



News & Case Notes

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BOARD NEWS

Rescheduled Rulemaking Hearing, Board Meeting, and Public Comment Extension – Proposed Amendments to OAR 438-015-0019 “Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute”

The Board has rescheduled its rulemaking hearing regarding [proposed amendments](#) to OAR 438-015-0019, extended the public comment period, and rescheduled its next public meeting. The meeting that was scheduled to take place on July 14 has been removed from the calendar.

The [virtual rulemaking hearing](#) to receive comments on proposed amendments to OAR 438-015-0019 has been rescheduled to July 22, 2026, at 10 a.m. The deadline to submit written comments regarding the proposed changes has been extended until August 5, 2026, at 5 p.m. Comments should be directed to the Board’s rules coordinator, Autumn Blake, by fax at 503-373-1684, by regular mail to 2601 25th St SE Ste 150, Salem OR 97302, or by email to autumn.k.blake@wcb.oregon.gov.

The Board will consider comments received and take possible action at a public meeting on August 6, 2026, at 1:30 p.m. The meeting will be held in Hearing Room A at the Board’s Salem office (2601 25th St. SE, Ste. 150). A formal announcement regarding the Board meeting will be electronically distributed to those individuals, entities, and organizations who have [registered](#) for these notifications.

Bulletin No. 1 (Revised) – Annual Adjustment to Attorney Fees and Costs, Effective July 1, 2026

The Board has published [Bulletin No. 1 \(Revised\)](#), which publishes adjusted maximum attorney fees under ORS 656.262(11)(a), ORS 656.262(14)(a), and ORS 656.308(2)(d), and the cap on expenses and costs under ORS 656.386(2). The adjusted amounts apply July 1, 2026 through June 30, 2027. These amounts are adjusted annually based on the increase, if any, to the state average weekly wage.

An attorney fee awarded under ORS 656.262(11)(a) may not exceed \$6,555 absent a showing of extraordinary circumstances. OAR 438-015-0110(3).

An attorney fee paid under ORS 656.262(14)(a) must be based on a rate of \$500 per hour. OAR 438-015-0033.

An attorney fee awarded under ORS 656.308(2)(d) may not exceed \$4,728, absent a showing of extraordinary circumstances. OAR 438-015-0038; OAR 438-015-0055(5).

Payments for witness fees, expenses, and costs under ORS 656.386(2) may not exceed \$3,600 unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount. OAR 438-015-0019.

Security Update to Medford Office

The Board's Medford office will receive a security enhancement in the coming months. As part of this upgrade, the landlord will install a secured door between the lobby area of the suite and the hallway leading to the hearing rooms.

Once the installation is complete, visitors will be admitted through a buzzer system operated by the receptionist, consistent with the security procedures already in place at the Board's Salem and Portland offices. This update is intended to improve overall safety, support consistent practices across locations, and ensure a more controlled and efficient flow of visitors.

CASE NOTES

PREEXISTING CONDITION: Condition Was Not a Statutory Preexisting Condition – Work Event Not a Material Contributing Cause of Condition

Terri L. Buyes, 78 Van Natta 322 (June 3, 2026). The Board upheld the employer's denial of the claimant's new or omitted medical condition claim for lumbar disc degeneration. The Board concluded that ORS 656.225(1) did not apply because the claimed condition was not a legally cognizable preexisting condition and, therefore, a material contributing cause standard applied to the compensability of that condition. However, the Board determined that the medical evidence did not establish that the work event was a material contributing cause of the need for treatment or disability for the condition.

Citing *Hopkins v. SAIF*, 349 Or 348, 363, 64 (2010), the Board determined that the medical record did not establish that the claimed lumbar disc degeneration was a preexisting condition because (1) it was not diagnosed or treated before the work injury, and (2) although the physicians who examined the claimant described the condition as "preexisting" and "arthritic," their opinions did not describe the condition in a manner that met the legal definition of arthritis - inflammation of one or more of the joints or due to infections, metabolic, or constitutional causes. Therefore, the Board determined that ORS 656.225 did not apply and the claimed condition was subject to a material contributing cause standard.

Turning to compensability, the Board concluded that the record did not support that the work event was a material contributing cause of the disability or need for treatment of the lumbar disc degeneration. Thus, it upheld the denial.

COURSE AND SCOPE: Claimant Was “Traveling Employee” – Injury Was Not “In The Course Of” and Did Not “Arise Out Of” Employment

John L. Ballard, 78 Van Natta 327 (June 4, 2026). The Board upheld the carrier’s denial of the claimant’s injury claim reasoning that the injury did not “arise out of” his employment and was not “in the course of” his employment because his activity at the time of the injury was not “reasonably related” to his status as a traveling employee. At the time of injury, the claimant was a self-employed attorney running in a local judicial election. If he won the election, he would have to close his law practice. On his way to his law office after working in a different city, the claimant stopped to fix one of his campaign signs and injured his hand. The parties agreed that the claimant was a traveling employee.

