

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of the Compensation of Donald D. Hill,
Claimant.

DONALD D. HILL,
Petitioner,

v.

TRADER JOES - TRADER JOES COMPANY
and Sedgwick CMS,
Respondents.

Workers' Compensation Board
2203852;
A182526

Argued and submitted August 13, 2025.

Julene M. Quinn argued the cause and filed the briefs for petitioner.

Isaac H. Horenblas argued the cause for respondents. On the brief was Sierra M. Tillery.

Before Shorr, Presiding Judge, Powers, Judge, and O'Connor, Judge.

SHORR, P. J.

Reversed and remanded.

SHORR, P. J.

Claimant seeks review of an order of the Workers' Compensation Board (board) that affirmed the Notice of Closure of his claim, based on claimant becoming medically stationary. Claimant asserts that 2022 amendments to the statutory process for case closure apply to his claim, and because that process was not followed, the closure of his claim must be set aside. We agree, and reverse and remand for further proceedings under the applicable law.

The facts of this case are procedural and, for the purposes of this opinion, uncontested. Claimant initially suffered a compensable work injury to his right knee in April 2019. His claim was accepted, and he underwent surgery and rehabilitation. In November 2020, Dr. Victor Lin declared him to be medically stationary and permanently limited to sedentary work. The following month, the employer issued a Notice of Closure, determining that claimant was medically stationary as of November 12, 2020. Claimant requested reconsideration and the Notice of Closure was rescinded because the record did not contain sufficient information to determine the extent of claimant's permanent disability.

Claimant continued to receive treatment for his knee. Eventually a closing examination was scheduled with Lin. On May 5, 2022, Lin again stated that claimant became medically stationary as of November 12, 2020. Based on that exam and report, the employer issued another Notice of Closure on May 17, 2022, awarding permanent partial disability and establishing a medically stationary date of November 12, 2020. That decision was affirmed on reconsideration on August 9, 2022, by ALJ Opinion and Order on March 8, 2023, and eventually by the board on September 15, 2023. Claimant timely filed this petition for judicial review.

Before us, claimant argues that new legislation regarding the processing of claims and the establishment of medically stationary dates applies to his claim. In 2022, the legislature passed House Bill (HB) 4138, which made changes to the workers' compensation laws. Specific to this matter, the bill amended ORS 656.262 to make clear that an employer must provide written notice to the worker and

their counsel prior to ending temporary disability benefits, including stating the reason that benefits are no longer due, Or Laws 2022, ch 73, § 1, and further amended ORS 656.268 to establish that when determining that a worker has become medically stationary, a medical provider may not “retroactively determine a worker to be medically stationary more than 60 days prior to the date of the determination,” except under certain circumstances that do not apply in this case, Or Laws 2022, ch 73, § 4.¹ The amendments were intended to provide advanced notice to a worker before their temporary disability benefits were ended, and to avoid situations where a medical provider in hindsight stated that an individual had been medically stationary for many months or years, causing temporary benefits that had already been paid to be deducted from any final permanent disability lump sum payment. Audio Recording, House Committee on Business and Labor, HB 4138, Feb 9, 2022, at 23:48 (comments of Rep Dacia Grayber), <https://olis.oregon-legislature.gov> (accessed Aug 25, 2026).

The changes did not take immediate effect. The bill stated that the amendments to ORS 656.262 and ORS 656.268 applied “to all claims that exist on, or arise on or after, January 1, 2024, regardless of the date of injury or the date on which the claim is filed.” Or Laws 2022, ch 73, §§ 3, 6. It further stated that the amendments “do not apply to disputes in which a final determination is made prior to January 1, 2024.” *Id.* Claimant maintains that his claim “existed” as of January 1, 2024, and because he filed a petition for judicial review with this court, the September 15, 2023, order from the board had not become “final.” He therefore asserts that the new rules regarding notice and the setting of a medically stationary date apply to his claim, and that they were not complied with in his case. He argues that it should now be considered improper, under the new law, for the May 2022 Notice of Closure to have set his medically stationary date more than 60 days in the past.

