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BOARD NEWS

Board Meeting – October 29, 2026

The Board has scheduled a public meeting for Thursday, October 29, 2026, at 10 a.m. The meeting will be held in Hearing Room A at the Workers' Compensation Board's Salem office (2601 25th St. SE, Ste. 150). The agenda for the Board meeting will be:

- Receipt of public comments and possible Member discussion regarding biennial attorney fee review under ORS 656.388(4).

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

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

The Board is currently accepting 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, or by fax at 503-373-1684. Written comments will be posted on the Workers' Compensation Board's website and compiled for Board consideration. The Board will accept written and oral comments through its October 29 meeting.

Annual Mediation Evaluation

The Workers' Compensation Board (WCB) will be conducting a mediation evaluation from September 1, 2026 through November 30, 2026. WCB will send evaluations to attendees of all mediations held. The purpose of the evaluation is to receive feedback from participants about their mediation experience. Evaluations will be sent by mail and will include a postage-paid return envelope for your convenience. An option to complete the survey electronically via a QR code or website will be included as well. WCB would appreciate your participation in providing us with feedback during this 3-month period.

CASE NOTES

OFFSET: Carrier Failed to Establish Entitlement to Post-Closure Offset

Tracy L. Hager, 78 Van Natta 541 (September 1, 2026). The Board found that there was insufficient evidence to establish that the carrier was entitled to a

claimed overpayment. Contrasting *Krystal A. Schriener*, 78 Van Natta 178 (2026), *Johnny A. Stacey*, 77 Van Natta 425 (2025), and *Nyla J. Vanalstine*, 67 Van Natta 510 (2015), the Board concluded that the carrier did not provide a verifiable calculation to establish the amount of overpayment, a detailed audit of benefits paid, or evidence from a claims adjuster to support the alleged overpayment. In addition, the record included three different amounts for the claimant's average weekly wage (AWW), but no evidence as to which amount was correct. Therefore, the Board determined that the record did not include sufficient information regarding pre-injury wage records to determine the claimant's AWW. Finally, the Board found that the carrier's evidence was insufficient in this case in light of the claimant's rebuttal evidence that the AWW used to calculate the overpayment was different than the AWW used at claim closure.

The Board declined to award penalties and related attorney fees under ORS 656.262(11)(a) for the carrier's allegedly unreasonable claim processing. Under these particular circumstances, it determined that the carrier was not precluded from asserting an overpayment after claim closure and its actions in doing so were not unreasonable.

SUBJECT WORKER: "Right to Control" / "Nature of the Work" Tests Applicable After 2022 Amendments to "005(28)(a)"

David Green, 78 Van Natta 568 (September 17, 2026). The Board found that the claimant was a subject worker and set aside the carrier's compensability denial. Analyzing the text, context, and legislative history of the 2022 amendments to ORS 656.005(28)(a), the Board found that it was appropriate to apply the "right to control" and "nature of the work" tests to determine whether the claimant was a subject worker. Although the 2022 amendments removed the "direction and control" language from the definition of a worker, the Board reasoned that the "right to control" and "nature of the work" tests continued to be considerations in determining a worker's subjectivity.

The Board found that the definition of "independent contractor" under ORS 670.600(2)(a) supported the application of the "right to control" and "nature of the work" tests because it required that an independent contractor be "free from direction and control." The legislative history of the 2022 amendments also supported the conclusion that the removal of the "direction and control" language did not affect the subjectivity analysis. The sponsor of the amendments testified that they were meant to streamline and add consistency to such determinations across state agencies and an independent contractor determination remained applicable to workers' compensation claims. Finally, the Workers' Compensation Division's analysis of the amendments maintained that "a person who * * * is subject to direction and control would be a worker under" both former ORS 656.005(30) and ORS 656.005(28)(a).

Determining that the application of the "right to control" and "nature of the work" tests was appropriate, the Board concluded that the claimant was a

“worker” under ORS 656.005(28) and a “subject worker” under ORS 656.027. Finally, because the carrier had conceded medical causation, the Board set the denial aside.

APPELLATE DECISIONS COURT OF APPEALS

MENTAL DISORDER: Board Order Supported by Substantial Evidence and Reason

Hayes v. TriMet, 352 Or App 843 (September 10, 2026). In a nonprecedential memorandum opinion, the Court of Appeals affirmed the Board’s order, *Ronald L. Hayes*, 77 Van Natta 139 (2025), that upheld the carrier’s denial of the claimant’s claim for adjustment disorder. Reviewing the Board’s order for substantial evidence and reason, the court determined that the Board had applied the correct legal standard for mental disorder claims under ORS 656.802(2) and (3) and noted that the only medical opinion in the record did not carry the claimant’s burden of proof. The court concluded that the Board was not required to discredit the medical opinion, especially without an opinion to support the claimant’s position, and that a reasonable person viewing the record as a whole could view the facts as the Board did. Additionally, the court opined that the order provided a rational explanation for why its factual findings supported its conclusions. Therefore, the court affirmed the Board’s order.

PREMATURE CLOSURE: 2022 Amendments to “262” and “268” Applied to Notice of Closure

Hill v. Trader Joes, 353 Or App 190 (September 23, 2026). Analyzing the text, context, and legislative history of the 2022 amendments to ORS 656.262 and ORS 656.268, the Court of Appeals held that the amendments applied to the claimant’s May 2022 Notice of Closure and remanded the claim for reconsideration.

The court addressed the issue of preservation as a preliminary matter. It noted that the amendments applied to “claims that exist on, or arise on or after, January 1, 2024, regardless of the date of injury or the date on which the claim is filed” and that they did not apply to disputes where a final determination had been made before that date. The court stated that, before January 1, 2024, there was no way to determine if the claimant would have a pending claim without a final order, and his appeal to the court was the first opportunity to raise the issue. Under such circumstances, the court excused preservation.

The court concluded that, because the claim existed on January 1, 2024, and the Board’s order had not become final due to it pending before the court, the 2022 amendments applied to the claimant’s case and must be reconsidered under the new process.