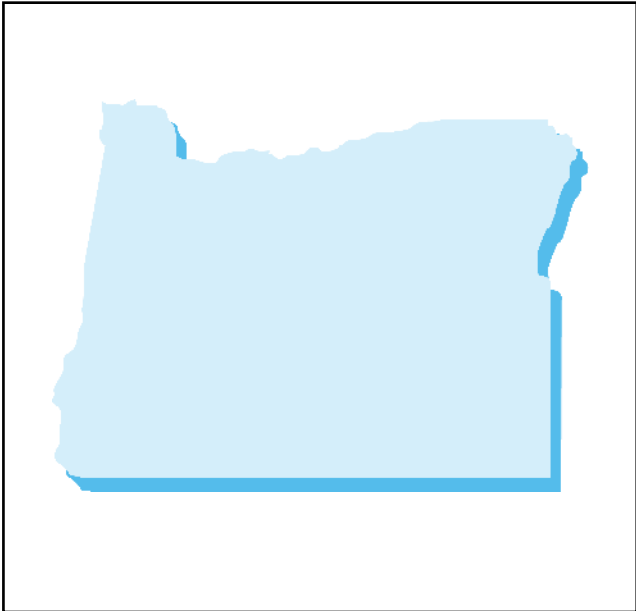




Hearings Division Statistical Report

Calendar Year 2009



*Information Management
Division*

*Oregon Department of Consumer
and Business Services*



January 2011



Hearings Division Statistical Report Calendar Year 2009

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Hearing requests, cases closed

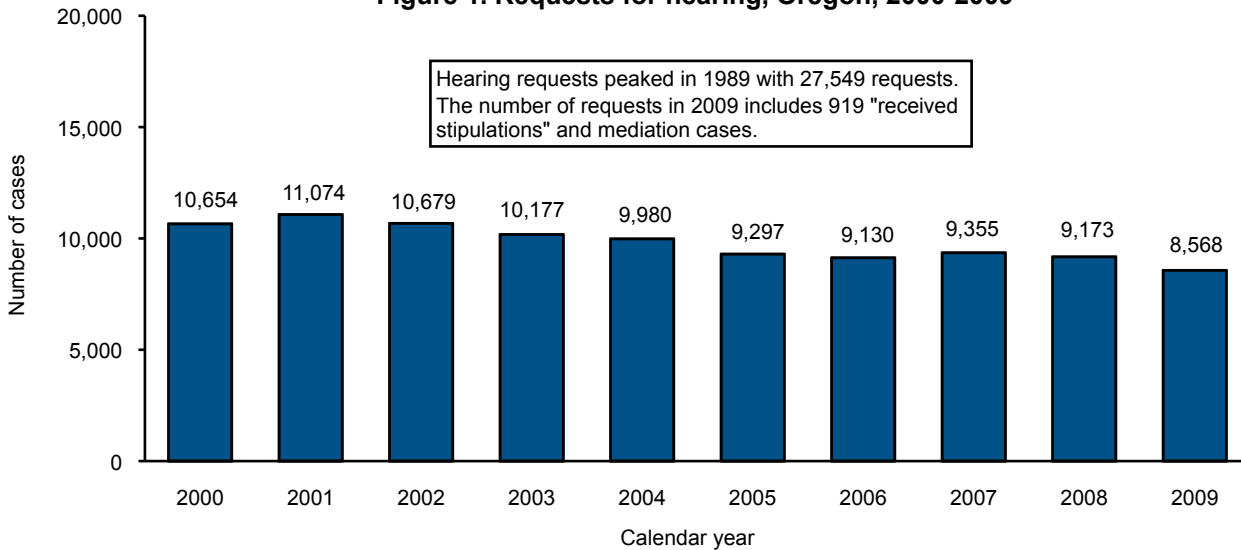
In 2009, the Hearings Division of the Oregon Workers' Compensation Board received 8,568 requests for hearing, 6.6 percent fewer than in 2008 (Figure 1).

The Hearings Division closed 9,044 cases in 2009, just 0.4 percent fewer than the previous year (Figure 2). Some orders close more than one case, so there

are fewer distinct orders than cases. In 2009, the average number of cases per order was 1.15. Request and order counts include cases solely about non-complying employer or civil penalty assessment; most analyses below exclude these case types.

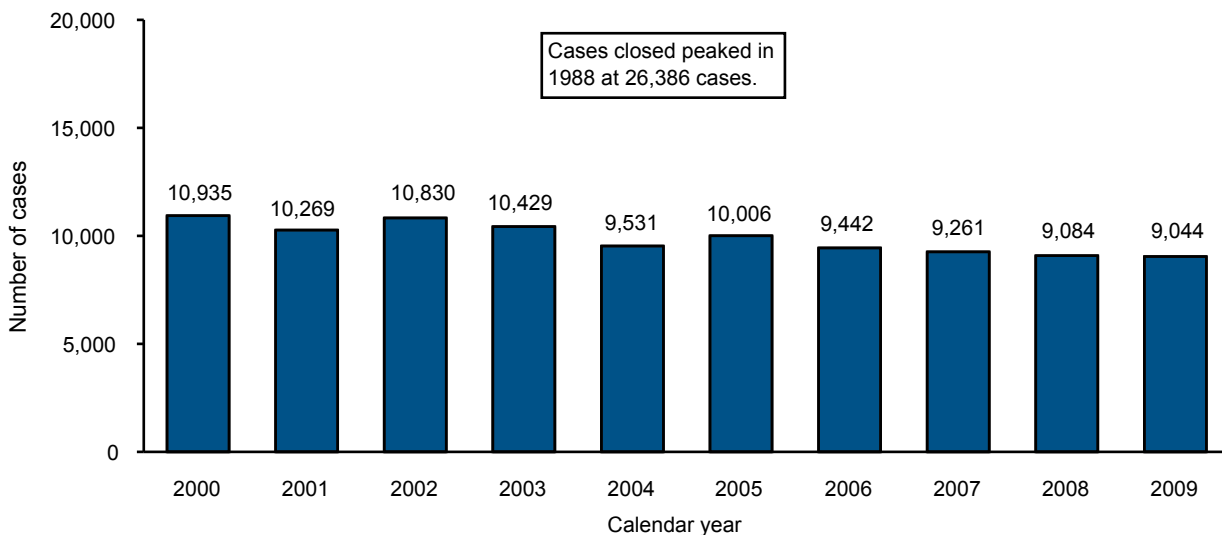
The percentage of cases that involved a judge's decision on the merits (order types "opinion and order" and "WCD proposed and final order") was

Figure 1. Requests for hearing, Oregon, 2000-2009



Note: "Mediation cases" are those set up to record the results of a mediation.

