



STATUTORY MINOR CORRECTION

WCB 1-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

FILED

03/15/2022 11:34 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Changing the language to reflect inclusion of "nonbinary" designations

CONTACT: Katy Gunville

2601 25th St. SE, Ste. 150

Filed By:

503-934-0123

Salem, OR 97302

Katy Gunville

katy.e.gunville@wcb.oregon.gov

Rules Coordinator

AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division

AMEND: 438-005-0040

RULE TITLE: General Definitions

RULE SUMMARY: General Definitions

RULE TEXT:

- (1) "Administrative Law Judge" means an individual appointed by the Board to perform the duties, functions and powers provided in ORS 654, 655 and 656, and such other duties, functions and powers as may be prescribed by the Board.
- (2) "Aggravation" means an actual worsening of the compensable condition(s) after the last award or arrangement of compensation, which is established by medical evidence supported by objective findings, and otherwise satisfies the statutory requirements of ORS 656.273.
- (3) "Aggravation rights" means the time periods specified in ORS 656.273 during which an injured worker is entitled to additional compensation for worsened conditions as a matter of right.
- (4) "Board" means the Workers' Compensation Board.
- (5) "Claimant" means an injured worker or any other person entitled to initiate or continue a claim for compensation.
- (6) "Director" means the Director of the Department of Consumer & Business Services or designee.
- (7) "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.
- (8) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.
- (9) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this state, or, except where the context requires otherwise, an assigned claims agent in cases under ORS 656.054.
- (10) "Party" means a claimant, an employer, including a noncomplying employer, an assigned claims agent in cases under ORS 656.054, and an insurer.
- (11) "Self-insured employer" means an employer or group of employers certified under ORS 656.430 as meeting the qualifications set out in 656.407.
- (12) "Workers' Compensation Division" means the Workers' Compensation Division of the Department of Consumer

and Business Services.

STATUTORY/OTHER AUTHORITY: ORS 656.726(5)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(5), 656.054



STATUTORY MINOR CORRECTION

WCB 2-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

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Salem, OR 97302

Filed By:

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Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division

AMEND: 438-005-0046

RULE TITLE: Filing and Service of Documents; Correspondence

RULE SUMMARY: Filing and Service of Documents; Correspondence

RULE TEXT:

(1) Filing:

(a) Except as otherwise provided in these rules, "filing" means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;

(b) In addition to the procedures otherwise described in these rules, "filing" may also be accomplished in the manner prescribed in OAR chapter 436, division 009 or 010 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;

(c) If filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;

(d) If a settlement stipulation, disputed claim settlement, or claim disposition agreement results from a mediation, "filing" also includes the physical delivery of the settlement stipulation, disputed claim settlement, or claim disposition agreement to the Administrative Law Judge who mediated the settlement or agreement, regardless of location.

(e) The following things may be filed by electronic mail (e-mail) pursuant to subsection (f) of this section:

(A) Request for hearing;

(B) Request for Board review of an Administrative Law Judge's order;

(C) Request for Board review of a Director's order finding no bona fide medical services dispute;

- (D) Request for extension of the briefing schedule under OAR 438-011-0020;
- (E) Request for waiver of the Board's rules under OAR 438-011-0030; or
- (F) Response to issues under OAR 438-006-0036.
- (f) To electronically file the requests listed in subsection (e) of this section by e-mail, a party shall:
- (A) Send an e-mail to: request.wcb@oregon.gov; and
- (B) Attach an electronic copy of a completed Workers' Compensation Board "Request for Hearing Form," or a completed request for Board review, or a completed request for extension of the briefing schedule, or a completed request for waiver of the Board's rules, or a completed Board "Response to Issues Form." These attachments must be in a format that can be viewed by the Board. Strict compliance with paragraph (B) of this subsection is not jurisdictional. Also, consistent with the Board's policy in OAR 438-005-0035(3), an unrepresented party shall not be held strictly accountable for failure to comply with Board rules.
- (C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the e-mail described in paragraph (A) of this subsection. An electronic filing under subsections (e) and (f) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.
- (g) The following things may be filed by website portal pursuant to subsection (h) of this section:
- (A) All actions described in subsection (e) of this section; and
- (B) Filing of any other thing that the Board makes available for filing by website portal.
- (h) To electronically file the things listed in subsection (g) of this section by website portal, a party shall:
- (A) Register as a "user" of the portal at: <https://portal.wcb.oregon.gov>; and
- (B) For subparagraph (g)(A) of this section, as appropriate, complete the electronic version of the Workers' Compensation Board "Request for Hearing Form," or complete a request for Board review, or complete a request for extension of a briefing schedule, or complete a request for waiver of the Board's rules, or complete a Board "Response to Issues Form"; or
- (C) For subparagraph (g)(B) of this section, complete the appropriate items on the website portal.
- (D) For the purposes of this rule, the date of a portal filing is determined by the date the Board receives the appropriate portal version of the form.
- (E) A portal filing under subsections (g) and (h) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed as of that date.
- (i) "Filing" includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:
- (A) The document transmitted indicates at the top that it has been delivered by FAX;
- (B) The Board's facsimile transmission number is used; and
- (C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.
- (j) Except for the documents specified in subsections (c), (e), or (g) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely.
- (2) Service:
- (a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail or website portal regarding requests, responses, or any other thing filed under OAR 438-005-0046(1)(e), (f), (g), or (h), or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is complete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail or website portal regarding requests, responses, or any other thing filed under 438-005-0046(1)(e), (f), (g), or (h), is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail or website portal regarding requests, responses, or any other thing filed under OAR 438-005-0046(1)(e), (f), (g), or (h), or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number. Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

