



## News &amp; Case Notes

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## BOARD NEWS

## Adoption of Permanent Rule Amendments to OAR 438-015-0019 – Effective October 1, 2026

The Board voted at its August 6, 2026, meeting to [adopt proposed rule amendments](#) to OAR 438-015-0019 “Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute.”

The [amendments](#) change requirements related to the submission of cost bills when a claimant prevails against a claim denial:

- The time frame to submit the cost bill will be extended to 60 days.
- Use of the [Board's cost bill form](#) will be mandatory.
- The cost bill form must be submitted as a separate document.
- The claimant's attorney may sign the cost bill form on the claimant's behalf.

The amendments become effective October 1, 2026, to apply to cost bills submitted on or after October 1, 2026.

## Attorney Fee Report: 2025

The Workers' Compensation Board (WCB) has published its [report](#) for attorney fees awarded or approved by WCB during calendar year 2025 to its [website](#).

## Biennial Review of Schedule of Attorney Fees Under ORS 656.388(4) – Request for Public Comment

The Board is seeking written public comments for its 2026 biennial review of its schedule of attorney fees under ORS 656.388(4). Written comments should be directed to Autumn Blake, rules coordinator, by mail at 2601 25th St SE, Ste. 150, Salem, OR 97302, by email at [RuleComments.WCB@wcb.oregon.gov](mailto:RuleComments.WCB@wcb.oregon.gov), or by fax at 503-373-1684. Written comments will be posted on the Board's [website](#) and compiled for discussion at public Board meetings.

The Board will also consider public testimony received at [scheduled Board meetings](#) to be held September 24 and October 29. The Board will accept written and oral comments through the October 29 meeting, with the possible extension of Board discussion at its November 30 meeting.

The meeting on Thursday, September 24, 2026, will be held at 10 a.m. through Zoom and in person in Hearing Room A of the Board's Salem office. A formal announcement regarding this meeting will be electronically distributed

to those who have registered for [electronic notifications](#). Notice of the October and November meetings will be electronically distributed in advance of those meetings.

## CASE NOTES

### CLAIM PROCESSING: Carrier's Claim Processing and Refusal to Close Were Not Unreasonable

*Greg A. Elkins*, 78 Van Natta 424 (July 14, 2026). On reconsideration, the Board adhered to its previous order in *Greg A. Elkins*, 78 Van Natta 377 (2026), which declined to award penalties and related attorney fees for the carrier's allegedly unreasonable claim processing and refusal to close the claim.

On reconsideration, the claimant contested the Board's analysis of the carrier's refusal to close the claim. The Board determined that, had the carrier closed the claim 14 days after the claimant's request to close, that closure would have been premature because the carrier did not have sufficient information to do so. Further, the Board found that after the claimant's request, the carrier proactively contacted the attending physician, the MCO, and the claimant's attorney to request information to aid in closing the claim. The carrier ultimately closed the claim 10 days after it received all necessary information regarding the claimant's impairment. Under these circumstances, the Board did not find the carrier's refusal to close the claim to be unreasonable.

### ATTORNEY FEES: Attorney Fee Award Not Payable While Claimant's Request for Judicial Review Pending

*Karista D. Peabody*, 78 Van Natta 454 (July 28, 2026). Analyzing ORS 656.295(8) and OAR 438-015-0082(2), the Board concluded that the carrier was not required to pay an attorney fee authorized by a nonfinal Board order that was pending judicial review. In so concluding, the Board explained that, under OAR 438-015-0082(2), an attorney fee must be paid within 14 days of the date the order is final. Citing ORS 656.295(8), the Board noted that an order is final unless "one of the parties appeals to the Court of Appeals for judicial review." Because the prior Board order was appealed to the court, the Board concluded that it was not final and, therefore, the carrier was not required to pay the fee authorized by the order.

The Board also concluded that ORS 656.313(1)(a) and 183.482(3) did not apply because an attorney fee is not compensation, the claimant appealed the prior Board order authorizing the fee, and the carrier was the respondent on judicial review.

Finally, the Board found that a penalty and related attorney fee were not warranted under ORS 656.262(11)(a) because the carrier had a legitimate doubt as to its obligation to pay the authorized attorney fee and it was not unreasonable to defer payment of the fee while the order was pending judicial review.

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**APPELLATE DECISIONS  
UPDATE**

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**PERMANENT IMPAIRMENT EXTENT: Board  
Order Not Supported by Substantial Evidence and  
Reason**

*Dean v. Multnomah County*, 351 Or App 608 (July 22, 2026). On reconsideration of its earlier decision, [349 Or App 10 \(2026\)](#), the Court of Appeals adhered to its opinion that reversed a Board order upholding an order that eliminated the claimant's impairment award. The court, however, modified its language regarding the scope of acceptance for purposes of claim closure and permanent disability rating.

The court clarified that the accepted condition continued to be that identified in the notice of acceptance and reiterated its holding that the Board had failed to articulate why it relied on the arbiter panel's analysis that had not considered a prior compensability determination.

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**APPELLATE DECISIONS  
COURT OF APPEALS**

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**OCCUPATIONAL DISEASE: Board Order Supported  
by Substantial Evidence and Reason**

*SAIF v. Dahl*, 351 Or App 181 (July 1, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board's order in *Erick T. Dahl*, 75 Van Natta 591 (2023), and determined it was supported by substantial evidence and reason.

While SAIF argued that the Board exceeded its role as a lay factfinder and erred as a matter of law in its analysis of the medical evidence, the court clarified that SAIF's argument on appeal was better described as a substantial-evidence challenge. Citing the factors considered by the doctor supporting compensability, the court concluded that there was substantial evidence to support the Board's conclusion.

Finally, the court concluded that the Board's explanation for finding the supporting doctor more persuasive was supported by substantial reason.