Figure 2. Hearing cases closed, all orders, Oregon, 2000-2009



17.5 percent (Table 1 and Figure 3), the lowest percentage on record. This trend is due in part to increasing numbers of board-conducted mediations and the high percentages of mediations that result in settlement. The percentage of cases closed by dismissal was 27.2 percent. About 72.4 percent of these dismissals were issued because the requester withdrew the hearing request. WCD contested cases are included in the above counts (see “New order types” in the appendix). Unless otherwise stated, counts and analyses except Figures 1 and 2 and Table 1 do not include the WCD contested-case orders.

The worker filed the request in 86.6 percent of the closed cases (Table 2); this percentage excludes stipulations received without a prior hearing request.

Table 1. Hearing compensation cases closed, by order type, Oregon, 2009

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
Opinion and order	1,521	16.9%	100.0%
Stipulation	1,356	15.1%	27.2%
DCS	3,614	40.2%	72.6%
Order on stipulation	11	0.1%	0.2%
All stipulations	4,981	55.4%	100.0%
Dismissal	285	3.2%	12.4%
Dismiss for CDA	302	3.4%	13.2%
Withdrawal	1,707	19.0%	74.4%
Above dismissals	2,294	25.5%	100.0%
WCD proposed & final order	52	0.6%	25.6%
WCD final order of dismissal	62	0.7%	30.5%
WCD proposed and final order of dismissal	89	1.0%	43.8%
All "WCD orders"	203	2.3%	100.0%
Total Orders	8,999	100.0%	

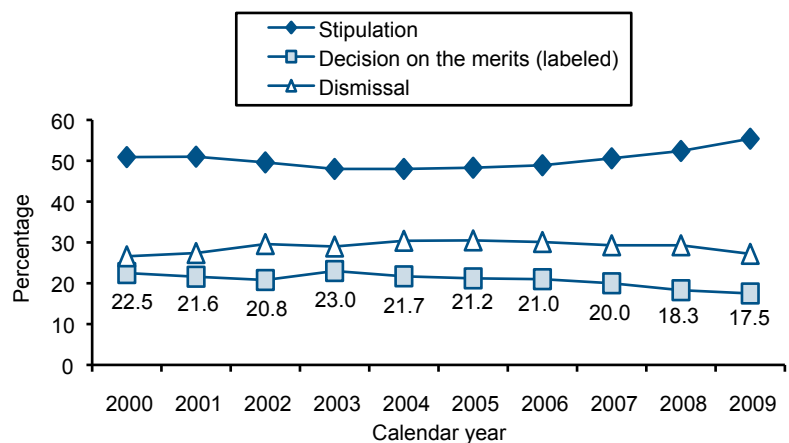
* For example, percentage of “all stipulations” and of “all dismissals.” “Total orders” differs from the Figure 2 count because some cases (e.g., noncomplying employer and civil penalty assessment) are excluded here.

Table 2. Hearing compensation cases closed, by requester, Oregon, 2009

Requester	Number of cases	Percentage of cases
Claimant	7,794	86.6%
Employer	27	0.3%
SAIF	68	0.8%
Private insurer	165	1.8%
Joint	907	10.1%
Other	38	0.4%
All	8,999	100.0%

For settlements received without a prior hearing request, the requester is considered to be “joint.” “Other” requester includes medical providers and unknown requesters. Due to rounding, the sum of percentages may not equal 100.

Figure 3. Distribution of hearing cases closed, by order type, Oregon, 2000-2009



Note: Includes WCD cases beginning in 2006.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 487 mediations during 2009 (Table 3). The average mediation required 12 work hours on the part of the judge. About 89 percent of mediations resulted in a settlement. The average dollar amount for a disputed claim settlement (DCS) resulting from mediation (\$21,400) was nearly three times as large as the average amount for non-mediated DCSs.

Table 3. Workers' Compensation Board mediations, Oregon, 2000-2009

Statistic	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Mean
Completed ¹	280	248	285	241	268	270	356	346	398	487	318
Result settled (%) ²	89	85	86	86	84	87	88	89	90	89	87
Settled by DCS (%) ³	87	93	85	88	81	82	77	79	76	80	83
Mean DCS \$k/case	16.7	14.2	10.3	11.2	13.3	11.0	15.1	14.8	22.1	21.4	15.0
Disease Claims (%) ⁴	41	49	42	41	31	67	46	64	72	73	53
Issues (%) ⁴											
Claim denial	40	39	43	41	32	30	28	30	25	26	33
Partial denial	64	70	65	66	74	73	53	62	53	55	63
All compensability	97	99	95	99	97	94	81	81	79	80	90
Non-WCB	43	51	55	45	50	47	42	43	43	44	46
ALJ work-hours (mean) ⁵	14	13	15	15	15	12	12	15	13	12	13.4
Request to mediation ⁶	77	73	80	79	95	78	73	72	77	69	77.3
Mediation to order ⁶	42	33	37	39	41	41	47	47	35	34	39.6

Notes:

Percentages, except "settlement resulted," indicate share of all *settled* mediations.

1. Count is mediations completed in the given year, regardless of order date. Includes all WCB mediations, including those where the dispute is at board review or in the courts. Data through 2005 are based on mediation worksheets; data from 2006 are based on mediation events in the board's data system.

2. Excludes those cases settled after pre-mediation conference calls.

3. A mediation is classified as closed by disputed claim settlement (DCS) if any included case is so closed.

4. A mediation is so classified if any included case is about this condition or issue.

5. Work-hours includes travel time; values are for all *completed* mediations, regardless of outcome.

6. Time lags are median values, in days.

Issues

The 6,502 opinion and orders (O&O) and stipulation cases closed in 2009 included a total of 7,144 issues, or 1.10 issues per case (Table 4).

For all order types, partial denial was the most frequent issue, as it has been since 2007. Approximately 44.8 percent of cases were about partial denial, the highest percentage on record. Whole-claim denial was a distant second, with 35.8 percent. The next most frequent issue was insurer penalty, at 7.3 percent of cases. Extent of permanent and temporary disability were issues in 3.9 percent and 3.0 percent of the cases, respectively.

Table 4. Number of issues per hearing compensation case, Oregon, 2009

Number of issues	Percentage of cases*
One	87.5%
Two	10.7%
Three	1.5%
Four	0.2%
Five	0.0%
Six	0.0%
More than one	12.5%

*Based on total cases with issues.

