

EXHIBIT A

438-005-0035

Board Policy

(1) It is the policy of the Board to expedite claim adjudication and amicably dispose of controversies, **while providing for access to adequate representation for injured workers.** In accordance with ORS 656.012(3), these rules shall be interpreted in an impartial and balanced manner. The overriding principle is substantial justice.

(2) With respect to postponement or continuance of hearings under OAR 438-006-0081 and 438-006-0091, substantial justice requires consideration of the relative financial hardship of the parties.

(3) The unrepresented party shall not be held strictly accountable for failure to comply with these rules. Any individual who undertakes to represent a party in proceedings under these rules shall be required to comply with these rules.

(4) It is the policy of the Board to promote the full and complete disclosure of a party's specific position concerning the issues raised and relief requested in a specification of issues under OAR 438-006-0031 and in a response under 438-006-0036. However, it is not the intent of this policy to create binding admissions on behalf of any party, but to clarify the scope of the matters to be litigated.

(5) The Board recognizes the complexity of disputed claims and the time limitations concerning the scheduling and litigation process for such claims. Consistent with this recognition, as factual, medical, and legal aspects of disputed issues evolve, the amendment of issues, relief requested, theories, and defenses may be allowed as prescribed in OAR 438-006-0031(2) and 438-006-0036(2).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.012

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

EXHIBIT B

438-015-0010 General Principles

(1) Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board.

(2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382, [and] 656.386, **and House Bill 2764 (2015), sections 9 and 10.**

(3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.

(4) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:

- (a) The time devoted to the case;
 - (b) The complexity of the issue(s) involved;
 - (c) The value of the interest involved;
 - (d) The skill of the attorneys;
 - (e) The nature of the proceedings;
 - (f) The benefit secured for the represented party;
 - (g) The risk in a particular case that an attorney's efforts may go uncompensated; and
 - (h) The assertion of frivolous issues or defenses.
- (5) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.307, 656.308(2), 656.382, 656.386, 656.388, HB 2764 (2015) §§ 9, 10
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02

EXHIBIT C

438-015-0019

Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute

(1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge or the Board may order payment of the claimant's reasonable expenses and costs for records, expert opinions, and witness fees incurred in the litigation of the denied claim(s).

(2) In ordering payment under section (1), an Administrative Law Judge or the Board may award reasonable expenses and costs that the claimant incurred as a result of the litigation of the denied claim(s) under ORS 656.386(1). If the parties stipulate to the specific amount of the reasonable expenses and costs, the Administrative Law Judge's or the Board's award of expenses and costs shall be included in the order finding that the claimant finally prevails against a denied claim(s) under 656.386(1). In the absence of the parties' stipulation, the Administrative Law Judge or the Board may award reasonable expenses and costs as described in section (1), which the claimant may claim by submitting a cost bill under section (3) to the insurer or the self-insured employer, not to exceed \$1,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.

(3) If an order under section (2) does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit, within 30 days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

(a) An itemization of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and

(b) The claimant's signature confirming that the claimed expenses and costs were incurred in the litigation of the denied claim(s).

(4) If the parties disagree whether a claimed fee, expense, or cost is reasonable, a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Unless a hearing is requested by the insurer or self-insured employer under section (4), payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) or within 30 days after the order under section (2) becomes final, whichever is later, and are in addition to compensation payable to the claimant and in addition to attorney fees.

(6) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge or the Board shall award a reasonable assessed attorney fee to the claimant's attorney.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.386(2), (4)

Hist.: WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13

EXHIBIT D

438-015-0025

Maximum Attorney Fees Out of Compensation

Except in situations where a claimant's attorney fee is an assessed fee, in settlement of disputed claims or claim disposition agreements and in cases under the third-party law, unless there is a finding in a particular case by an Administrative Law Judge or the Board that extraordinary circumstances justify a higher fee, the established fees for attorneys representing claimants are as set forth in OAR 438-015-0040, [438-015-0045,] 438-015-0055[(1),(2), (3), and 438-015-0080.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236(4), 656.289(4), 656.307, 656.308(2), 656.382, 656.386, 656.388(3), 656.593(1)(a)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13

EXHIBIT E

438-015-0033

Attorney Fee Award Under ORS 656.262(14)(a)

(1) In accordance with ORS 656.262(14)(a), a reasonable hourly rate for an attorney's actual time spent during a personal or telephonic interview or deposition conducted under that statute is \$275.

(2) If the claimant is represented by an attorney, the insurer or self-insured employer shall pay a reasonable attorney fee award, which is based upon the hourly rate prescribed in section (1) multiplied by the actual time spent by the attorney during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a).

(3) To obtain the attorney fee described in section (2), the claimant's attorney shall submit a bill to the insurer or self-insured employer within 30 days of completion of the personal or telephonic interview or deposition. The bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

(a) An itemization of the actual time spent by the claimant's attorney during the personal or telephonic interview or deposition;

(b) The claimant's attorney's signature confirming that the claimed time was actually spent during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a); and

(c) A copy of the executed retainer agreement, unless previously provided.

