PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on October 11, 2016, by the Department of Consumer & Business Services/Workers’ Compensation Board.

Agency and Division: Department of Consumer & Business Services/Workers’ Compensation Board

Chapter Number: Chapter 438

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Administrative Rules Chapter Number: (503)934-0123

RULE CAPTION

Amending OAR 438-015 regarding assessed and out-of-compensation attorney fees, and timely payment.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

ADOPT:


REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 656.307; ORS 656.388; ORS 656.388(4); ORS 656.593; ORS 656.726(5)

Other Auth.: Stats. Implemented: ORS 656.236(4); ORS 656.267(3); ORS 656.278(1); ORS 656.289(4); ORS 656.307; ORS 656.308; ORS 656.382; ORS 656.383; ORS 656.386; ORS 656.388; ORS 656.593; ORS 656.726(5).

RULE SUMMARY

Amend Division 015 rules concerning attorney fees under the Workers’ Compensation Law as follows: (1) amend OAR 438-015-0005(4) to delete the phrase “by an attorney” from the definition of “attorney fee” legal services; (2) amend OAR 438-015-0010(4)(a) to add the phrase “for legal services” to the “time devoted to the case” factor in the determining a reasonable attorney fee; (3) amend OAR 438-015-0010(4)(g) to add the phrase “and the contingent nature of the practice” to the “risk in a particular case that an attorney’s efforts may go uncompensated” factor in the determining a reasonable attorney fee; (4) amend OAR 438-015-0040(1) and (2), respectively, to remove the out-of-compensation attorney fee cap on permanent partial disability (PPD) increases at a hearing, and to increase the out-of-compensation attorney fee cap to $20,000 on permanent total disability (PTD) awards at hearing; (5) amend OAR 438-015-0050(1) to increase the “threshold/soft cap” attorney fee to 25 percent of the first $50,000 of proceeds from a Disputed Claim Settlement (DCS), plus 10 percent of the settlement proceeds in excess of $50,000; (6) amend OAR 438-015-0052(1) to ) to increase the “threshold/soft cap” attorney fee to 25 percent of the first $50,000 of proceeds from a Claim Disposition Agreement (CDA), plus 10 percent of the settlement proceeds in excess of $50,000; (7) amend OAR 438-015-0055(2) and (3), respectively, to remove the out-of-compensation attorney fee cap on PPD awards on Board review, and to increase the out-of-compensation attorney fee cap to $30,000 on PTD increases on Board review; (8) amend OAR 438-015-0080(1) and (2) to remove the cap on out-of-compensation attorney fee awards relating to increased temporary disability awards in Own Motion cases; and (9) amend OAR 438-015-0082(2) to make an assessed attorney fee payable within 14 days of the date the order authorizing the fee becomes final.

Note: Permanent rulemakings must be submitted by the 15th day of the month to be included in the next month’s Oregon Bulletin and online OAR Compilation updates.