Table 5. Opinion and order cases by issue, disposition, and insurer class, Oregon, 2009

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	55	23	8	48	134	60.6%	14.5%
	Decrease	18	4	3	9	34	15.4%	
	Increase	27	5	1	20	53	24.0%	
	Total cases	100	32	12	77	221		
Temporary disability	Affirm	15	3	0	15	33	45.8%	4.7%
	Decrease	0	1	1	1	3	4.2%	
	Increase	19	5	0	12	36	50.0%	
	Total cases	34	9	1	28	72		
Claim denial	Set aside	91	36	9	100	236	47.8%	32.5%
	Affirm	120	31	12	95	258	52.2%	
	Total cases	211	67	21	195	494		
Partial denial	Set aside	77	34	6	87	204	41.5%	32.3%
	Affirm	110	49	10	118	287	58.5%	
	Total cases	187	83	16	205	491		
Aggravation denial	Set aside	5	1	0	3	9	19.1%	3.1%
	Affirm	11	3	3	21	38	80.9%	
	Total cases	16	4	3	24	47		
Responsibility	Total cases	32	8	0	23	63		4.1%
Premature closure	No	7	1	4	12	24	68.6%	2.3%
	Yes	3	3	2	3	11	31.4%	
	Total cases	10	4	6	15	35		
Insurer penalty	No	47	22	5	52	126	50.2%	16.5%
	Yes	37	16	4	68	125	49.8%	
	Total cases	84	38	9	120	251		
Attorney fee	No	3	0	0	0	3	10.0%	2.0%
	Yes	12	5	1	9	27	90.0%	
	Total cases	15	5	1	9	30		
Subjectivity	No	3	2	0	6	11	68.8%	1.1%
	Yes	4	0	0	1	5	31.3%	
	Total cases	7	2	0	7	16		
Rate of time loss	Affirm	2	0	0	1	3	18.8%	1.1%
	Decrease	0	0	0	0	0	0.0%	
	Increase	7	0	0	6	13	81.3%	
	Total cases	9	0	0	7	16		
Other issue	No	51	13	10	63	137	74.1%	12.2%
	Yes	14	7	2	25	48	25.9%	
	Total cases	65	20	12	88	185		
No issues		21	3	1	21	46		
Total issues		770	272	81	798	1,921		

Notes: "Percentage disposition" gives the breakout of how issues were resolved; for each issue, the sum of these percentages equals 100 (except for rounding). "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages exceeds 100. "Other insurers" includes cases with multiple insurers, no insurer, or unknown insurer. See the appendix for situations where no issue is recorded for a case.

Opinion and orders

Hearings judges decided 1,921 issues in 1,521 O&O cases, an average of 1.26 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 5. The percentage of cases about permanent disability, 14.5 percent, was similar to 2007 and 2008 values. Whole claim denial, at 32.5 percent, was the most frequent issue (as it’s been since 1989), but its percentage frequency was the lowest since 1988. Partial denial was the second most frequent issue in O&Os, at 32.3 percent. About 16.5 percent of O&O cases had the issue of insurer penalty (the highest percentage since 2001).

Table 6 and Figure 4 provide information about the number of O&O cases with extent of disability (temporary, permanent, or both) at issue and the type of disability increase. In 2009, workers’ disability awards were increased in 89 cases (the sum of the last three table columns), about 31 percent of the 288 disability-issue cases.

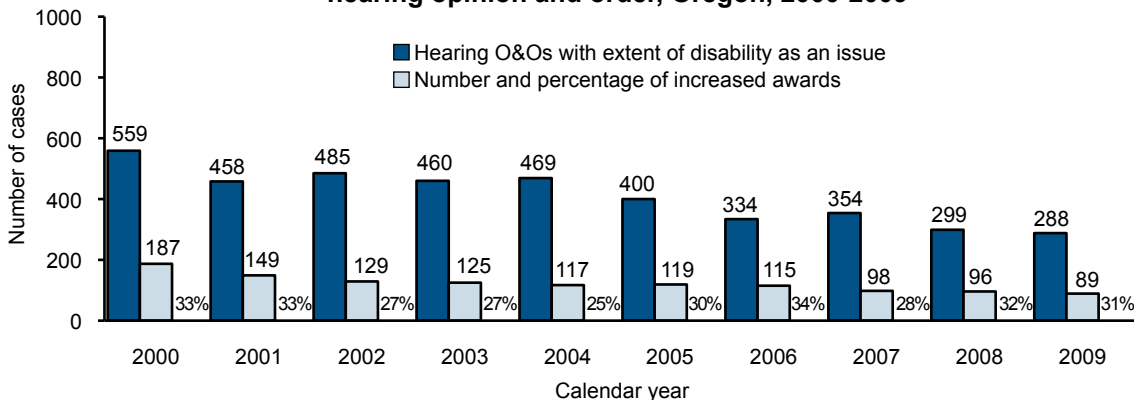
The “percentage disposition” column of Table 5 provides information about the disposition of issues in O&O cases.

Table 6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 2000-2009

Calendar year	Extent of disability issue	PPD award	PTD award	TD increase with no PPD increase
2000	559	110	2	75
2001	458	85	0	64
2002	485	75	1	53
2003	460	73	1	51
2004	469	66	0	51
2005	400	65	1	53
2006	334	66	0	49
2007	354	52	0	46
2008	299	56	0	40
2009	288	53	0	36

“Extent of disability issue” means that either permanent disability or temporary disability (time loss), or both, were decided. PPD is permanent partial disability, PTD is permanent total disability, and TD is temporary disability.

Figure 4. Disability issues and award increases, hearing opinion and order, Oregon, 2000-2009



Figures 5 and 6 provide historical values of O&O dispositions on extent of disability. The percentage of disability cases decided in favor of the claimant (including insurer appeals where the award is affirmed) for permanent and temporary disability were 38.5 percent and 58.3 percent, respectively.

The “set-aside-denial” rate for whole claim denial, 47.8 percent, was the highest since 1994 (Figure 7). The “set-aside” rate for partial denial, 41.5 percent, was the lowest since 2004. For aggravation, the “set-aside” rate, 19.1 percent, was above 2007’s near-record-low 17.1 percent (Figure 7); aggravation denials were affirmed in 80.9 percent of all 2009 O&O cases. The “yes” rate for insurer penalty was

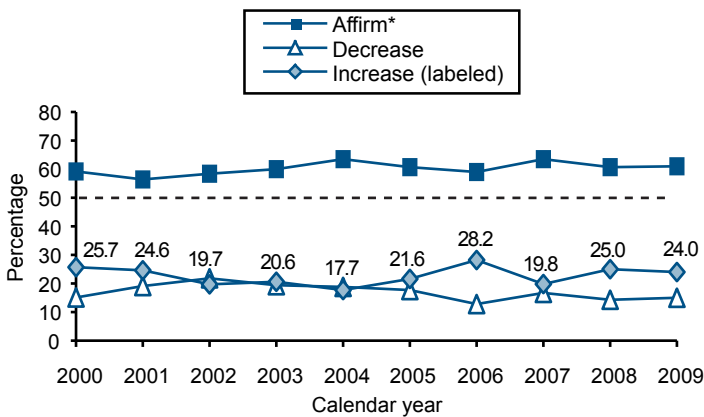
49.8 percent (Figure 8), the highest since 1992 (which ended a period when values of 55 percent to 75 percent prevailed).

