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BOARD NEWS

Proposed Amendments to OAR 438-015-0019 "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute" – Rulemaking Hearing and Public Comments

At its May 12, 2026, public meeting, the Board voted to [propose amendments](#) to OAR 438-015-0019, "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute," to revise the procedure for submitting cost bills for reasonable expenses and costs when a claimant finally prevails against a denial under ORS 656.386(1).

The Board will hold a [virtual rulemaking hearing](#) June 22, 2026, at 9:30 a.m. to receive comments on the proposed amendments. Written public comments regarding the changes must be received by July 6, 2026, at 5 p.m. Comments should be directed to the Board's rules coordinator, Autumn Blake, by email to autumn.k.blake@wcb.oregon.gov, by fax at 503-373-1684, or by regular mail to 2601 25th St SE Ste 150, Salem OR 97302.

The Board will consider comments and take possible rulemaking action at its July 14, 2026, public meeting.

Judge Jacobson Returns to ALJ Corps

After two and a half years as the Presiding Administrative Law Judge (PALJ), Judge Jacobson returned to the ALJ Corps on June 1. The Board appreciates her willingness to take up this challenging role and looks forward to her continued contributions to the Hearings Division. She is in the Portland Office. Judge Nick Cordes has been selected as the Acting PALJ until a recruitment is completed. Judge Cordes was hired as an ALJ in 2022 after nearly a decade in private practice.

CASE NOTES

TEMPORARY DISABILITY: Carrier Satisfied Statutory and Rule Requirements to Convert TTD to TPD

Maria S. Vasquez-Genchi, 78 Van Natta 286 (May 4, 2026). Analyzing ORS 656.268(4)(c) and OAR 436-060-0030(3)(c), the Board held that the carrier met the requirements to convert the claimant's temporary total disability (TTD) to temporary partial disability (TPD) benefits. Citing *Stephanie A. Sherman*, 73 Van

Natta 210, 212 (2021), the Board found that the carrier had notified the claimant in writing of a modified job offer and that there was no requirement that the carrier verify that the offer was actually received by the claimant. In doing so, the Board reasoned that the modified job offer was sent by certified mail to the claimant's correct address and was received by claimant's family member at that address.

TEMPORARY DISABILITY RATE: Average Weekly Wage Calculation Based on Wage Earning Agreement

Wade A. Wilson, 78 Van Natta 298 (May 13, 2026). The Board declined to increase the claimant's rate of temporary total disability (TTD) under OAR 436-060-0025(4)(c) because the intent of his wage earning agreement demonstrated that his TTD rate was correct. Distinguishing *William P. Cordell*, 55 Van Natta 1081 (2003), the Board determined that because the claimant had not completed training at the time of the injury, he was entitled to TTD based on the training rate rather than the full wages agreed to after he completed training.

ATTORNEY FEES: ALJ Dismissal Order Did Not Constitute a "Finding" for Purposes of "382(2)" Attorney Fee

Sara A. Brown, 78 Van Natta 306 (May 27, 2026). In a decision by an equally divided panel, the Board declined to award an attorney fee under ORS 656.382(2) where the self-insured employer withdrew its erroneous hearing request of a prior ALJ's order.

In a concurring opinion, Member Douglas distinguished *Arvidson v. Liberty Northwest Ins. Corp.*, 366 Or 693 (2020), concluding that the ALJ did not have jurisdiction to review the prior ALJ's order for which the request for hearing was filed. She would have found that the ALJ's dismissal for lack of jurisdiction did not constitute a "finding" for the purpose of awarding an attorney fee under ORS 656.382(2). Additionally, Member Douglas noted that, even if the dismissal were considered a "finding," the order did not make a finding that the compensation award "should not be reduced or disallowed" because the underlying dispute was pending before the Board.

Member Ceja dissented. He would have determined that, as in *Arvidson*, the ALJ's decision closed an action that would have proceeded as of right and did not alter the compensation award. He would have found that the claimant was entitled to an attorney fee award under ORS 656.382(2) because the dismissal order constituted a "finding" and the dismissal was a decision about the case itself.

**APPELLATE DECISIONS
UPDATE****MEDICAL SERVICES: Board Order Did Not Commit Legal Error and Was Supported by Substantial Evidence – Medical Experts Not Required to Use “Magic Words”**

InteliStaf Healthcare v. Daniels, 349 Or App 390 (May 13, 2026). Reviewing for legal error and substantial evidence, the Court of Appeals affirmed the Board’s orders, *Julie A. Daniels*, 74 Van Natta 143 (2022), *recons*, 75 Van Natta 364 (2023), that determined that the claimed medical services were for claimant’s chronic pain condition, which was an ordinary condition caused in material part by the work injury. The court first analyzed ORS 656.245(1)(a) to determine that the Board did not legally err in finding that the medical services in dispute were “for” an ordinary condition caused in material part by the work injury. Second, the court concluded that the Board’s conclusions that claimant’s chronic pain syndrome was a condition, the disputed services were for that condition, and the chronic pain was caused in material part by the work injury were supported by substantial evidence. In doing so, the court noted that the Board and court “do not require medical experts to use magic legal words.”