(4) Signatures.

(a) Any thing delivered for filing under these rules shall include the signature of the party or the party's attorney, which may be provided in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means.

(b) The user name and password required to file a document with the Board by means of the website portal shall constitute the signature of the filer and for any other purpose for which a signature is required.

(c) Except for documents filed under subsection (b) of this section, any document filed by electronic means must include a signature block that includes the printed name of the filer, preceded by an electronic symbol intended to substitute for a signature (such as a scan of the filer's handwritten signature or "s/") in the space where the signature would otherwise appear.

(d) Any order, notice, or any other document issued by an Administrative Law Judge or a Board Member may include their signature in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means permitted under the Board's rules.

(e) Any electronically transmitted signature shall have the same force and effect as an original signature, provided that the electronically transmitted signature is executed or adopted by a person with the intent to sign the document as prescribed in ORS Chapter 84 (Uniform Electronic Transactions Act).

STATUTORY/OTHER AUTHORITY: ORS 656.726(5)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(5)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

WCB 3-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION BOARD

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Changing language to reflect inclusion of "nonbinary" designations

CONTACT: Katy Gunville
503-934-0123
katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150
Salem, OR 97302

Filed By:
Katy Gunville
Rules Coordinator

AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division

AMEND: 438-006-0050

RULE TITLE: Preliminary Rulings

RULE SUMMARY: Preliminary Rulings

RULE TEXT:

The Presiding Administrative Law Judge or delegate shall rule on all preliminary matters.

STATUTORY/OTHER AUTHORITY: ORS 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.307, 656.388, 656.593, 656.726(4)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

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CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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& LEGISLATIVE COUNSEL

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503-934-0123

katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150

Salem, OR 97302

Filed By:

Katy Gunville

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AMEND: 438-006-0055

RULE TITLE: Depositions

RULE SUMMARY: Depositions

RULE TEXT:

Depositions of medical or vocational experts are permitted by agreement of the parties, or by approval of an Administrative Law Judge, subject to the provisions of ORS 656.285. Depositions of claimants are permitted in the manner prescribed by ORS 656.262(14). Depositions of other lay witnesses are not permitted over objection unless the Presiding Administrative Law Judge or delegate finds that extraordinary circumstances justify the deposition.

STATUTORY/OTHER AUTHORITY: ORS 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.262(14), 656.388, 656.593, 656.726(5)



STATUTORY MINOR CORRECTION

WCB 5-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

2601 25th St. SE, Ste. 150

Filed By:

503-934-0123

Salem, OR 97302

Katy Gunville

katy.e.gunville@wcb.oregon.gov

Rules Coordinator

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AMEND: 438-006-0065

RULE TITLE: Consolidation/Joinder/Bifurcation

RULE SUMMARY: Consolidation/Joinder/Bifurcation

RULE TEXT:

(1) An Administrative Law Judge shall consolidate into one proceeding all cases in which a claimant has requested hearings involving denials of responsibility for a claim issued by insurers or self-insured employers under ORS 656.308(2)(a).

(2) Any request for hearing pertaining to the same claim or claimant as that of a pending hearing request should also recite whether the request for hearing should be consolidated with a pending hearing request or be separately scheduled for hearing.

(3) Except as provided in ORS 656.308(2)(a) and section (1) of this rule, a hearing request complying with section (2) of this rule shall be processed pursuant to the recitation contained in the hearing request.

(4) A hearing request not complying with section (2) of this rule shall be referred to the Administrative Law Judge assigned to any pending request for hearing pertaining to the same claim or claimant or to the Presiding Administrative Law Judge or designee, who shall determine, in the interests of substantial justice to all parties, whether the request will be consolidated or separately scheduled for hearing.