In two cases, insurers requested sanctions against worker attorneys, per ORS 656.390. Judges denied sanctions in both cases.

Stipulations, disputed claim settlements

In 2009, disputing parties settled 5,223 issues in 4,981 stipulated cases, about 1.05 issues per case. Claim denial and partial denial were by far the most frequent issues (Table 7), which is typical. Dispositions of “affirm denial” for compensability issues are always high because stipulations include DCSs, where the denial is sustained.

Figure 5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 2000-2009



* Remands are coded as "Affirm"

Figure 6. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 2000-2009

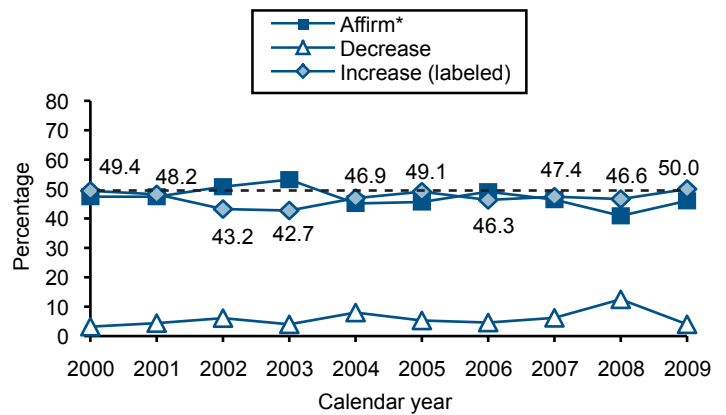


Figure 7. Set-aside denial rates for compensability cases, hearing opinion and order, Oregon, 2000-2009

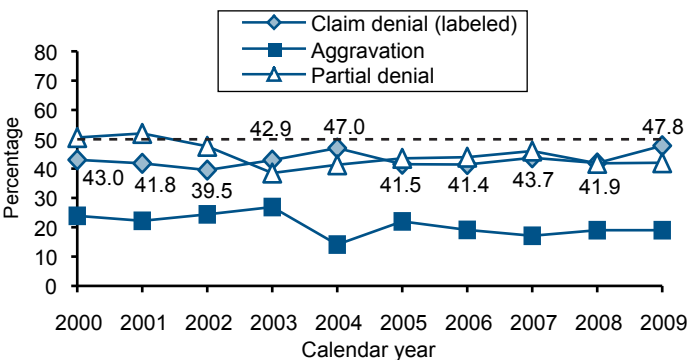


Figure 8. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 2000-2009

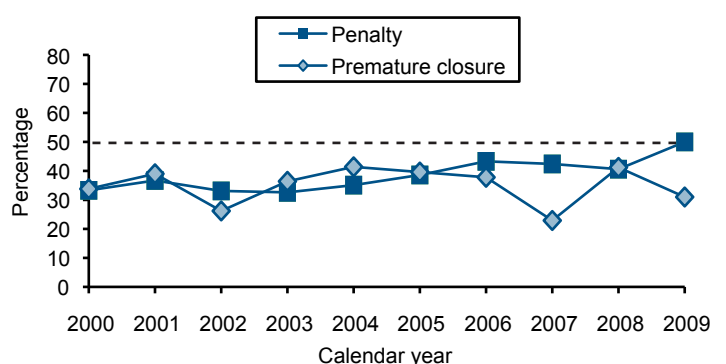


Table 7. Stipulation cases by issue, disposition, and insurer class, Oregon, 2009

Issue	Disposition	Insurer class					Percentage disposition	Percentage of cases
		SAIF	Private	Self-insured	Other insurers	All insurers		
Permanent disability	Affirm	1	3	1	10	15	45.5%	0.7%
	Decrease	0	0	0	2	2	6.1%	
	Increase	6	2	2	6	16	48.5%	
	Total cases	7	5	3	18	33		
Temporary disability	Affirm	1	1	0	5	7	5.8%	2.4%
	Decrease	0	0	0	0	0	0.0%	
	Increase	33	36	5	39	113	94.2%	
	Total cases	34	37	5	44	120		
Claim denial	Set aside denial	133	79	11	98	321	17.5%	36.9%
	Affirm denial	644	357	62	452	1,515	82.5%	
	Total cases	777	436	73	550	1,836		
Partial denial	Set aside denial	135	107	6	67	315	13.0%	48.6%
	Affirm denial	760	426	94	826	2,106	87.0%	
	Total cases	895	533	100	893	2,421		
Aggravation denial	Set aside denial	3	3	0	9	15	9.0%	3.3%
	Affirm denial	48	32	7	64	151	91.0%	
	Total cases	51	35	7	73	166		
Responsibility	Total cases	4	10	0	8	22		0.4%
Premature closure	No	1	2	1	6	10	90.9%	0.2%
	Yes	0	0	0	1	1	9.1%	
	Total cases	1	2	1	7	11		
Insurer penalty	No	0	3	1	8	12	5.4%	4.5%
	Yes	55	75	8	72	210	94.6%	
	Total cases	55	78	9	80	222		
Attorney fee	No	1	0	0	0	1	0.7%	2.7%
	Yes	31	42	2	59	134	99.3%	
	Total cases	32	42	2	59	135		
Subjectivity	No	0	0	0	4	4	100.0%	0.1%
	Yes	0	0	0	0	0	0.0%	
	Total cases	0	0	0	4	4		
Rate of time loss	Affirm	0	1	0	2	3	5.3%	1.1%
	Decrease	0	0	0	0	0	0.0%	
	Increase	18	18	2	16	54	94.7%	
	Total cases	18	19	2	18	57		
Other issue	No	18	11	3	16	48	24.5%	3.9%
	Yes	42	28	9	69	148	75.5%	
	Total cases	60	39	12	85	196		
No issues	Total cases	59	35	11	73	178		
Total issues		1,934	1,236	214	1,839	5,223		

Notes: "Percentage disposition" gives the breakout of how issues were resolved; for each issue, the sum of these percentages equals 100 (except for rounding). "Percentage of cases" is the fraction of all cases that contain each issue; some cases have more than one issue, so the sum of these percentages exceeds 100. "Other insurers" includes cases with multiple insurers, no insurer, or unknown insurer. See the appendix for situations where no issue is recorded for a case.

In 2009, insurers paid almost \$31.2 million to workers in 3,614 disputed claim settlement cases (Table 8 and Figure 9), the most since 1991's \$32.6 million (which was from 6,021 cases). The average DCS amount was \$8,620 and the median amount was \$4,600 (compared to \$4,000 in 2008). The largest amount paid in a single settlement was \$250,000 and the most frequent amount was \$5,000 (the same as in 2008). The DCS amount was unspecified in four cases.

The percentage of DCS cases about partial denial, 57.2 percent, was the highest on record. DCSs accounted for 72.6 percent of all stipulations, a record-high 40.2 percent of all closing hearing orders, and 84.2 percent of all claims denied at hearing (excludes aggravations).