(4) If the parties disagree regarding the attorney's bill under section (3), a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Unless it files a request for hearing, the insurer or self-insured employer must pay the attorney fee described in section (3) as an award under this rule within 30 days of its receipt of the bill.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.262(14)(a)

Hist.:

EXHIBIT F

438-015-0045

Attorney Fees When a Claimant Requests a Hearing on Extent of Temporary Disability

If the Administrative Law Judge awards additional compensation for temporary disability **benefits**, the Administrative Law Judge shall [*approve a fee of 25 percent of the increased compensation, but not more than \$1,500, to be paid out of the increased compensation*] **award a reasonable assessed attorney fee.**

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.307, 656.308(2), 656.382, 656.386, 656.388, HB 2764 (2015) §§ 9, 10

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 1-1998,

f. 11-20-98, cert. ef. 2-1-99

EXHIBIT G

438-015-0048

Attorney Fees When a Claimant Requests a Hearing on a Claim Reclassification

If a claimant requests a hearing regarding a claim reclassification order from the Workers' Compensation Division, and the Administrative Law Judge finally determines that the claim should be classified as disabling, the Administrative Law Judge may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.386(3)

Hist.:

EXHIBIT H

438-015-0055

Attorney Fees When a Claimant Requests Review by the Board

(1) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for temporary disability and the Board awards additional compensation, the Board shall *[approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$5,000]* **award a reasonable assessed attorney fee.**

(2) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$6,000.

(3) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent total disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$16,300.

(4) If a claimant requests review of an Administrative Law Judge's order that upheld a denial of compensability for a claim and the Board orders the claim accepted, the Board shall assess a reasonable attorney fee to be paid by the insurer or self-insured employer to the claimant's attorney.

(5) If a claimant requests review of an Administrative Law Judge's order that upheld a responsibility denial issued under ORS 656.308(2) and the claimant's attorney actively and meaningfully participates in finally prevailing against the responsibility denial, the Board shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee for prevailing over the responsibility denial shall not exceed \$2,500. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole number.

(6) If a claimant requests review of an Administrative Law Judge's order regarding a claim reclassification order from the Workers' Compensation Division, and the Board finally determines that the claim should be classified as disabling, the Board may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.307, 656.308(2), 656.382, 656.386, 656.388, HB 2764 (2015) §§ 9, 10
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13

EXHIBIT I

438-015-0065

Attorney Fees When Insurer or Self-Insured Employer Requests a Hearing

(1) If an insurer or self-insured employer requests a hearing or otherwise seeks a reduction in compensation and the Administrative Law Judge finds that **all or part of** the compensation awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

(2) If an employer or insurer raises attorney fees, penalties or costs as a separate issue in a request for hearing, and the Administrative Law Judge finds that the attorney fees, penalties or costs awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge shall award reasonable additional attorney fees to the attorney for the claimant for efforts in defending the fee, penalty or costs.

[(2)] **(3)** If an insurer or self-insured employer requests a hearing regarding a reconsideration order rescinding a notice of closure, and the Administrative Law Judge finds that the reconsideration order should not be reversed, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

[(3)] **(4)** If an insurer or self-insured employer requests a hearing regarding a reconsideration order, and the ALJ finds that **all or part of** the compensation awarded by the reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

[(4)] **(5)** If an insurer or self-insured employer requests a hearing regarding a claim reclassification order from the Workers' Compensation Division, and the Administrative Law Judge finally determines that the claim should be classified as disabling, the Administrative Law Judge may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.382, 656.386, 656.388

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

EXHIBIT J

438-015-0070

Attorney Fees When Insurer or Self-Insured Employer Requests or Cross-Requests Review by the Board

(1) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order and the Board finds that **all or part of** the compensation awarded to the claimant should not be disallowed or reduced, the Board shall award a reasonable assessed fee to the claimant's attorney.

(2) If an employer or insurer raises attorney fees, penalties or costs as a separate issue in a request for review, and the Board finds that the attorney fees, penalties or costs awarded to the claimant should not be disallowed or reduced, the Board shall award reasonable additional attorney fees to the attorney for the claimant for efforts in defending the fee, penalty or costs.

(3)(a) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order and the matter is briefed, but the insurer or self-insured employer withdraws the appeal prior to a decision by the Board, resulting in the claimant's prevailing in the matter, the Board shall award a reasonable assessed fee for the claimant's attorney's efforts in briefing the matter to the Board.

(b) A matter is considered "briefed" when the insurer or self-insured employer has filed its initial brief.

[(2)] **(4)** If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order regarding a reconsideration order rescinding a notice of closure, and the Board finds that the reconsideration order should not be reversed, the Board shall award a reasonable assessed fee to the claimant's attorney.

[(3)] **(5)** If an insurer or self-insured employer requests or cross-requests review of the Administrative Judge's order regarding a reconsideration order, and the Board finds that **all or part of** the compensation awarded by the reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the Board shall award a reasonable assessed fee to the claimant's attorney.

[(4)] **(6)** If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order regarding a claim reclassification order from the Workers' Compensation Division, and the Board finally determines that the claim should be classified as disabling, the Board may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.382, 656.386, 656.388

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

EXHIBIT K

**438-015-0080
Attorney Fees in Own Motion Cases**

NO AMENDMENTS TO OAR 438-015-0080 WERE ADOPTED.

EXHIBIT L

438-015-0110

Attorney Fees in Cases Involving ORS 656.262(11)(a)

If the Director, an Administrative Law Judge, the Board, or the Court find that the insurer or self-insured employer unreasonably delayed or unreasonably refused to pay compensation, attorney fees or costs, or unreasonably delayed acceptance or denial of a claim an assessed attorney fee shall be awarded in a reasonable amount that:

- (1) [*Is*] Considers the proportionate [*to the*] benefit to the claimant;
- (2) Takes into consideration the factors set forth in OAR 438-015-0010(4), giving primary consideration to the results achieved and to the time devoted to the case; and
- (3) Does not exceed [*\$3,000*] **\$4,000**, absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole number.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.262(11)(a)

Hist.: WCB 3-2003, f. 12-12-03 cert. ef. 1-1-04; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13