial evidence and reason, the Court of Appeals affirmed the Board order's in *Camille Smicz*, 75 Van Natta 497 (2023), that upheld a denial of the claimant's occupational disease claim for post-traumatic stress disorder. In reaching that conclusion, the court determined that the Board applied the ORS 656.802(7)(b) presumption appropriately. In addition, the court found that the Board's determination that the claimant did not establish by a preponderance of persuasive medical evidence that she more likely than not met the diagnostic criteria for PTSD was supported by substantial evidence.

PENALTY: Penalty and Attorney Fees Not Awardable Where "Correctness" of Notice of Closure Not "At Issue" At a Hearing

Calvi v. Gallagher Bassett Services Inc., 347 Or App 281 (February 19, 2026). The Court of Appeals affirmed the Board's order in *John Calvi*, 76 Van Natta 687 (2024), previously noted in **NCN 43:11**. Interpreting ORS 656.268(5)(f), the court held that a penalty under that statute may only be awarded when the correctness of a notice of closure is "at issue" in a hearing and it is found to be unreasonable. The court explained that a matter is "at issue" when it is "presented for determination." In doing so, the court noted that because the authority to award a penalty under ORS 656.268(5)(f) rests with the Workers' Compensation Board (WCB), a claimant who receives a favorable reconsideration decision from the Appellate Review Unit (ARU) must challenge the order in a hearing request in order to place the correctness of the notice of closure at issue in a hearing. The court reasoned that, in the present case, the claimant did not request a hearing on the reconsideration order that set aside the claim closure. Instead, after the reconsideration order became final, the claimant filed a request for hearing seeking a penalty and attorney fees under ORS 656.268(5)(f) for unreasonable claim closure. The court concluded that because the claimant had not challenged ARU's determination, the "correctness" of the notice of closure was not at issue in a hearing and a penalty was not awardable under the statute.