

EXHIBIT A

438-015-0005

Definitions

In addition to the definitions set forth in OAR 438-005-0040:

- (1) “Approved fee” means an attorney fee paid out of a claimant’s compensation.
- (2) “Assessed fee” means an attorney fee paid to a claimant’s attorney by an insurer or self-insured employer in addition to compensation paid to a claimant.
- (3) “Attorney” means a member of the Oregon State Bar.
- (4) “Attorney fee” means payment for legal services performed [*by an attorney*] on behalf and at the request of a claimant under ORS Chapter 656.
- (5) “Compensation” means all benefits, including medical services, provided for a compensable injury to a subject worker or the beneficiaries of a subject worker pursuant to ORS Chapter 656.
- (6) “Cost bill” means an itemized statement from the claimant of the amount of expenses and costs for records, expert opinions, and witness fees incurred as a result of the litigation involving a claim denial under ORS 656.386(1).
- (7) “Denied claim” means a claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation or a claim under ORS 656.386(1)(b)(B), (C), or (D) to which the insurer or self-insured employer does not timely respond.
- (8) “Expenses and costs” reimbursable under ORS 656.386(2) mean reasonable expenses and costs incurred by the claimant for things and services reasonably necessary to pursue a matter, but do not include attorney fees. Examples of expenses and costs referred to include, but are not limited to, costs of records, expert witness opinions, witness fees and mileage paid to execute a subpoena and costs associated with travel.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.308, 656.382, 656.386, 656.388, 656.726(5)

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 2-1995, f. 11-13-95, cert. ef. 1-1-96; 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 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, 656.383 and 656.386.

(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 **for legal services**;

(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 the contingent nature of the practice**; 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 656.308, 656.382, 656.383, 656.386, 656.388

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; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

EXHIBIT C

438-015-0040

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

(1) If the Administrative Law Judge awards additional compensation for permanent partial disability, the Administrative Law Judge shall approve a fee of 25 percent of the increased compensation, [*but not more than \$4,600,*] to be paid out of the increased compensation.

(2) If the Administrative Law Judge awards compensation for permanent total disability, the Administrative Law Judge shall approve a fee of 25 percent of the increased compensation, but not more than [*\$12,500*] **\$20,000**, to be paid out of the award for permanent total disability.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.386(5), 656.388

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 1-1998, f. 11-20-98, cert. ef. 2-1-99

EXHIBIT D

438-015-0050

Attorney Fees in Connection With Disputed Claim Settlements

(1) When a denied and disputed claim is settled under the provisions of ORS 656.289(4) and OAR 438-009-0010, an attorney fee may be approved by the Administrative Law Judge or the Board in an amount up to 25 percent of the first [\$17,500] **\$50,000** of the settlement proceeds plus ten percent of any amount of the settlement proceeds in excess of [\$17,500] **\$50,000**. Under extraordinary circumstances, a fee may be authorized in excess of this calculation.

(2) When the settlement proceeds are to be paid in more than one payment payable within a period of more than one year from the date of approval, for purposes of approving an attorney fee under section (1) of this rule, settlement proceeds shall be calculated based on the “present value” of the total settlement proceeds. “Present value” may be represented by the actual present value of the total settlement proceeds or the purchase price of any annuity designed to fund payment of the total settlement proceeds. The parties shall provide the Board with a written statement of the “present value” of the total settlement proceeds.

Stat. Auth.: ORS 656.388(4), 656.726(5)

Stats. Implemented: ORS 656.289(4), 656.388

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 6-1991(Temp), f. 8-29-91, cert. ef. 9-2-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91;

WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13

EXHIBIT E

438-015-0052

Attorney Fees in Connection With Claim Disposition Agreements

(1) When a claim disposition agreement is approved under the provisions of ORS 656.236 and OAR 438-009-0020, an attorney fee may be approved by the Board in an amount up to 25 percent of the first [\$17,500] **\$50,000** of the agreement proceeds plus ten percent of any amount of the proceeds in excess of [\$17,500] **\$50,000**. Under extraordinary circumstances, a fee may be authorized in excess of this calculation.

(2) When the agreement proceeds are to be paid in more than one payment payable within a period of more than one year from the date of approval, for purposes of approving an attorney fee under section (1) of this rule, agreement proceeds shall be calculated based on the “present value” of the total proceeds. “Present value” may be represented by the actual present value of the total agreement proceeds or the purchase price of any annuity designed to fund payment of the total agreement proceeds. The parties shall provide the Board with a written statement of the “present value” of the total agreement proceeds.

Stat. Auth.: ORS 656.388(4), 656.726(5)

Stats. Implemented: ORS 656.236(4), 656.388

Hist.: 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 6-1991(Temp), f. 8-29-91, cert. ef. 9-2-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99

EXHIBIT F

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 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*] **\$30,000**.
- (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 656.308(2), 656.382, 656.383, 656.386, 656.388

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;

WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

EXHIBIT G

438-015-0080

Attorney Fees in Own Motion Cases

- (1) If an attorney is instrumental in obtaining increased temporary disability compensation, the Board 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.
- (2) If an attorney is instrumental in obtaining a voluntary reopening of an Own Motion claim that results in increased temporary disability compensation, the Board shall approve a fee of 25 percent of the increased compensation, [*but not more than \$1,500,*] to be paid out of the increased temporary disability compensation resulting from the voluntary reopening.
- (3) If the Board awards additional compensation for permanent disability, the Board shall approve a reasonable attorney fee in the amounts prescribed in OAR 438-015-0040, payable out of the increased compensation.
- (4) The Board may allow a fee in excess of the amounts prescribed in sections (1) through (3) of this rule upon a finding that extraordinary services have been rendered.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.267(3), 656.278(1), 656.386(1)(2), 656.388

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; 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 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT H

438-015-0082

Timely Payment of Attorney Fees

(1) An approved attorney fee shall be paid within the time required for payment of the compensation out of which the approved fee is to be paid.

(2) An assessed attorney fee shall be paid within [*30 days*] **14 days** of the date the order authorizing the fee becomes final.

Stat. Auth.: ORS 656.307, 656.388, 656.593, ORS 656.726(5)

Stats. Implemented: ORS 656.382(1), 656.386(1)(2), 656.388

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; 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