(5) On their own motion or, in response to a party's written motion filed no less than seven (7) days prior to a scheduled hearing, the assigned Administrative Law Judge or the Presiding Administrative Law Judge or designee may, in the interests of substantial justice to all parties, bifurcate consolidated requests for hearing or consolidate separately scheduled hearings.

STATUTORY/OTHER AUTHORITY: ORS 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.307, 656.308, 656.726(4)



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CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

2601 25th St. SE, Ste. 150

Filed By:

503-934-0123

Salem, OR 97302

Katy Gunville

katy.e.gunville@wcb.oregon.gov

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AMEND: 438-006-0078

RULE TITLE: Request for Expedited Hearing

RULE SUMMARY: Request for Expedited Hearing

RULE TEXT:

- (1) If it is alleged that the claimant is suffering a financial hardship or medical hardship, the claimant may file with the Presiding Administrative Law Judge with copies to the insurer, a written motion asserting the hardship and requesting an expedited hearing:
 - (a) For purposes of this rule, "financial hardship" means that the claimant is receiving neither compensation nor regular wages nor other income in lieu of wages which is comparable in amount to compensation;
 - (b) For purposes of this rule, "medical hardship" means that the claimant's condition will permanently and irreversibly deteriorate if the hearing is scheduled in the ordinary course of business and that such deterioration may be avoided by scheduling the hearing at an earlier date.
- (2) A motion for expedited hearing shall be accompanied with supporting evidence:
 - (a) If the motion is based on financial hardship, supporting evidence shall include an affidavit from claimant or family member establishing such hardship;
 - (b) If the motion is based on medical hardship, supporting evidence shall include a medical report from the attending physician establishing medical hardship.
- (3) A motion for expedited hearing shall state whether opposing counsel (or the party if the party is not represented by counsel), objects to, concurs in or has no comment regarding the motion.
- (4) If opposing counsel (or the party if the party is not represented by counsel) concurs with the motion, the motion shall be accompanied by three mutually suitable dates for an expedited hearing.
- (5) If opposing counsel (or the party if the party is not represented by counsel) either objects to the motion or has no comment, counsel for the moving party shall arrange and place a conference telephone call with the Presiding Administrative Law Judge or designee and counsel for the parties.
- (6) Within a reasonable time after receipt of the motion for expedited hearing and completion of the telephone call, if

required, the Presiding Administrative Law Judge or designee shall notify the parties in writing of the Administrative Law Judge's ruling:

(a) If the motion is granted, the Presiding Administrative Law Judge or designee shall also notify the parties of the date for the expedited hearing;

(b) If the motion is denied, hearing shall be held on a date scheduled in the ordinary course of business.

STATUTORY/OTHER AUTHORITY: ORS 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.283(1), 656.726(4)



STATUTORY MINOR CORRECTION

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CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

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AMEND: 438-006-0095

RULE TITLE: Change of Administrative Law Judge

RULE SUMMARY: Change of Administrative Law Judge

RULE TEXT:

(1) Except as provided in section (4) of this rule, an Administrative Law Judge shall disqualify themselves from a proceeding in which the Administrative Law Judge's impartiality reasonably may be questioned, including, but not limited to, instances when:

(a) The Administrative Law Judge has a bias or prejudice concerning a party, a representative, or any other participant in the proceeding before the Administrative Law Judge, or has knowledge, obtained from sources outside the proceeding, of disputed evidentiary facts concerning the proceeding;

(b) The Administrative Law Judge served as a lawyer in the matter in controversy, or a lawyer with whom the Administrative Law Judge previously was associated served during the period of association as a lawyer in the matter, or the Administrative Law Judge or the lawyer has been a material witness in the matter;

(c) The Administrative Law Judge knows that the Administrative Law Judge, individually or as a fiduciary, or the Administrative Law Judge's spouse, parent or child, wherever residing, or any other person residing in the Administrative Law Judge's household has a financial interest in the subject matter in controversy, is a party to the proceeding or has any other interest that could be substantially affected by the outcome of the proceeding;

(d) The Administrative Law Judge, the Administrative Law Judge's spouse, parent or child, wherever residing, or any other person residing in the Administrative Law Judge's household:

(A) Is a party to the proceeding, or an officer, director, partner or trustee of a party;

(B) Is acting as a lawyer in the proceeding; or

(C) Is, to the Administrative Law Judge's knowledge, likely to be a material witness in the proceeding.

(2) When an Administrative Law Judge disqualifies themselves from a proceeding under this rule, the Administrative Law Judge is not required to disclose the reason or reasons for the disqualification except as required by law.