DCSs accounted for claimant attorney fees of almost \$5.6 million, 49.1 percent of all fees at hearing. The average DCS fee was \$1,753 (considering only non-zero out-of-compensation fees). About 99.2 percent of DCS fees were paid out of the DCS consideration.

Table 8. Hearing disputed claim settlements, by principal issue, Oregon, 2009

Principal issue	Number of cases	Percentage of cases	Total DCS amount (\$k)	Average amount (\$)	Total fees* (\$k)
Claim denial	1,492	41.3%	12,812	8,587	2,406
Partial denial	2,067	57.2%	18,021	8,718	3,106
Aggravation denial	36	1.0%	150	4,176	28
Other issues	19	0.5%	171	9,024	11
All issues	3,614	100.0%	31,154	8,620	5,551

Only the highest-ranking issue is identified with each case. Values may not add to all-issues totals due to rounding.

* Includes some assessed fees.

Figure 9. Hearing disputed claim settlement amounts, Oregon, 2000-2009



Note: Numbers within bars are case counts.

Permanent disability

Pre-2005 scheduled and unscheduled disability:

There were only 34 cases about permanent disability where the injury date was before January 2005. The “Scheduled & unscheduled” sections of Table 9 provide data about these cases. For example, of cases closed by opinion and order, eight increased disability. These eight cases had only unscheduled awards, and the increases averaged 74.2 degrees.

Whole-body impairment and work disability:

Cases about permanent disability with injury date in 2005 or later constituted about 87 percent of all permanent-disability cases. The “Impairment & work disability” sections of Table 9 provide data about these cases. For example, of cases closed by opinion and order (shaded section of the table), 45 increased disability. Of these cases, 33 cases increased impairment and 24 cases increased work disability (both counts include 12 cases with both

Table 9. Hearings PPD award changes, Oregon, 2009

Increases	Opinion and order		All order types		
	Type of PPD award	Number of cases	Average change*	Number of cases	Average change*
Scheduled and unscheduled		8		12	
Scheduled		0	--	2	17.3
Unscheduled		8	74.2	10	64.8
(number with both types)		(0)		(0)	
Impairment and work disability		45		57	
Impairment		33	6.2	44	5.6
Work disability		24	14.0	28	13.0
(number with both types)		(12)		(15)	

Decreases	Opinion and order		All order types		
	Type of PPD award	Number of cases	Average change*	Number of cases	Average change*
Scheduled and unscheduled		3		3	
Scheduled		0	--	0	--
Unscheduled		3	19.2	3	19.2
(number with both types)		(0)		(0)	
Impairment and work disability		31		33	
Impairment		26	6.2	28	7.2
Work disability		14	9.6	14	9.6
(number with both types)		(9)		(9)	

*Average change awards are in units of degrees or percentages, as indicated in the left column. A case may have award changes in both scheduled and unscheduled disability, or in both impairment and work disability. Cases where an award of PTD is granted or rescinded are not included.

impairment and work-disability increases). The average impairment increase was 6.2 percent. See appendix for explanation of the change in how PPD is determined.

Of the 24 O&O work-disability-increase cases mentioned above, 13 awarded work disability for the first time. Another 14 O&O cases reduced work disability and four reduced it to zero; two of those four cases still allowed impairment. So, judges in at least 15 (13 plus 2) cases reversed the department in the determination of whether the worker returned or was released to regular work.

Permanent disability was decreased by stipulation in two cases. Disability was reduced to zero in both cases, and both settlements were in conjunction with a claim disposition agreement.

All disability cases:

In all, 254 cases involved extent of permanent disability in 2009, a record-low 3.9 percent of all cases. The case count was just 3.6 percent of the 7,007 permanent-disability cases resolved in 1990. Case dispositions were as follows (these figures include stipulations): increase the award, 27.2 percent; decrease the award, 14.2 percent; and affirm the award, 58.7 percent. See Table 10 for case counts by order type and disposition.

Table 10. Disposition of hearing PPD cases, by order type, Oregon, 2009

Order type	Dispositions			
	Increase	Decrease	Affirm	All
Opinion and order	53 24.0%	34 15.4%	134 60.6%	221 100.0%
Stipulation	16 48.5%	2 6.1%	15 45.5%	33 100.0%
All orders	69 27.2%	36 14.2%	149 58.7%	254 100.0%

Note: Table entries are number of cases (top number) and the percentage of each order type that has the given disposition (so percentages add to 100 in the horizontal, except for rounding). Includes cases with the award of permanent total disability granted or rescinded.

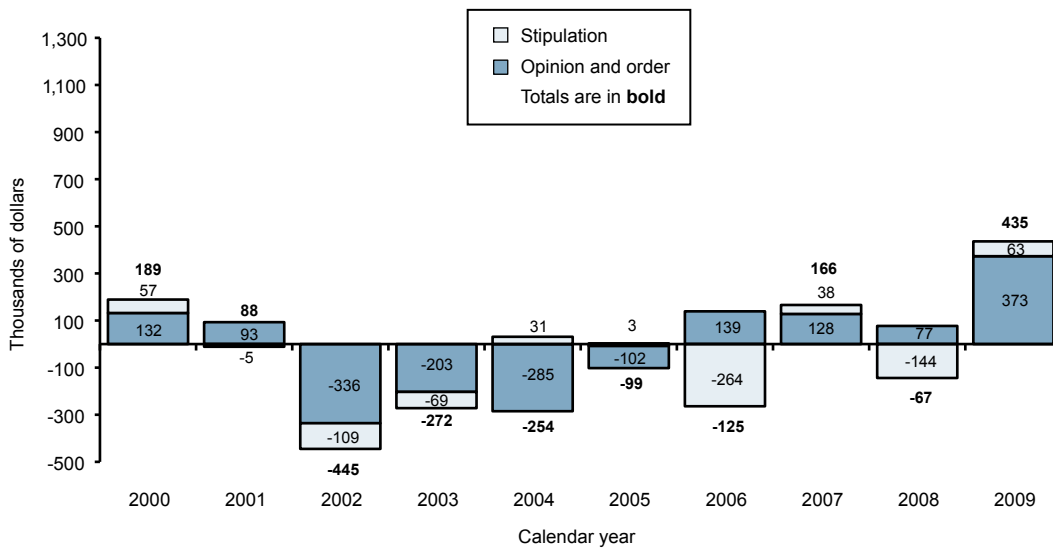
The net amount awarded for PPD at hearing in 2009 was more than \$435,000 (Figure 10). O&Os accounted for 85.6 percent of this amount. Some stipulations are a compromise between the parties; they award an increase (or sometimes decrease) that's smaller than that requested by the petitioner. Stipulated awards and total PPD paid are not perfect indications of the accuracy of awards granted at closure or department reconsideration because some stipulations reduce PPD awards to zero in conjunction with a claim disposition agreement.