The Board determined that, although the claimant was a traveling employee, his injury was not in the course of his employment because it was not reasonably related to his status as a traveling employee. In doing so, the Board distinguished *Sabin Corp. v. McBride*, 134 Or App 321 (1995), because the claimant’s decision to stop and fix the campaign sign did not bear any relationship to the necessity of being a traveling employee. Further, the Board distinguished *John E. Schlosser*, 58 Van Natta 2275 (2006), because the activity in support of the claimant’s judicial campaign was detrimental to the success of his law practice.

HEARING REQUEST: “Good Cause” for Untimely Filed Hearing Request

COMPENSABLE INJURY: Doctor’s Causation Opinion Supported Compensability

Peter Pankhard, 78 Van Natta 397 (June 29, 2026). Analyzing ORS 656.319(1)(b) and *Goodwin v. NBC Universal Media – NBC Universal*, 298 Or App 475 (2019), the Board found that the claimant’s untimely hearing request was due to “mistake, inadvertence, surprise, or excusable neglect.” In so concluding, the Board relied on claimant’s testimony that he believed his claim was still being processed by the carrier after the denial and that the denial would be voluntarily rescinded if he submitted the appropriate medical records to the carrier. The Board further relied on the claims examiner’s testimony that they may have told the claimant that the denial could be voluntarily rescinded if they received the appropriate medical evidence. Under such circumstances, the Board reinstated the claimant’s untimely hearing request.

Turning to compensability, the Board found that the causation opinion of the surgeon who examined claimant persuasively established that the work

event was the material contributing cause of the claimant's disability or need for treatment for the claimed conditions. Therefore, the Board set aside the carrier's denial.

APPELLATE DECISIONS UPDATE

NEW OR OMITTED MEDICAL CONDITION: Claimed Conditions Were Encompassed Within Previously Accepted Conditions – Board Order Supported by Substantial Evidence

Stringer v. SAIF, 350 Or App 306 (June 3, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board's order in *Collin Stringer*, 76 Van Natta 462 (2024), previously noted in [NCN 45:3](#). Citing *DeBoard v. Fred Meyer*, 285 Or App 732, *rev den*, 361 Or 885 (2017), the court stated that determining whether "a condition is encompassed within the scope of the new or omitted condition claim is a question of fact." The court noted that the medical evidence was undisputed that the claimed new or omitted medical conditions were encompassed by the carrier's prior acceptance. Therefore, the court found that the Board's order was supported by substantial evidence and affirmed. In doing so, the court declined to address the claimant's unpreserved argument that the Board applied the wrong legal standard, *i.e.*, rather than considering whether a new medical condition is "encompassed by" the previously accepted condition, the Board was required to consider whether the new medical condition was the "same condition as" the previously accepted condition.

APPELLATE DECISIONS COURT OF APPEALS

COMBINED CONDITION: Board Applied Incorrect Burden of Proof In Denying Compensability of Combined Condition

Beamon v. SAIF, 350 Or App 415 (June 10, 2026). The Court of Appeals reversed and remanded a Board order finding that the Board did not apply the correct legal standard in determining whether the claimant's combined condition was compensable. Analyzing ORS 656.005(7)(a)(B) and ORS 656.266(2)(a), the court determined that, while the Board concluded that the claimant had established a combined condition as required by statute, it erred in finding that the claimant was required to show that his work injury was a material contributing cause of the preexisting component of the combined condition, *i.e.*, spondylosis. Further, the court concluded that the Board had not examined whether the carrier had met its burden to prove that the otherwise compensable disc condition was not the major contributing cause of the need for treatment or disability of the combined condition. Therefore, the court reversed and remanded for the application of the correct burden of proof.

Presiding Judge Tookey dissented. He argued that the claimant's initial burden under ORS 656.005(7)(a) is to establish that the otherwise compensable injury combined with the preexisting condition to cause or prolong disability or the need for treatment of "*the claimed combined condition.*" Because the claimant requested benefits for the preexisting spondylosis, Judge Tookey would have concluded that the claimant's burden was to show that the disc injury combined with the preexisting spondylosis to cause or prolong disability or a need for treatment of the spondylosis. Ultimately, because the Board did not find any supporting evidence to that effect, Judge Tookey would have affirmed the Board's order.

FIREFIGHTER PRESUMPTION: Claimant Was Not a Subject Worker Before Filing Claim Under Presumption – Board Order Supported by Substantial Evidence

Kastner v. City of Hillsboro, 350 Or App 539 (June 10, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed a Board order that found that the claimant was not a subject worker, the firefighter's presumption under ORS 656.802(5)(b) did not apply, and his claimed myeloma condition was not compensable. The court analyzed the disputed factors of ORS 670.600(2) to determine whether the claimant was an employee of the city, rather than an independent contractor, when the claimant had provided training for city employees following his retirement. The court found that the Board's conclusions that the city did not have the "right to control" the claimant and the claimant had an "independently established business" were supported by substantial evidence. Determining that the claimant was an independent contractor during the time in question, the court affirmed the Board's order upholding the denial of his claim.