(3) For purposes of this rule:

- (a) "Fiduciary" includes relationships such as personal representative, trustee, conservator and guardian;
- (b) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:
- (A) Ownership in a mutual or common investment fund that owns securities is not a "financial interest" unless the Administrative Law Judge participates in the management of the fund;
- (B) Holding an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in property of the organization;
- (C) The proprietary interest of a policy holder in a mutual insurance company, a depositor in mutual savings association, or a similar proprietary interest is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and
- (D) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (4) An Administrative Law Judge who would be disqualified under this rule may, rather than disqualify themselves from the proceeding, disclose to the parties the basis of the disqualification. If, after such disclosure, any party wishes the Administrative Law Judge to disqualify themselves from the proceeding, the Administrative Law Judge shall do so. If, after such disclosure, the parties all agree in writing or on the record that the Administrative Law Judge's impartiality is not in question because of the information disclosed to the parties, the Administrative Law Judge may participate in the proceeding. Any writing signed by or on behalf of all parties shall be incorporated into the record of the proceeding, or, in the case of a mediation, made part of the Administrative Law Judge's mediation file.
- (5) Immediately upon discovering the asserted basis, any party may request that an Administrative Law Judge disqualify themselves from a proceeding on any basis set forth in section (1) of this rule. If the Administrative Law Judge does not then disqualify themselves, any party may promptly file a request for disqualification of the Administrative Law Judge with the Presiding Administrative Law Judge. Such a request shall include an affidavit setting out, in detail, the basis for the requested disqualification.
- (6) Following review of the request for disqualification and accompanying affidavit, the Presiding Administrative Law Judge will determine, in their discretion, whether a hearing on the allegations in the affidavit shall be held. Following such a hearing or following the Presiding Administrative Law Judge's determination that a hearing will not be held, the Presiding Administrative Law Judge shall issue a written decision concerning the disqualification request. If the Presiding Administrative Law Judge determines that the Administrative Law Judge should be disqualified, the Presiding Administrative Law Judge shall so state and explain the basis for the decision, and shall assign another Administrative Law Judge to the case. If the Presiding Administrative Law Judge determines that the Administrative Law Judge should not be disqualified, the Presiding Administrative Law Judge shall so state and explain the basis for the decision, and the case shall proceed with the Administrative Law Judge.

STATUTORY/OTHER AUTHORITY: ORS 656.726(5)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(5)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

WCB 8-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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AMEND: 438-006-0110

RULE TITLE: Hearing Security

RULE SUMMARY: Hearing Security

RULE TEXT:

Any party or attorney having knowledge or reasonable belief that any party or witness to the hearing may potentially present a danger or may be a threat to anyone involved in the claim or hearing shall immediately notify the hearing Administrative Law Judge and the opposing attorney(s) of the potentially dangerous situation. All decisions involving security at the hearing shall be within the discretion of the Presiding Administrative Law Judge or designee.

STATUTORY/OTHER AUTHORITY: ORS 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(4)



STATUTORY MINOR CORRECTION

WCB 9-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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AMEND: 438-006-0115

RULE TITLE: Motion to Dismiss a Party under ORS 656.308(2)(c)

RULE SUMMARY: Motion to Dismiss a Party under ORS 656.308(2)(c)

RULE TEXT:

- (1) If an insurer or self-insured employer is alleging that the record does not contain substantial evidence to support a finding of responsibility against it, the insurer or self-insured employer may file a "written notice" pursuant to ORS 656.308(2)(c) requesting its dismissal as a party to the proceeding.
- (2) The written notice described in section (1) of this rule shall be considered by the Administrative Law Judge if:
 - (a) The written notice is labeled "308 Dismissal Motion";
 - (b) The written notice (including any supporting documentation) is filed not more than 28 days or less than 14 days before the hearing; and
 - (c) A copy of the written notice (including any supporting documentation) is simultaneously served on the other parties, or if represented, on their attorneys in the manner provided in OAR 438-005-0046(2)(a), and proof of such service is provided in accordance with 438-005-0046(2)(b).
- (3) Written responses to the written notice described in sections (1) and (2) of this rule shall be considered if:
 - (a) The written response is labeled "308 Dismissal Response";
 - (b) The written response (including supporting documentation) is filed within seven days after the written notice is filed; and
 - (c) A copy of the written response (including supporting documentation) is simultaneously served on the other parties or, if represented, on their attorneys in the manner provided in 438-005-0046(2)(a) and proof of such service is provided in accordance with 438-005-0046(2)(b).
- (4) For purposes of ORS 656.308(2)(c) and this rule, the record shall include any document filed with the Hearings Division which was considered by the Administrative Law Judge prior to the issuance of their decision.
- (5) Not less than seven days before the hearing, the Administrative Law Judge shall inform the parties either that:
 - (a) The party filing the written notice shall be dismissed as a party to the hearing; or

(b) The party filing the written notice shall not be dismissed as a party to the hearing; or

(c) The hearing shall be postponed.

