Workers' Compensation Board

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BOARD NEWS

Board Meeting – November 30, 2026

The Board has scheduled a public meeting for Monday, November 30, 2026, at 10 a.m. The meeting will be held in person in Hearing Room A at the Workers' Compensation Board's Salem office (2601 25th St. SE, Ste. 150) and through Zoom.

The agenda for the Board meeting will be:

- Member discussion of public comments regarding biennial attorney fee review under ORS 656.388(4).
- Discussion of proposed legislative concept regarding barriers to communication in an electronic environment.

Formal notice of the Board meeting will be distributed electronically to those individuals, entities, and organizations who have signed up to receive those notifications.

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.

2026 Modernization Progress

A year ago, the Workers' Compensation Board (WCB) was submitting documentation to the State of Oregon's oversight committee for approval to solicit vendors for its modernization project. Since then, WCB has completed several rounds of reviews for two different vendors. WCB is required to have an independent quality management service (IQMS) vendor, in addition to a vendor to build and implement the new electronic case management system. We are now at the phase where WCB can enter into contract negotiations with the vendors in both of these areas. We hope to be able to share additional information on this in the near future.

Presently, WCB is installing more reliable internet connections in our Pendleton and Bend offices. This will help avoid processing delays and expand functionality in those offices. It will also be able to support Wi-Fi capabilities needed during hearings and mediations and is another step we are taking to ensure the success of our modernization efforts.

CASE NOTES

EVIDENCE: ALJ Did Not Abuse Discretion in Excluding Post-Closure Reconsideration Evidence and Admitting Evidence That Was Subject of Review

Kristy L. Regas, 78 Van Natta 593 (October 2, 2026). The Board affirmed an Order on Reconsideration and found that the administrative law judge (ALJ) did not abuse her discretion in denying the claimant's evidentiary motions at hearing. The claimant had moved to cross-examine the medical arbiters, introduce her own oral testimony at hearing, exclude the medical arbiter panel's reports, and limit the admissibility of the Order on Reconsideration. Applying ORS 656.268(8)(h) and 656.283(6), the Board determined that the record was statutorily limited to what was developed at the reconsideration level. Additionally, there was no authority to support the claimant's motions to exclude the arbiter reports or limit the admissibility of the Order on Reconsideration. Moreover, the Board found that declining to consider the attending physician's post-closure opinions was consistent with the limitations in ORS 656.268(6)(a)(B) and not an abuse of discretion.

The claimant also raised the issue of alleged due process violations based on the ALJ's evidentiary rulings. However, the record did not support that the claimant had exhausted the administrative remedies available to her during the reconsideration process. Therefore, the Board found that claimant had not met her burden to establish error in the reconsideration process.

Member Ceja dissented in part. He would have found that the claimant was entitled to additional temporary disability benefits, but agreed with the majority opinion regarding the evidentiary and permanent disability issues.

COURSE AND SCOPE: Fatal Injury "Arose Out Of" and "In the Course Of" Employment – Activity Incidental to Employment – "Personal Comfort" Doctrine Applied

Heriberto Rangel Rangel, DCD, 78 Van Natta 624 (October 16, 2026). Analyzing the circumstances surrounding the deceased worker's injury, the Board found that the claimant's claim for survivor benefits was compensable because the injury "arose out of" and "in the course of" employment.

The deceased worker was fatally injured in a motor vehicle accident as a passenger while riding with coworkers in the employer's vehicle. The worker was brought to the United States on a work visa by the employer, did not engage in

any other employment, and lived on the employer's premises away from comprehensive medical care. Due to the characteristics of his employment, the worker was dependent on the employer and coworkers for transportation.

Addressing the "arising out of" prong of the work connection test, the Board found that the injury did not result from the nature of the work or from anything distinctly personal to the worker and, therefore, was "neutral." Citing *Clark v. U.S. Plywood*, 288 Or 255 (1980) and *Halfman v. SAIF*, 49 Or App 23 (1980), the Board determined that the injury occurred during an activity acquiesced to and contemplated by the employer and originated from a risk to which his work environment exposed him.

