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BOARD NEWS

Board Meeting – May 12, 2026

The Board Members have scheduled a public meeting for Tuesday, May 12, 2026, at 10 a.m. The meeting 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:

- Regular quarterly meeting – OAR 438-021-0010(1)(d)

A formal announcement regarding the Board meeting will be electronically distributed to those individuals, entities, and organizations who have [registered](#) for these notifications.

WCB 2025 ALJ Anonymous Survey

Consistent with ORS 656.724(3)(b), attorneys regularly participating in workers’ compensation cases will be sent a link on April 15, 2026, via email, to participate in the annual anonymous survey. The survey plays an important role in the Workers’ Compensation Board’s (WCB) evaluation of the performance of WCB administrative law judges and your feedback is very much appreciated. Thank you for your participation.

Hearing Venues

As the Workers’ Compensation Board continues to navigate changes brought about by increased remote proceedings, please note that all cases will be set by default in Bend, Eugene, Florence, Medford, Pendleton, Portland, or Salem, based on the closest travel location to the worker’s residence as listed on the initial request for hearing under ORS 656.283(4)(a). For sets in Astoria, Klamath Falls, Ontario, The Dalles, or another location not listed, please file a request for the location needed either with the initial request for hearing or by making a motion for change of venue with the assigned administrative law judge (ALJ). Please feel free to contact Presiding ALJ Jacqueline Jacobson with any questions.

CASE NOTES

CLAIM PROCESSING: Employer Required to Process Form 827 Filed on Behalf of Claimant Without Claimant’s Signature

PENALTY: “262(11)(a)” Penalty Warranted for *De Facto* Denial and Subsequent Rescission

Andrew C. McAdams, 78 Van Natta 125 (March 5, 2026). The Board awarded an ORS 656.386(1) attorney fee for the rescission of the employer’s *de facto* denial and an ORS 656.262(11)(a) penalty and related attorney fee for the employer’s allegedly unreasonable failure to accept the claimant’s condition.

Analyzing ORS 656.267, the Board found that the record established that the carrier received a physician’s Form 827 based on the “Recv’d Date” stamp on the form but the claim was not accepted or denied within 60 days. The Board cited *Coleman v. SAIF*, 304 Or App 122 (2020), stating that a physician could initiate a new or omitted medical condition claim on behalf of a worker and that the worker was not required to sign the form. Finding that the claim was properly initiated, the claim was not accepted within 60 days, and the claimant’s attorney filed a request for hearing before the claim was accepted, the Board awarded an attorney fee under ORS 656.386(1). Again, citing *Coleman* and the date of the court’s opinion, the Board concluded that the employer’s actions were unreasonable when it delayed processing the claim. As such, the Board found that a penalty and related attorney fee under ORS 656.262(11)(a) were warranted.

TEMPORARY DISABILITY: Claimant Not Entitled to Additional Temporary Disability Because Record Lacked Physician Authorization and ORS 656.262(4)(j)(A) Did Not Apply

Ashley Fagerson, 78 Van Natta 131 (March 5, 2026). The Board held that the claimant was not entitled to temporary disability benefits beyond those awarded by an Order on Reconsideration because they were not authorized by an attending physician. In addition, the Board found that ORS 656.262(4)(j)(A), which provides that a carrier “may not end temporary disability benefits until written notice has been mailed or delivered to the worker,” did not apply. The Board explained that the carrier never ended claimant’s temporary disability benefits for the disputed period but had paid these benefits and awarded them in the Notice of Closure. The Board noted that, although the Workers’ Compensation Division Appellate Review Unit (ARU) subsequently found that the claimant was not entitled to temporary disability benefits for that period, ORS 656.262(4)(j)(A) does not require the carrier to notify the worker when ARU makes an entitlement determination. Therefore, the Board concluded that the claimant did not establish error in the reconsideration process.

COMPENSABLE INJURY: Record Did Not Establish Legal Causation

William Bender, 78 Van Natta 141 (March 9, 2026). The Board upheld the carrier’s denial of the claimant’s injury claim for a left shoulder condition. In upholding the denial, the Board deferred to the ALJ’s demeanor-based determination that the claimant’s testimony was not credible. The Board

alternatively reasoned that, even if it did not defer to the ALJ's credibility finding, it would have found the claimant not credible based on the record because his description of the work event, his actions after the event, and his presentation on examination were inconsistent. Therefore, the Board concluded that the record did not establish legal causation.