STATUTORY/OTHER AUTHORITY: ORS 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.308(2)(c)



STATUTORY MINOR CORRECTION

WCB 10-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Changing language to reflect inclusion of "nonbinary" designations

CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150

Salem, OR 97302

Filed By:

Katy Gunville

Rules Coordinator

AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division

AMEND: 438-007-0005

RULE TITLE: Medical and Vocational and Other Documentary Evidence

RULE SUMMARY: Medical and Vocational and Other Documentary Evidence

RULE TEXT:

- (1) To avoid unnecessary delay and expense medical evidence should be presented in the form of written reports and should include:
- (a) History of the injury or disease;
 - (b) Pertinent medical history;
 - (c) Present complaints;
 - (d) All sources of history and complaints;
 - (e) Date of examination;
 - (f) Findings on examination;
 - (g) Impairment of physical or mental function including loss of reserve capacity;
 - (h) Restrictions of activities, such as lifting, bending, twisting, sitting, standing and repetitive use;
 - (i) Cause of the impairment and opinion whether the impairment is all or in part work related;
 - (j) Medical treatment indicated;
 - (k) Likelihood of permanent impairment and opinion whether the condition is likely to change; and
 - (l) The reason for the opinion.
- (2) The insurer or self-insured employer may subpoena the claimant's attending or consulting physician(s) and vocational expert(s) for cross-examination. Medical, surgical, hospital and vocational reports offered by the insurer or self-insured employer will also be accepted as prima facie evidence provided the insurer or self-insured employer agrees to produce the medical and vocational expert(s) for cross-examination upon request of the claimant. The reports of any medical or vocational expert who has refused to make themselves available for cross-examination shall be excluded from the record unless good cause is shown why such evidence should be received. The cost of cross-examination of any medical or vocational expert(s) under this section shall be paid by the insurer or self-insured employer.

(3) To avoid unnecessary cost and delay, the Board encourages the use of written interrogatories or depositions to secure medical or vocational expert testimony.

(4) The Administrative Law Judge may appoint a medical or vocational expert to examine the claimant and to file a report with the Administrative Law Judge. The parties may also agree in advance to be bound by such expert's findings. The cost of examination and reports under this rule shall be paid by the insurer.

STATUTORY/OTHER AUTHORITY: ORS 656.307, 656.388, 656.593, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.287, 656.310(2)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

WCB 11-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150

Salem, OR 97302

Filed By:

Katy Gunville

Rules Coordinator

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AMEND: 438-007-0016

RULE TITLE: Disclosure of Expert Witness Required

RULE SUMMARY: Disclosure of Expert Witness Required

RULE TEXT:

Within the times provided for the initial exchanges of exhibits and indexes under OAR 438-007-0018 each party shall disclose to all other parties the identity of each expert witness the party will call to testify at the hearing. A statement by a party that the party "reserves the right," or similar language, to call as a witness any expert whose opinion has been included in the documents filed in the case is not compliance with this rule. At the hearing the Administrative Law Judge may, in their discretion, allow the testimony of expert witnesses not disclosed as required by this rule. In the exercise of this discretion, the Administrative Law Judge shall determine whether material prejudice has resulted from the timing of the disclosure and, if so, whether there is good cause for the failure to timely disclose that outweighs the prejudice to the other party or parties.

STATUTORY/OTHER AUTHORITY: ORS 656.307, 656.388, 656.593, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(4)



STATUTORY MINOR CORRECTION

WCB 12-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150

Salem, OR 97302

Filed By:

Katy Gunville

Rules Coordinator

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AMEND: 438-007-0018

RULE TITLE: Exchange and Admission of Exhibits at Hearing

RULE SUMMARY: Exchange and Admission of Exhibits at Hearing

RULE TEXT:

(1) Not later than 28 days before the hearing, the insurer or self-insured employer shall provide the claimant and other insurer or self-insured employer legible copies of all documents that are relevant and material to the matters in dispute in the hearing, together with an index. The index shall include the document numbers, description of each document, author, number of pages and date of the document. The documents shall be arranged in chronological order and numbered, in Arabic numerals, in the lower right corner of each page, beginning with the document of earliest date. The numbers shall be preceded by the designation "Ex," and pagination of multiple-page documents shall be designated by a hyphen followed by the page number. For example, page two of document two shall be designated "Ex 2-2." A physician's chart notes constitute a multi-page document to the extent that the date of each individual chart note is subsequent to the date of the preceding exhibit and is earlier than the date of the next exhibit. However, for deposition transcripts, only the cover page of the deposition need be numbered; i.e., "Ex. 3."