Employer does not dispute that the new procedures were not followed, but argues that it did not violate the law

¹ Those statutes were further amended in Or Laws 2026, ch 73, sec 49, 50, in ways that have no bearing on the issues addressed in this opinion.

because the amendments had not taken effect at the time the Notice of Closure was issued, or by the time of reconsideration, the ALJ's opinion, or the board's order. In that vein, employer also asserts that claimant did not preserve his argument below. On the matter of applicability of the new procedures, employer argues that the language of the bill does not indicate that retroactive application was the intent of the legislature. Employer agrees that the board's order was not final on January 1, 2024, in light of the petition for judicial review, but maintains that application of the new law to this claim would lead to an absurd result, as it would fault employer for failing to comply with a law that was not in effect at the time of closure.

We begin with preservation. Under the unique confluence of circumstances present here, we conclude that preservation is excused based on the fact that claimant had no practical ability to raise the issue below. *See Peebles v. Lampert*, 345 Or 209, 220, 191 P3d 637 (2008) (discussing the practical purposes of the preservation requirement and circumstances in which it gives way); *SAIF v. Matt Jenkins Contracting*, 257 Or App 46, 60, 306 P3d 641 (2013) (discussing the preservation requirement in context of workers' compensation claims and excusing preservation when an error appeared for the first time when the agency issued its order). The 2022 amendments apply to claims that were pending as of January 1, 2024. Until January 1, 2024, arrived, there was no way to determine whether claimant would have a pending claim without a final order. Prior to that date, claimant had no basis to argue that the processing of his claim was bound by the new requirements, and this appeal is the first opportunity claimant has had, after January 1, 2024, to make the argument he now urges. Therefore, preservation is excused. Similarly, we note that the related concept of issue exhaustion in administrative proceedings is "a prudential doctrine that courts may relax or set aside entirely, depending on the circumstances." *Tuckenberry v. Board of Parole*, 365 Or 640, 647, 451 P3d 227 (2019). The Supreme Court has noted that issue exhaustion is not applicable "when objections are to legal flaws that the agency could not remedy, and '[t]here can be other justifications for considering on judicial review important statutory issues not first decided by the agency,'

including when ‘correct administration of the statute concerns public interests beyond those of the parties.’” *Id.* (quoting *Marbet v. Portland Gen. Elect.*, 277 Or 447, 456, 561 P2d 154 (1977)). The application of the 2022 amendments as of January 1, 2024, is a legal question that could not have been decided at the time of the board’s decision.

Whether the new law applies to claimant’s claim is a question of statutory interpretation that we analyze pursuant to our well-established methodology of considering the text, context, and any relevant legislative history of the law. *State v. Gaines*, 346 Or 160, 169-71, 206 P3d 1042 (2009). We conclude that the 2022 amendments apply to this matter. The plain language of the bill states that the amendments apply to all claims that exist on January 1, 2024. This claim existed on January 1, 2024, because it was pending in this court. The parties agree that the board’s order had not become final, by virtue of the petition for judicial review. See ORS 656.295(8) (“An order of the board is final unless within 30 days after the date of mailing of copies of such order to the parties, one of the parties appeals to the Court of Appeals for judicial review pursuant to ORS 656.298.”).

Employer argues that, unless the legislature expressly provides that a statute applies retroactively, rights and liabilities should flow prospectively. Employer attempts to distinguish this situation from that in *Volk v. America West Airlines*, 135 Or App 565, 568, 899 P2d 746 (1995), where the effective clause of the relevant amendments to the workers’ compensation laws included the phrase “this Act is intended to be fully retroactive unless a specific exception is stated in this Act.” Employer points to the legislative history discussed in *Volk* that demonstrated that retroactivity was an issue specifically discussed in committee and on the floor and was addressed in amendments, and argues that without such a history, and without the explicit language acknowledging retroactive application, we cannot presume that the legislature intended the impact of the amendments to be retroactive.

We are unconvinced by employer’s argument. The best indicator of the intent of the legislature is the language used in a piece of legislation. *Oregon Trucking Assns. v. Dept.*

of *Transportation*, 364 Or 210, 220, 432 P3d 1080 (2019). Although the bill did not use all of the same words that were used in the bill that was at issue in *Volk*, and did not explicitly use the word “retroactive,” the effective date could not be clearer as to the claims to which the changes applied: “all claims that exist on, or arise on or after, January 1, 2024, regardless of the date of injury or the date on which the claim is filed,” but not to “disputes in which a final determination is made prior to January 1, 2024.” The absence of the word “retroactive” does not change the meaning of the words used in the applicability clause. *See Gaines*, 346 Or at 171 (text and context remain the primary consideration in statutory analysis).