Member Ceja dissented. Because the ALJ's credibility determination was based on the witnesses' testimonies at hearing compared to the record, Member Ceja would not have given deference to the ALJ. Instead, he would have found that the totality of evidence supported legal causation. He would also have found that the medical opinions supporting compensability were persuasive based, in part, on the treating surgeon's direct surgical observations. Finally, Member Ceja would have found that the medical opinions supporting a combined condition to be unpersuasive.

APPELLATE DECISIONS UPDATE

HEARING REQUEST: Board Order Regarding OAR 436-005-0046(1)(c) Presumption Supported by Substantial Evidence and Reason

Kopf v. SAIF, 347 Or App 857 (March 18, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board's order on remand in *Eric C. Kopf*, 76 Van Natta 193 (2024), previously noted in [NCN 43:3](#). The Board's initial order, *Eric C. Kopf*, 72 Van Natta 647 (2020), determined that the claimant's request for hearing was untimely. In reaching this conclusion, the Board stated that the claimant's attorney's letter explaining that he had timely mailed the request was not evidence. The court reversed and remanded the case to the Board, *Kopf v. SAIF*, 321 Or App 764 (2022), finding that the Board had erred when it did not consider counsel's unsworn statements as evidence and that the Board must decide "the persuasiveness of that evidence in light of the record as a whole." On remand, the Board considered counsel's letter as evidence but ultimately remained unpersuaded in light of the entire record that the claimant had timely filed the request for hearing. Claimant appealed the Board's order on remand.

Citing *Marsh v. SAIF*, 297 Or App 486 (2019), the court found that the Board did not err in concluding that claimant did not preserve his argument that the 60-day deadline to request a hearing runs from the time the denial is mailed to claimant rather than to claimant's attorney. The court also determined that claimant did not preserve his argument that the Board's rule regarding timely mailing exceeded its statutory rulemaking authority. Finally, the court concluded that the Board's determination that the claimant's request for hearing was untimely was without legal error and based on substantial evidence and reason. In doing so, the court reasoned that the Board was not required to credit the evidence in the claimant's favor nor compelled to find that the claimant had overcome the presumption that the request for hearing was untimely.

EXTENT OF PERMANENT DISABILITY: Board Misapplied *Gage* and *Hicks* When It Relied on Medical Arbiter Instead of Attending Physician – Remanded to Apply OAR 436-035-0007(5)(b)

Okon v. Broadspire, 348 Or App 1 (March 25, 2026). The Court of Appeals reversed and remanded the Board's order in *Inemesit N. Okon*, 76 Van Natta 738 (2024), previously noted in **NCN 43:12**, that did not award permanent partial disability benefits at claim closure. Analyzing OAR 436-035-0007(5)(b), the court concluded that the Board had misapplied the court's opinions in *Hicks v. SAIF*, 194 Or App 655, 660, *adh'd to as modified on recons*, 196 Or App 146 (2004), and *Gage v. Fred Meyer Stores - Kroger Co.*, 329 Or App 360, 368 (2023), *adh'd to as modified on recons*, 330 Or App 669 (2024).

The court determined that the Board had erroneously concluded that *Hicks* and *Gage* required it to rely on a medical arbiter report instead of an attending physician's opinion to establish impairment if it is clear and unambiguous. It also determined that the Board erred in concluding that it was not free to disregard a medical arbiter's opinion in the absence of persuasive reasons to the contrary. The court distinguished *Hicks* wherein the medical arbiter's opinion was the only impairment opinion and "unambiguously" attributed the claimant's impairment to the compensable condition. The court also distinguished *Gage*, explaining that it reversed the Board's decision for lack of substantial evidence and reason because the Board did not adequately explain its conclusion that the attending physician's opinion was more persuasive than that of the medical arbiter panel.

The court concluded that when one party requests reconsideration and there is a report from an attending physician and a report from a medical arbiter, the Board is required to apply OAR 436-035-0007(5)(b), which states that impairment is established "based on the objective findings of the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician are more accurate and should be used". Therefore, the court remanded the case to the Board to apply that standard.

APPELLATE DECISIONS COURT OF APPEALS

INJURY CLAIM: Board Order Supported by Substantial Evidence and Reason

Forsberg v. Providence Health & Services - Oregon, 347 Or App 672 (March 11, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board's order that upheld the carrier's denial of the claimant's claim for a respiratory condition identified as COVID-19 or a COVID-like illness. First, the court concluded that the claimant's procedural contentions were not raised at the hearing level or on Board review. Consequently, the court determined that those contentions were not preserved. Moreover, reviewing the Board's order for substantial evidence and reason, the court concluded that the Board provided reasoned explanations of each of its findings. The court, therefore, affirmed the Board's order.