There were no hearing permanent total disability grants in 2009 (Figure 11), and no rescissions. So, the net number of PTD awards at hearing was zero.

The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past 20 years. Four primary reasons for this change:

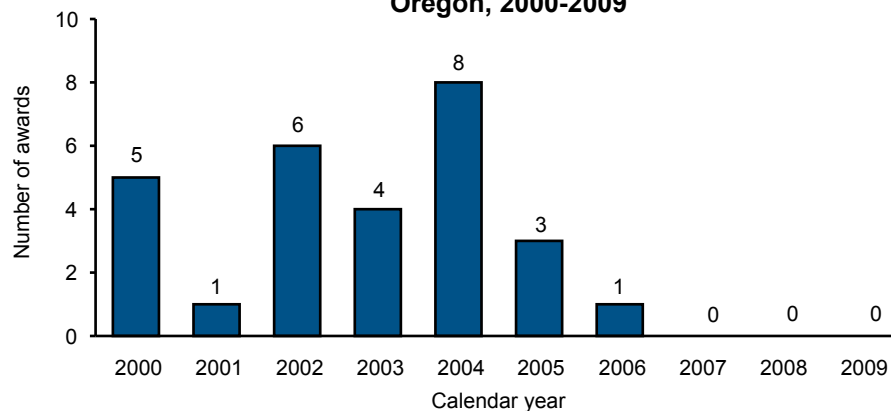
- Decreasing numbers and severity of injuries, and fewer accepted disabling claims

Figure 10. Net hearing PPD awards by order type, Oregon, 2000-2009



Note: Due to rounding, values may not add to totals.

Figure 11. PTD awards granted at hearing, Oregon, 2000-2009



- House Bill 2900 (1987): primarily, enacting disability standards
- Senate Bill 1197 (1990): required reconsideration, medical arbiters for impairment disputes, “tighter” disability standards, and claim disposition agreements
- Senate Bill 369 (1995): limitation of evidence at hearing, prohibition of issues that were not raised at nor arose out of the reconsideration, and the limitation on disability when a worker returns to work

Time Lags

For all hearing orders in 2009 (Table 11), the median time from injury to hearing request was 351 days (11.5 months), and the median request-to-order time for all order types was 141 days (4.6 months). The request-to-order time lag for a withdrawal or settlement overstates a dispute’s duration because the hearing is typically cancelled a month before the closing order is issued.

For opinion and order cases (Figure 12), the median time from hearing request to order was 226 days (7.4 months). For O&O cases without a postponement, the median request-to-order time was 149 days (4.9 months). The percentage of O&Os with at least one postponement was 45.2 percent, the highest percentage on record.

O&O request-to-order time lags include time that the record was kept open, after the hearing concluded. The median hearing-to-close time lag was 37 days, while the most frequent time lag was zero (the case closed on the hearing day). The median close-to-order time lag was 27 days.

Claimant attorney fees

Claimants were represented by counsel in at least 93.2 percent of O&O cases and 88.8 percent of all cases (excludes WCD contested cases).

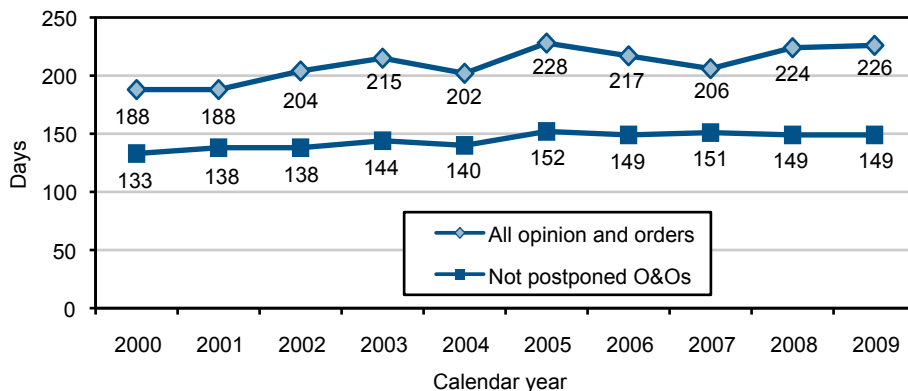
Claimant attorney fees totaling almost \$11.3 million were approved for payment out of worker compensation awards or assessed against insurers in

Table 11. Median hearing time lags, by order type, Oregon, 2009

Lag period (dates)	Opinion and order	Received stipulation	Other stipulation	Dismissal, withdrawal	All orders
Injury – request	375	490	291	373	351
Injury – order	686	498	518	550	564
Request – order	226	7	161	104	141
Request – hearing	90				
Hearing – closed	37				
Closed – order	27				

Units are calendar days. Hearing and closed dates apply to opinion and order cases only. Time-lag segments do not add to totals because figures are medians, not means. “Received stipulation” are settlements received without a prior hearing request; “Other stipulation” includes all other settlements.

Figure 12. Median time lags, hearing request to order, opinion and order cases, Oregon, 2000-2009



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2009 hearing orders (Table 12). The average fee of \$2,357 was about 7.2 percent more than in 2008 (Figure 13). Total fees were the highest since 1992 and 11.4 percent more than in 2008 (Figure 14). Data here exclude fees in WCD cases.

About 50.5 percent of the fees were paid out of compensation or DCS consideration, the highest since 2003. In 1990, this figure was 65.0 percent, but fewer extent-of-disability cases and smaller percentages of disability-increase dispositions have reduced this percentage.