(2) Not less than 14 days before the hearing, or within seven days of receipt of the insurer document index and documents, whichever is later, the claimant shall provide the insurer(s) or self-insured employer(s) legible copies of any additional documents that are relevant and material to the matters in dispute in the hearing. The additional documents shall be marked and accompanied by a supplemental document index, prepared in the same manner as the insurer documents and index and numbered to coincide in chronological order with the insurer's documents. Letter subdesignations shall be used to ensure chronological numbering. For example, a document which is chronologically between documents six and seven of the insurer documents shall be designated "Ex 6A."

(3) Before or at the hearing, the parties shall delete from their indexes and packets of documents those documents which are cumulative, or which no party can in good faith represent to be relevant and material to the issues, and the revised indexes and packets of documents shall be submitted to the Administrative Law Judge. For compliance with this rule, it is sufficient for the parties to mark neatly through the index description of the documents not being offered in

evidence with ink, and to remove the corresponding documents from the packets submitted to the Administrative Law Judge.

(4) Filing of the documents described in section (1) shall not establish that:

(a) The insurer or self-insured employer is the sponsor for each of these documents for purposes of admission into the evidentiary record; or

(b) The claimant is automatically entitled to cross-examine the author of any document filed by the insurer or self-insured employer under section (1).

(5) Subject to ORS 656.287(l), at the hearing the Administrative Law Judge may in their discretion allow admission of additional medical reports or other documentary evidence not disclosed as required by OAR 438-007-0015. In the exercise of this discretion, the Administrative Law Judge shall determine whether material prejudice has resulted from the timing of the disclosure and, if so, whether there is good cause for the failure to timely disclose that outweighs any prejudice to the other party or parties. Following a finding of material prejudice, the Administrative Law Judge may exclude a document or continue the hearing for such action as is appropriate to cure the material prejudice caused by the late disclosure of the document.

STATUTORY/OTHER AUTHORITY: ORS 656.726(5)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(5)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

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CHAPTER 438
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WORKERS' COMPENSATION BOARD

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& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville
503-934-0123
katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150
Salem, OR 97302

Filed By:
Katy Gunville
Rules Coordinator

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AMEND: 438-007-0025

RULE TITLE: Reconsideration

RULE SUMMARY: Changing language to reflect inclusion of "nonbinary" designations

RULE TEXT:

(1) The Administrative Law Judge may reopen the record and reconsider the decision before a request for review is filed or, if none is filed, before the time for requesting review expires. Reconsideration may be upon the Administrative Law Judge's own motion or upon a motion by a party showing error, omission, misconstruction of an applicable statute or the discovery of new material evidence.

(2) A motion to reconsider shall be served on the opposite parties by the movant and, if based on newly discovered evidence, shall state;

(a) The nature of the new evidence; and

(b) An explanation why the evidence could not reasonably have been discovered and produced at the hearing.

STATUTORY/OTHER AUTHORITY: ORS 656.307, 656.388, 656.593, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.283(7), 656.726(4)



STATUTORY MINOR CORRECTION

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CHAPTER 438

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WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150

Salem, OR 97302

Filed By:

Katy Gunville

Rules Coordinator

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AMEND: 438-009-0015

RULE TITLE: Notice of Settlement; Submission of Documents

RULE SUMMARY: Notice of Settlement; Submission of Documents

RULE TEXT:

- (1) The party that requested the hearing shall promptly notify the Presiding Administrative Law Judge, or delegate, when a case is settled in whole or in part.
- (2) The party that requested Board review shall promptly notify the Board's Closing and Appeals Division in writing when a case is settled in whole or in part.
- (3) The Presiding Administrative Law Judge, or delegate, may require written notice of settlement as a condition of cancellation of a scheduled hearing.
- (4) With the consent of the assigned Administrative Law Judge, the parties may enter a settlement on the oral record at the time and place scheduled for the hearing. With the exception of a disputed claim settlement, the Administrative Law Judge may enter an order reciting and approving the settlement in such cases, without the submission of documents by the parties. With the consent of the parties, the official oral record, including the Administrative Law Judge's approval, which is subject to transcription if necessary, is sufficient authority for the payment of settlement amounts in advance of the formal written order.
- (5) Notwithstanding OAR 438-005-0046(1)(d), in all cases settled by disputed claim settlement or written stipulation of the parties, the settlement document shall be mailed or delivered to the Administrative Law Judge or the Board for approval. If the disputed claim settlement or written stipulation pertains to the resolution of disputes pending before both the Hearings Division and the Board, the settlement document shall recite the issues resolved by the Opinion and Order that is pending before the Board. If the disputed claim settlement or written stipulation is mailed or delivered to the Hearings Division for approval and the agreement either formally or effectively modifies a dispute which is pending before the Board, the disputed claim settlement or stipulation shall be submitted in a format to provide for both Hearings Division and Board approval.
- (6) Unless a party has filed prior written notice with the Hearings Division or the Board that the party wants an exhibit

returned to them, all exhibits (with the exception of exhibit lists) may be discarded from the record following:

- (a) Administrative Law Judge or Board approval of a settlement stipulation or disputed claim settlement;
- (b) An Administrative Law Judge order dismissing a party's hearing request in response to that party's withdrawal of the request; or
- (c) A Board order dismissing a party's request for Board review in response to that party's withdrawal of the request for Board review.

STATUTORY/OTHER AUTHORITY: ORS 656.726(5)

STATUTES/OTHER IMPLEMENTED: ORS 656.236, 656.289(4), 656.726(5)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

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CHAPTER 438
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION BOARD

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& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville
503-934-0123
katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150
Salem, OR 97302

Filed By:
Katy Gunville
Rules Coordinator

AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division

AMEND: 438-011-0023

RULE TITLE: Request for Recusal of Board Member

RULE SUMMARY: Request for Recusal of Board Member

RULE TEXT:

A request by a party that a Board member not participate in the review of a case shall be made in writing and filed with the Board not later than the due date of the party's first brief. The request shall state specifically why the Board member should not participate in review of the case. A Board member may decline to participate in the review if the Board member finds that there is a personal conflict of interest involving a matter or matters directly in issue in the case.

STATUTORY/OTHER AUTHORITY: ORS 656.307, 656.388, 656.593, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(4)



STATUTORY MINOR CORRECTION

WCB 16-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150

Salem, OR 97302

Filed By:

Katy Gunville

Rules Coordinator

AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

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AMEND: 438-013-0035

RULE TITLE: Postponements and Continuances

RULE SUMMARY: Postponements and Continuances

RULE TEXT:

(1) A hearing under the Expedited Claims Service shall not be postponed except upon a showing of extraordinary circumstances beyond the control of the party requesting the postponement. "Extraordinary circumstances" shall be as defined in OAR 438-006-0081 except that unavailability of an individual who represents an insurer shall not be a reason to postpone a hearing under any circumstances and unavailability of an individual who represents a claimant shall not be a reason to postpone a hearing under the Expedited Claims Service unless the Administrative Law Judge finds that the claimant is physically or mentally incapable of representing themselves at the hearing.

(2) A hearing under the Expedited Claims Service may be continued for further proceedings only if the Administrative Law Judge finds and states on the oral record that a continuance is required to achieve substantial justice.

STATUTORY/OTHER AUTHORITY: ORS 656.307, 656.388, 656.593, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.291(3)(b), 656.291(4)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

WCB 17-2022

CHAPTER 438
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION BOARD

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Changing language to reflect inclusion of "nonbinary" designations

CONTACT: Katy Gunville
503-934-0123
katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150
Salem, OR 97302

Filed By:
Katy Gunville
Rules Coordinator

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Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division

AMEND: 438-020-0005

RULE TITLE: ALJ Designation

RULE SUMMARY: ALJ Designation

RULE TEXT:

Pursuant to ORS 45.275(1), an Administrative Law Judge (ALJ) is empowered to appoint qualified interpreters in hearings over which they preside. The ALJ may designate the Hearings Division's Interpreter Services Coordinator (ISC) or another designee to appoint the interpreter.

STATUTORY/OTHER AUTHORITY: ORS 656.726(5), 183.310 - 183.400

STATUTES/OTHER IMPLEMENTED: ORS 656.726(5), 45.273, 45.275, 45.285, 45.288



STATUTORY MINOR CORRECTION

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CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

2601 25th St. SE, Ste. 150

Filed By:

503-934-0123

Salem, OR 97302

Katy Gunville

katy.e.gunville@wcb.oregon.gov

Rules Coordinator

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AMEND: 438-082-0040

RULE TITLE: Conduct of Hearing; Evidence; Proposed Order; Notice to Parties

RULE SUMMARY: Conduct of Hearing; Evidence; Proposed Order; Notice to Parties

RULE TEXT:

(1) A record of all proceedings shall be made, except that no record need be made of prehearing conferences. The record shall be transcribed only by order of the Board.

(2) Subject to sections (3) and (7) of this rule, the hearing may be conducted in any manner reasonably calculated to achieve substantial justice.

