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BEFORE THE WORKERS' COMPENSATION BOARD OF

THE STATE OF OREGON

RULEMAKING HEARING

TRANSCRIPT OF PROCEEDINGS

Workers'
Compensation Board
Hearings Division

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 31st day of July, 2020 at 10:00 a.m., before Ian T. Brown, Hearings Officer for the Workers' Compensation Board of the State of Oregon.

INDEX OF ATTENDEES

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- Ian Brown, Hearings Officer
- Roger Pearson, Former Managing Attorney
- Lauren Eldridge, Staff Attorney
- Greig Lowell, Project Manager
- BY PHONE
- Jill Gragg, SAIF
- Jodie Phillips Polich, Attorney
- Cathy Ostrand-Ponsioen, Workers' Compensation Division
- Elaine Schooler, SAIF
- Jaye Fraser, SAIF
- Colin Hackett, Attorney
- Nathan Goin, Attorney

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INDEX OF EXHIBITS

<u>EXHIBITS:</u>	<u>MARKED:</u>	<u>ADMITTED:</u>	<u>NOT ADMITTED:</u>	<u>WITHDRAWN:</u>
1 - 39	3	3		
A - C	3	3		

TRANSCRIPT OF PROCEEDINGS

1
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3 HEARINGS OFFICER BROWN: All right. Good morning, we are on
4 the record. This is the time and place for the rulemaking hearing in the matter of the
5 adoption of permanent rules and amendments to the rules of practice and procedure
6 for contested cases under the workers' compensation law relating to attorney fees,
7 OAR 438 Division 015. Specifically, as listed in the June 25, 2020, Notice of
8 Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact. There's a
9 proposal to amend OAR 438-015-0010 and adopt proposed OAR 438-015-0125.

10 It's July 30, 2020. Excuse me, July 31st, 2020. I am the hearings
11 officer, Ian Brown. These proceedings are being electronically recorded.

12 UNIDENTIFIED SPEAKER: Jaye Fraser. Joined.

13 UNIDENTIFIED SPEAKER: Colin Hackett. Joined.

14 MR. LOWELL: We have--

15 HEARINGS OFFICER BROWN: Hang on.

16 MR. LOWELL: --two additional people on the line. This is Greig
17 Lowell of the Workers' Compensation Board. Colin Hackett and Jay Fraser. Can
18 you hear us Colin and Jaye?

19 MR. HACKETT: I can. This is Colin.

20 MS. FRASER: I can.

21 MR. LOWELL: Thank you.

22 MS. FRASER: This is Jaye; I can hear.

23 MR. LOWELL: Thank you.

24 HEARINGS OFFICER BROWN: Are either of you intending to provide
25 testimony today?

1 MR. HACKETT: I don't think so but if something came up I'd probably
2 talk.

3 HEARINGS OFFICER BROWN: All right.

4 MS. FRASER: And this is--same with Jaye.

5 HEARINGS OFFICER BROWN: Sounds good. You'll have the
6 opportunity to change your mind.

7 Due to the coronavirus, the hearing is conducted by telephone
8 conference. Instructions for submitting written comments, attending the hearing, and
9 providing testimony were posted to the Board's website, as have been the exhibits
10 that we received in time to post on the website. I will highlight Exhibit C as
11 alternative language regarding the amendment to OAR 438-015-0010, as proposed
12 by Members Curey and Ousey.

13 Usually we don't need to mention the historical context at the
14 rulemaking hearing, but this has been a long enough process that it's worth just
15 briefly reviewing. The Board started its review of the fee schedules--

16 UNIDENTIFIED SPEAKER: Nathan Goin. Joined.

17 HEARINGS OFFICER BROWN: The Board started its review of the
18 fee schedules in 2018, there was an advisory committee, the Board considered the
19 matter at its October and December 2019 hearings--meetings, and a rulemaking
20 hearing was scheduled. On January 3, 2020, a letter was sent to the Board of
21 Governors of the Oregon State Bar to consult and provide input. The rulemaking
22 hearing was held January 31st and the Board met on February 27th.