Figure 13. Average claimant attorney fees by source, Oregon, 2000-2009

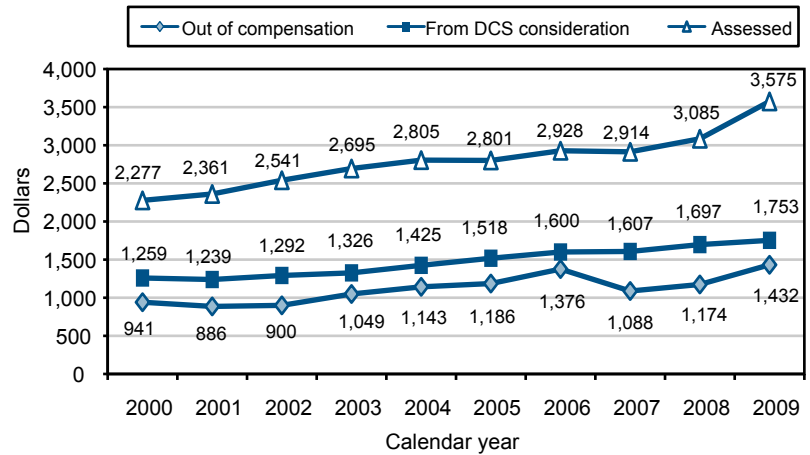


Figure 14. Total hearing claimant attorney fees, Oregon, 1999-2008

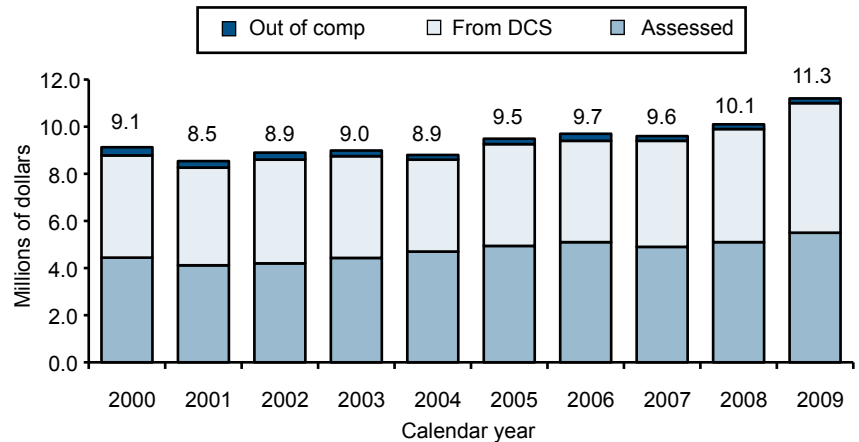


Table 12. Claimant attorney fees, by order and fee type, Oregon, 2009

Fee type	Order type			Percentage of all fees
	Opinion and order	Stipulation	All types	
Out of compensation:				
Total (\$)	145,000	51,000	196,000	1.7%
Average (\$)	1,839	878	1,432	
Cases	79	58	137	
DCS consideration:				
Total (\$)		5,508,000	5,508,000	48.8%
Average (\$)		1,753	1,753	
Cases		3,143	3,143	
Assessed:				
Total (\$)	3,195,000	2,396,000	5,591,000	49.5%
Average (\$)	5,557	2,422	3,575	
Cases	575	989	1,564	
All types:				
Total (\$)	3,340,000	7,955,000	11,295,000	100.0%
Average (\$)	5,236	1,915	2,357	
Cases	638	4,154	4,792	

DCS fees are those from DCS consideration only. Fees may not add to totals due to rounding. Cases may not add to all-types cases because some cases have more than one fee type. Occasionally DCSs include assessed fees; they are included here as assessed fees.

Appendix

Background and context

The Hearings Division of the Oregon Workers' Compensation Board provides a forum for impartial dispute resolution in the Oregon workers' compensation system. Administrative law judges carry out this hearings function. Parties who are dissatisfied with a decision of an insurer or the Workers' Compensation Division of the Department of Consumer and Business Services may request a hearing with the Hearings Division. See ORS 656.283.

This report covers cases for which hearing orders were written during the subject calendar year, regardless of the date the hearing was requested or held. The basic unit of data is the case, not the written order. Sometimes an order may close more than one case.

Excluded from this report are (1) safety cases, per Oregon Revised Statutes Chapter 654; (2) inmate injury fund cases; (3) cases not dealing with workers' compensation claims, such as those about noncomplying employer status or civil penalty assessment [exception: these cases are included in hearing request and order counts]; and (4) nonclosing orders, such as interim orders and orders of abatement.

Data for this report were collected by the Workers' Compensation Board staff from various source documents, but primarily from the hearing order itself. Data were written to data sheets and then entered into the board's data system. Computer edits were performed in order to identify and correct data that were inconsistent or otherwise questionable.

Generally, 1978 is the first year with detailed statistical records. Unless otherwise indicated, record-high or record-low values are for the period beginning with 1978.

New PPD system

Via Senate Bill 757, the Legislature created a new system for determining permanent partial disability awards. It applies to workers injured on or after Jan. 1, 2005. Instead of scheduled and unscheduled PPD

awards, which are measured in degrees and paid at rates that are a function of injury date and (for unscheduled PPD) the number of degrees awarded, the new system provides for two award types:

- **Impairment.** The impairment for all body parts is combined into whole-body impairment, measured in percent (1-100). It is paid at the *state* average weekly wage (for injuries between Jan. 1, 2005, and June 30, 2005, \$688.56 for each percent of impairment).
- **Work disability.** If a worker cannot return to regular work at the job held at injury, work disability is awarded. It combines impairment with a value based on age, education, and adaptability factors; it is given in percent, and exceeds impairment because the factors are all positive. Each percent is paid at 1.5 times the *worker's* average weekly wage (but the wage used is not less than 50 percent nor more than 133 percent of the state average weekly wage).

New order types

House Bill 2091, effective Jan. 1, 2006, transferred jurisdiction of appeal of director's orders from the Office of Administrative Hearings to the Workers' Compensation Board. These "WCD contested cases" most frequently involve disputes about medical services or vocational services. The board set up three new order types to deal with them:

- **WCD/Proposed and final order** – A judge's decision *on the merits* of the case. Appeal of this order is to WCD (not board review), and the subsequent review level is the Court of Appeals.
- **WCD/Final order of dismissal** – A dismissal, usually due to withdrawal by the petitioner. In most WCB reports, these are treated as *withdrawals*.
- **WCD/Proposed and final order of dismissal** – A dismissal, usually due to a settlement. In most WCB reports, these are treated as *dismissals*.

Terminology

Note: For other terminology, see the Workers' Compensation Division's list of terms and abbreviations: <http://wcd.oregon.gov/communications/publications/terms.html>. Other terms are defined in the law and WCB rules.

Administrative law judge – a WCB Hearings Division judge. Formerly called “referees,” judges conduct hearings, decide cases, write opinion and orders, issue dismissal orders, approve settlements, and conduct mediations.

Attorney fees – fees paid to attorneys representing injured workers. Attorney fees may be awarded for these outcomes: getting a denial overturned, obtaining an increase in compensation, and preventing a decrease in compensation.

Comments about attorney fees:

- Most fees are determined at hearing for attorney efforts and results on issues raised at hearing. Other fees are determined by hearings judges for attorney efforts and results achieved outside of hearings. They include cases in which attorney fees were an issue in the hearing request.
- Attorney fees that are recorded for hearings cases are not necessarily the actual amounts paid. For example, if the duration of time loss is increased and the ending date is not specified, the fees recorded are the maximum allowable (\$1,500). In other cases, the fees may be reversed (reduced or eliminated) when the judge's decision in favor of the claimant is reversed or modified by the board or courts, or when the amount of the fee is successfully challenged.
- Sometimes, fee amounts cannot be determined from the order. In most such cases, the fee is based, at least in part, on penalties against the insurer. There is no way to know when part of a fee is missing, as with a denial reversal and an unknown penalty fee.