We further briefly address employer’s argument that interpreting the amendments as applying to claimant’s claim would lead to an absurd result. As an initial matter, the Supreme Court has stated that “the absurd results canon is best applied sparingly—only when the statute is truly ambiguous *and* the result is truly absurd. If we were to do otherwise, we would be rewriting a clear statute based solely on our conjecture that the legislature could not have intended a particular result.” *LandWatch Lane County v. Lane County*, 364 Or 724, 741, 441 P3d 221 (2019) (emphasis in original; internal quotation marks omitted). The text here is not ambiguous, and therefore the absurd result canon of interpretation is unnecessary. Furthermore, although we acknowledge that the board’s action and those actions that came before it were not incorrect at the time they were undertaken, the application of the new laws to this claim is not absurd. The bill was passed in early 2022, but it was nearly two years before it was applicable to claim processing. At a meeting of the Worker’s Compensation Management-Labor Advisory Committee (MLAC), a committee of the Department of Consumer and Business Services that proposed the bill to the legislature, the committee members and presenting witnesses specifically discussed whether allowing the amendments to apply to cases that continued in litigation as of the applicability date would be opening a “can of worms.” The consensus was that the approach was consistent with how amendments to worker’s compensation process changes had been accomplished in the past, and

that the long lead time would allow time for employers to implement new processes in order to comply with the notice and process changes, with the knowledge that all cases that remained unresolved as of January 1, 2024, would be subject to the new requirements.² Audio Recording, Management-Labor Advisory Committee, Feb 11, 2022, at 17:15 (comments of Jovanna Patrick, Oregon Trial Lawyers Association, and Elaine Schooler, State Accident Insurance Fund), *available at* www.youtube.com/@OregonDCBS/videos (accessed Aug 25, 2026). Although those are not statements of legislators, the later legislative committee discussions noted that the bill reflected the position of MLAC and was the negotiated compromise of all interested parties. *See Teitelman v. SAIF*, 374 Or 271, 288 & n 13, 577 P3d 791 (2025) (discussing MLAC proceedings and proposed amendments as part of the legislative history of other legislation regarding workers' compensation).

We further note that the legislature knows how to limit the applicability of new legislation to address claims that continue in litigation after amendments take effect. In 1990, in passing revisions to the workers' compensation laws, the legislature included the following carve-out:

“Any matter regarding a claim which is in litigation before the Hearings Division, the board, the Court of Appeals or the Supreme Court under this chapter and regarding which a request for hearing was filed before May 1, 1990, and a hearing was convened before July 1, 1990, shall be determined pursuant to the law in effect before July 1, 1990.”

Astoria Plywood Co. v. Culp, 115 Or App 737, 739, 840 P2d 99 (1992). In discussing the meaning of the term “convened,” we noted the instructive legislative history wherein the “litigation exception” was discussed, with one Representative noting the large number of cases actively pending and the “nightmare” that would ensue if they all had to be revisited under the new law. *Id.* at 742-43. That language and legislative history demonstrate that the legislature is capable of considering the impact of changes on various stages of the lengthy workers' compensation process and can exempt

² The Notice of Closure in claimant's case was issued shortly after the bill was passed and signed by the governor.

claims from amendments based on the stage the claim has reached, when the legislature so desires. No such exemption was included in HB 4138. We therefore conclude that, regardless of whether the result in this case seems “absurd” to employer, it reflects the negotiated compromise and will of the legislature. The 2022 amendments are applicable to claimant’s case.

Remand is therefore necessary for the Workers’ Compensation Division to reconsider claimant’s claim in light of the 2022 legislation. *Conner v. Connecticut Indemnity Co.*, 139 Or App 421, 424, 912 P2d 413 (1996). Because this claim must be reconsidered under the new process, we need not reach claimant’s second assignment of error regarding the sufficiency of the evidence supporting claim closure.

Reversed and remanded.