



PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES WORKERS' COMPENSATION BOARD

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ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL

FILING CAPTION: Updating Workers' Compensation Board rule related to cost bill submissions.

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AMEND: 438-015-0019

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RULE SUMMARY: OAR 438-015-0019 amends the requirements that claimants and their attorneys must follow when submitting a cost bill to the insurer or self-insured employer.

CHANGES TO RULE:

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. ¶

(a) Reasonable costs and expenses may not exceed \$3,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount. ¶

(b) The maximum expenses and costs awarded under this section are 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 will publish the maximum fee by bulletin, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest multiple of \$100. ¶

(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 360 days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill, ~~which may~~ must be submitted as a separate submission on a form prescribed by the Board, ~~shall and must~~ 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 or, if represented, the claimant's attorney'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.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.386(2), ORS 656.386(4), ~~OR Ch L 2025 c. 152~~