23 In WCB Administrative Order 1-2020, the Board amended OAR 438-
24 015-0005, -0010, and -0033, and adopted OAR 438-015-0115. The Board's Order
25 of Adoption noted that it had deferred action regarding proposals regarding a

1 “contingent hourly rate” in the determination of a reasonable attorney fee and
2 bifurcation of the attorney fee determination in cases at the Board review level.

3 The Board met on June 23 and scheduled this rulemaking hearing. As
4 noted in the Statement of Need, proposed OAR 438-015-0010(6) concerns the
5 contingent hourly rate concept, and proposed OAR 438-015-0125 concerns the
6 bifurcation concept. As a result of those proceedings, Exhibits 1 through 39 have
7 been submitted and are available on the Board’s website. Those Exhibits 1 through
8 39 are admitted.

9 Prior to today’s hearing, Exhibits A through C were submitted and are
10 admitted. Additionally, written comments may be submitted if received by the end of
11 the day today, that’s 11:59 p.m.

12 Going through the exhibits, Exhibit A is the July 29, 2020, Statement of
13 Filing Notice of Procedures by Kayleen Swift, our Administrative Rules Coordinator.

14 Exhibit B is a July 29, 2020 letter from Steven Bennett of the American
15 Property Casualty Insurance Association.

16 And Exhibit C, as mentioned before, is a memo describing alternative
17 language regarding “contingent hourly rate” amendment to OAR 438-015-0010 and
18 the memo explains the rationale. Instead of adding section (6), it amends section (4)
19 to add subsection (4)(l); it also amends subsections (j) and (k) to move the word
20 “and.” I will read the memo and the proposed subsection (4)(l).

21 So this is submitted by Members Curey and Ousey and the memo
22 says, “Please accept the following recommended proposed rule for consideration.

23 “During its June 23, 2020, public meeting, the Workers’ Compensation
24 Board made a recommendation to create a subsection (6) under OAR 438-015-
25 0010, which provides that in determining a reasonable assessed attorney fee under

1 OAR 438-015-0010(4), the Board will consider a “contingent hourly rate” and the
2 basis for its calculation, if such information is submitted by the claimant’s attorney.
3 The Board proposed including that factor in subsection (6), rather than subsection
4 (4) (which contains the other factors to be considered in determining a reasonable
5 assessed attorney fee), to make clear that the Board was not required to consider
6 the “contingent hourly rate” factor unless the claimant’s attorney supplied such
7 information. Upon further reflection, since the wording of the proposed rule indicates
8 [sic] the fact that this factor shall be considered only when such information is
9 submitted, we propose that separating this voluntary “contingent hourly rate” factor
10 from the other factors for determining a reasonable attorney fee award listed in
11 subsection (4) of OAR 438-015-0010 is unnecessary. We, therefore, recommend
12 the following revision to the proposed rule[.]”

13 And the new subsection (4)(l), as proposed, states--adds the factor of
14 “Claimant’s contingent hourly rate, if asserted, together with any information used to
15 establish the basis upon which the rate was calculated.”

16 So that is Exhibit C which is the last exhibit that we had received prior
17 to this rulemaking hearing. As of now, nobody has expressed an interest in
18 testifying so I don’t have a list to go through. But if somebody would like to testify,
19 they can do that. Would anyone like to speak up and request to testify?
20

21 (no response)

22
23 HEARINGS OFFICER BROWN: All right, hearing no requests to
24 testify, the testimonial part of this hearing is complete. And now we conclude the
25 recorded hearing. Again, written comments may be submitted by the end of today to

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be included in the rulemaking hearing record. We will now go off the record.

(WHEREUPON, the proceedings were adjourned at 10:09 a.m.)

CERTIFICATION OF TRANSCRIPT

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I, Autumn K. Blake, as the transcriber of the oral proceedings at the July 31, 2020 Rulemaking Hearing, certify this transcript of be true, accurate, and complete.

Dated this 17th day of August, 2020.



Transcriber