Moving to the "in the course of" prong, the record supported a conclusion that the injury occurred during a period of employment, where the worker was reasonably expected to be, and that the employer had acquiesced to providing transportation. The Board also found that the "personal comfort" doctrine applied as the decedent was involved in an activity reasonably incidental to his employment. Again citing *Clark*, the Board found a sufficient work connection to the injury because the worker was on a work-related trip in the employer's vehicle leaving from the employer's premises with the employer's workers' compensation specialist.

Finding that both prongs of the work connection test were satisfied, the Board reversed the carrier's denial.

Member Ousey concurred stating that there were multiple elements of work connections in this case to support compensability. Although each case that considers work connectedness must be evaluated on its own particular facts, there were elements of the "traveling employee" rule, the "bunkhouse" rule, and the "special errand" and "employer conveyance" exceptions to the "going and coming" rule. He concluded that the totality of the work connections were sufficient to warrant compensation.

FIREFIGHTER PRESUMPTION: *McCann* Court Interpretation Supported Claimant's Cancer Claim – *Kalenius* Distinguishable

Brett Swenson, 78 Van Natta 642 (October 20, 2026). The Board reversed the carrier's denial of the claimant's new or omitted medical condition claims for renal cell carcinoma and "cardiovascular renal disease as a result of [claimant's] diagnosed kidney cancer." The claimant asserted that the firefighter presumption in ORS 656.802(4) applied because his kidney conditions constituted "cardiovascular-renal disease." Under these particular circumstances, the Board agreed with claimant's contention.

The Board analyzed the definition of "cardiovascular-renal disease" articulated by the court in *City of Eugene v. McCann*, 248 Or App 527 (2012), as "a physical impairment of the heart or blood vessels, gradual in onset, that interrupts or modifies the performance of the body's vital functions" in relation to the claimed conditions. The Board determined that the claimant's renal cell carcinoma tumor, which extended into the renal vein, impacted the physical

structure and function of the renal vein blood vessel, ultimately resulting in the surgical removal of the kidney, was gradual in onset, and modified the performance of the body's vital functions . Moreover, the Board reasoned that the tumor's renal vein extension demonstrated some degree of vascular involvement. Finally, the Board concluded that the carrier had not established by clear and convincing evidence that the claimant's conditions were unrelated to his employment as a firefighter and, therefore, reversed the carrier's denial.

The Board distinguished *Kalenius v. City of Corvallis*, 313 Or App 447 (2021). In *Kalenius*, because the claimed stroke condition did not cause a physical impairment of the cardiovascular system and was not gradual in onset, it did not meet the court's definition in *McCann*.

APPELLATE DECISIONS UPDATE

OFFSET: Carrier Established Overpayment – Circumstances Did Not Trigger "262(4)(j)(A)" Notice

Stacey v. Cascade Steel Rolling Mills – Schnitzer Steel, 354 Or App 44 (October 21, 2026). The Court of Appeals affirmed a Board order, previously noted in NCN 44:8, that found that the carrier established an overpayment of temporary total disability benefits and was not required to send a notice under ORS 656.262(4)(j)(A) before recovering the overpayment.

The court determined that the carrier had the burden of proof to establish an overpayment, that the claimant received benefits to which he was not entitled, and to establish the amount of the overpayment. Citing *SAIF v. Iliaifar*, 217 Or App 104, 108 (2007), the court stated that the Board may consider evidence other than wage documentation. In this case, the court explained that there was substantial evidence in the record of the overpayment including the testimonies of the claimant and claims adjuster, an indemnity payment ledger, an audit and calculation, and a letter from the carrier. Considering that the claimant had not offered evidence to rebut the carrier, the court concluded that the Board's order was supported by substantial evidence. Moreover, because the Board's reasoning explained why it regarded that evidence as sufficient, the court concluded that the Board's order was supported by substantial reason.

Analyzing whether the carrier was required to provide written notice under ORS 656.262(4)(j)(A) before recovering the overpayment, the court clarified that the carrier was not required to provide a termination notice when the amount of temporary disability benefits changed. Here, the claimant's temporary disability benefits changed in form and amount but did not end. Under such circumstances, the court agreed with the Board that the lack of a termination notice did not preclude the carrier from recovering the overpayment and affirmed the Board's order.

Workers' Compensation Board
2601 25th St., Ste. 150
Salem, OR 97302
503.378.3308
www.wcb.oregon.gov