



# MEMORANDUM

April 7, 2023

To: ALJ Bruce Smith and members of OSB Workers' Compensation Section Access to Justice Committee

From: Constance L. Wold, Workers' Compensation Board Chair, and Terry Bello, WCB Operations and Administrative Services Manager

Subject: Unrepresented Worker Litigation Report

The information in this report is provided in response to an inquiry from the OSB Workers' Compensation Section's Access to Justice Committee ("A2J") for specific data (over a five year period) regarding litigation in which the worker was not represented by legal counsel ("UNREPS"). The resultant data reported herein is organized by the specific questions asked by the A2J Committee.

(1) **How many requests for hearing (RFH) were filed?**

| RFH filed | 2018 | 2019 | 2020 | 2021 | 2022 | TOTAL |
|-----------|------|------|------|------|------|-------|
|           | 485  | 533  | 465  | 430  | 410  | 2323  |
|           |      |      |      |      |      |       |

(2) **How many cases went to hearing?**

| RFH's that went to hearing | 2018 | 2019 | 2020 | 2021 | 2022 | TOTAL |
|----------------------------|------|------|------|------|------|-------|
|                            | 57   | 55   | 60   | 46   | 10   | 228*  |
|                            |      |      |      |      |      |       |

\*231 was the original total of matters that went to hearing. Of these, three are not included in the counts above. Two matters concerned attorney fee liens from prior representation. One matter resulted in an O&O which was later vacated via settlement.

(3) **How many cases settled prior to hearing?**

| <b>RFH's settled before hearing</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>TOTAL</b> |
|-------------------------------------|-------------|-------------|-------------|-------------|-------------|--------------|
|                                     | 96          | 89          | 99          | 77          | 73          | 434          |
|                                     |             |             |             |             |             |              |

(4) **How many RFH were voluntarily withdrawn prior to hearing?**

| <b>Voluntarily withdrawn before hearing</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>TOTAL</b> |
|---|-------------|-------------|-------------|-------------|-------------|--------------|
|   | 212         | 245         | 219         | 200         | 124         | 1,000        |
|   |             |             |             |             |             |              |

(5) **How many RFH were dismissed on jurisdictional grounds (including untimely RFH).**

| <b>Dismissed on jurisdictional grounds</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>TOTAL</b> |
|--|-------------|-------------|-------------|-------------|-------------|--------------|
|  | 3           | 2           | 12          | 4           | 0           | 21           |
|  |             |             |             |             |             |              |

(6) **How many O&Os on merits were favorable to UNREPs?**

| <b>O&amp;O's on the merits favorable to UNREPS</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>TOTAL</b> |
|--|-------------|-------------|-------------|-------------|-------------|--------------|
|  | 6           | 6           | 4           | 3           | 1           | 20*          |
|  |             |             |             |             |             |              |

\*Each file is counted separately even if banded with/part of the same order, as we are looking for R4H rather than orders. Counts are based on the year of the R4H, which means if multiple years are grouped together, each file is counted under the year the R4H was filed.

Where there are multiple issues, if at least one was resolved favorably for the worker, it is counted as a "favorable" outcome. Jurisdictional issues are not included; however, issues such as failure to cooperate and subjectivity are included.

(7) **How many O&Os on merits were unfavorable to UNREPs?**

| O&O's on the merits unfavorable to UNREPS | 2018 | 2019 | 2020 | 2021 | 2022 | TOTAL |
|---|------|------|------|------|------|-------|
|   | 43   | 44   | 43   | 33   | 10   | 173*  |
|   |      |      |      |      |      |       |

\*Each file is counted separately even if banded with/part of the same order, as we are looking for R4H rather than orders. Counts are based on the year of the R4H, which means if multiple years are grouped together, each file is counted under the year the R4H was filed.

Where all issues were resolved unfavorably for the worker, it is counted as "unfavorable." If there were multiple issues and at least one was resolved favorably for the worker, this is counted as a "favorable" outcome.

**Caveat:**

| Cases with no issues resolved | 2018 | 2019 | 2020 | 2021 | 2022 | TOTAL |
|-------------------------------|------|------|------|------|------|-------|
|                               | 2    | 4    | 2    | 6    | 0    | 14*   |
|                               |      |      |      |      |      |       |

\*The above are RFH in which there are no issues to code. This can occur, for example, when all of the issues raised in a R4H are withdrawn, or if the issues raised in the R4H are not decided in the O&O.

(8) **How many UNREP O&Os were appealed to the board?**

| <u>UNREP O&amp;Os appealed to the board</u> | 2018 | 2019 | 2020 | 2021 | 2022 | TOTAL |
|---|------|------|------|------|------|-------|
|   | 18   | 17   | 15   | 12   | 3    | 65    |
|   |      |      |      |      |      |       |

(9) **What was the outcome of those appealed cases?**

| <u>Outcomes for UNREP O&amp;Os appealed to the board</u> | 2018 | 2019 | 2020 | 2021 | 2022 | TOTAL |
|--|------|------|------|------|------|-------|
| Cases appealed   | 18   | 17   | 15   | 12   | 3    | 65    |
| Favorable outcome  | 1    | 0    | 0    | 0    | 0    | 1     |
| Unfavorable outcome                                      | 13   | 15   | 12   | 10   | 1    | 51    |
| No issue/dismitted                                       | 4    | 3    | 2    | 1    | 0    | 10    |
| Settlement   | 0    | 0    | 0    | 0    | 0    | 0     |
| Still on board review                                    | 0    | 0    | 0    | 1    | 2    | 3     |
|  |      |      |      |      |      |       |