(3) The entire record filed by the Department with the Board shall be received into evidence. No other documentary evidence shall be received. Only those persons whose statements were considered by the Department in reaching its decision shall be permitted to give testimony. Subject only to these limitations, there are no formal or technical rules of evidence; however, evidence may be excluded if it is irrelevant or unduly repetitious.

(4) If the applicant fails to appear at the requested hearing, the special hearings officer shall forthwith issue an order requiring the applicant to show cause in writing within ten days why the applicant's request for Board review of Department's decision should not be dismissed as having been abandoned. If no or an insufficient response is received to the order to show cause, the Board may dismiss the applicant's request for review of Department's decision or may take such other action as it deems appropriate.

(5) Not more than 30 days after the conclusion of the hearing, the special hearings officer shall file with the Board all documentary evidence received together with written findings of fact, conclusions, and a proposed order. Copies of the written findings of fact, conclusions and proposed order shall be simultaneously mailed to all interested parties.

(6) The proposed order shall contain the following notice:

"NOTICE TO ALL PARTIES: This order will be reviewed automatically by the Workers' Compensation Board within 30 days and will become a final order of the Workers' Compensation Board 30 days from the mailing date of this order unless this order is sooner withdrawn or modified by the Board. Objections to this proposed order must be in writing and filed with Workers' Compensation Board, 2601 25th Street SE, Suite 150, Salem, OR 97302-1282 within 20 days

from the date of this order to be considered."

(7) Hearings under these rules shall be open to the public except:

(a) The Board or a special hearings officer shall close the hearing to the public upon the motion or request of an applicant or, if the applicant is a minor, a parent or guardian of the applicant, for any of the reasons set forth in ORS 147.115(1); and

(b) The Board or a special hearings officer may close the hearing to the public upon the motion or request of an interested party other than the applicant or upon its or their own motion for any of the reasons set forth in ORS 147.115(1).

STATUTORY/OTHER AUTHORITY: ORS 183.310 - 183.410, 147.155(5), 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 147.155, 656.726(4)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

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CHAPTER 438
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION BOARD

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& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville
503-934-0123
katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150
Salem, OR 97302

Filed By:
Katy Gunville
Rules Coordinator

AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division

AMEND: 438-085-0631

RULE TITLE: Sanctions for Failure to File Documents

RULE SUMMARY: Sanctions for Failure to File Documents

RULE TEXT:

If a party fails to file any document when due, the Administrative Law Judge may, in their discretion:

- (1) Treat the failure as a waiver of the party's right to file the document, and presume that the document, if filed, would be adverse to the party's position on any issue related to it; or
- (2) Enter an order dismissing the request for hearing or vacating the citation.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2)

STATUTES/OTHER IMPLEMENTED: ORS 654.025, 654.078

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

WCB 20-2022

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION BOARD

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& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville
503-934-0123
katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150
Salem, OR 97302

Filed By:
Katy Gunville
Rules Coordinator

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AMEND: 438-085-0718

RULE TITLE: Hearing Security

RULE SUMMARY: Hearing Security

RULE TEXT:

Any party or representative having knowledge or reasonable belief that any party or witness may present a danger or may be a threat to anyone involved in the hearing shall immediately notify the assigned Administrative Law Judge and the opposing parties or representatives of the potentially dangerous situation. All decisions involving security at the hearing shall be within the discretion of the Presiding Administrative Law Judge or designee.

STATUTORY/OTHER AUTHORITY: ORS 656.725(4)

STATUTES/OTHER IMPLEMENTED: ORS 656.726(4)

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

STATUTORY MINOR CORRECTION

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CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

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& LEGISLATIVE COUNSEL

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CONTACT: Katy Gunville

503-934-0123

katy.e.gunville@wcb.oregon.gov

2601 25th St. SE, Ste. 150

Salem, OR 97302

Filed By:

Katy Gunville

Rules Coordinator

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AMEND: 438-085-0750

RULE TITLE: Change of Administrative Law Judge

RULE SUMMARY: Change of Administrative Law Judge

RULE TEXT:

- (1) The assigned Administrative Law Judge may withdraw from a case whenever they consider it appropriate.
- (2) Any party may request that the assigned Administrative Law Judge remove themselves from a case on the grounds of personal bias or conflict of interest. If the assigned Administrative Law Judge declines the request, the party may file with the Presiding Administrative Law Judge a motion for removal and supporting affidavit.
- (3) If, in the opinion of the Presiding Administrative Law Judge, the motion for removal is filed with due diligence and the supporting affidavit is sufficient on its face, the Presiding Administrative Law Judge may, in their discretion, hold a hearing, and shall either grant or deny the motion.

STATUTORY/OTHER AUTHORITY: ORS 655.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.025, 654.078