Types of attorney fees:

- Out of compensation – fees that are taken out of a worker's compensation when an attorney is instrumental in obtaining an increase in compensation.
- Out of DCS consideration – fees in disputed-claim settlements usually come from the DCS proceeds.

- Assessed – fees assessed against the insurer. This type of fee is most frequently awarded when the attorney is instrumental in getting an insurer denial reversed. Penalty-related fees are considered to be this type, even when the fee comes from the penalty amount.

During the year covered by this report, Oregon law or WCB rules placed the following restrictions on claimant attorney fees at hearings (stated amounts could be exceeded only in extraordinary circumstances):

- Out of compensation – 25 percent of the increase; to a maximum of \$1,500 for time loss, \$4,600 for permanent partial disability, and \$12,500 for permanent total disability.
- Out of DCS consideration – 25 percent of the first \$17,500; 10 percent of proceeds above that threshold.
- Assessed – \$1,000 in a responsibility dispute, and \$2,000 for penalties for unreasonable insurer conduct. Otherwise, there were no restrictions.

Case – a dispute. A case is established and assigned a case number at the time of the hearing request. A case may have several contested issues.

Degree – a unit of impairment derived from the percentage of impairment and used to determine the value of a permanent partial disability. The value of each degree of disability is based on the date of injury.

Favorable rate – the percentage of dispositions in favor of the worker. For the issues of temporary disability and permanent disability, this rate reflects award increases plus affirmations of the prior order when the insurer or employer requested the hearing.

Hearing – a formal proceeding in which the parties to a dispute and their representatives appear before a judge and provide evidence (testimony and/or documents) and argument. Hearings are normally followed by the judge writing an opinion and order.

Insurer class – SAIF, private insurance carrier, or self-insured employer. Some cases with an “unknown” insurer are appeals of department nonsubjectivity determinations (disputes about whether the worker or the employer is subject to the workers' compensation law). Class may be unknown when a claim is processed by a third-party administrator (TPA).

Issue – the subject(s) of a dispute. Only issues that are resolved (decided by the judge or settled by the parties) are recorded with a disposition.

These issues are recorded:

(1) Extent of permanent disability – the amount of permanent partial disability or whether the worker is permanently and totally disabled. See ORS 656.206 and 656.214.

(2) Extent of temporary disability – eligibility for, or duration of, temporary disability (often called “time loss”), including interim compensation awarded pending an insurer decision to accept or deny a claim. See ORS 656.210 and 656.212.

(3) Claim denial – denial of a new claim, denial of the whole claim for reasons of work-relatedness (“course and scope”); this issue excludes denial because the worker failed to cooperate (ORS 656.262(14)), the worker or employer is not subject to workers’ compensation law (ORS 656.027), another insurer is responsible (ORS 656.307), the insurer didn’t provide coverage on the date of injury, and the claim was not timely. Flare-up of a pre-existing condition due to work activities is considered to be this issue.

(4) Partial denial – denial of part of a claim, denial of a new condition in an accepted claim.

This issue includes consequential conditions, flare-up of a pre-existing condition due to a compensable injury, scope of acceptance disputes in accordance with ORS 656.262(6)(d), current condition disputes, new medical condition claims, and disputes about whether there’s a causal relationship between medical services and a compensable injury.

(5) Aggravation – worsening of the compensable condition since the most recent award. It raises the question of whether the claim should be reopened. See ORS 656.273.

(6) Responsibility – which insurer should accept a claim and pay benefits. This issue, even though raised, is not recorded in a DCS (it’s really the compensability denial that is

sustained). Also, it isn’t coded when the claim is found not compensable (the responsibility issue is not reached). See ORS 656.307.

(7) Premature closure – whether the claim was closed before the worker was medically stationary. See ORS 656.268 and 656.283(7).

(8) Penalties – “additional amounts” paid by the insurer to the worker and/or worker’s attorney, usually for unreasonable claims processing conduct. See ORS 656.262(11), 656.268(5), and 656.291(2).

(9) Attorney fee – whether claimant’s attorney should be awarded fees, and how much, for efforts or results achieved outside of hearings. This issue is not recorded when fees are requested for the hearing outcome. See ORS 656.262(11), 656.291(2), 656.307(5), 656.308(2), 656.382, 656.386, and 656.388.

(10) Subjectivity – whether the worker or employer is subject to Oregon workers’ compensation law. See ORS 656.027. This issue was first coded in 2000. Previously, it was coded as “other” issue.

(11) Temporary disability rate – the rate at which time loss should be paid. Usually, this issue involves what wage should be used in the computation of TD rate. (Note: if the question is whether temporary total disability or temporary partial disability should be paid, the issue is coded as “extent of temporary disability,” not this issue.) This issue was first coded in 2004.

(12) Other issue – any issue not specified above.

No issue is recorded for a case when:

- All raised issues are “reserved” or “preserved” to be resolved later
- The hearing request is dismissed in an order captioned as an opinion and order
- All issues are withdrawn at hearing in an order not captioned as a dismissal
- The numbers of cases exceeds the number of distinct denials
- Both insurer and worker appeal a department reconsideration order and two cases are set up

Mediation – a process in which the Workers’ Compensation Board provides (without cost to either party) facilities and a mediator (a specially trained administrative law judge) to help settle disputes without formal litigation. Mediations are held only when parties agree to mediate.

Mediation case – a case created after a mediation, if necessary, to record the results of the mediation. (Before December 2004, received-stipulation case types were used for this purpose.)

Order types:

Dismissal – an order by a judge dismissing the hearing request; there generally is no hearing. Dismissals are written when (1) the hearing requester withdraws the request; (2) the judge rules to dismiss for untimely filing, lack of jurisdiction, or other legal basis; (3) the Workers’ Compensation Board approves a claim disposition agreement that disposes of all contested issues; and (4) a judge determines that there is not substantial evidence to support a responsibility finding against a particular insurer, per ORS 656.308(2)(c).

Disputed claim settlement – resolution of a compensability dispute wherein the parties agree to leave a claim or medical condition denied, in exchange for some consideration (usually cash paid to the worker). See ORS 656.289(4). DCSs are a type of stipulation. DCSs affirm a compensability denial, but may sometimes include other issues. The DCS amount is sometimes unspecified; usually this happens when the insurer is to pay medical bills and the amount is not mentioned in the order.

Opinion and order – an order of the administrative law judge that records a decision on the merits and the rationale for it. Usually, an opinion and order is written when a hearing is conducted, but a judge may sometimes decide the case on the written record alone.

Order on stipulation – an order written by a judge, based on an agreement of the parties. In this report, we don’t distinguish between orders on stipulation and other stipulations.

Stipulation – an order written to record, approve, and make enforceable an agreement of the parties. In its broadest use, it includes disputed claim settlements. In almost all uses, it includes “orders on stipulation.”

Received stipulation – a settlement received without a prior hearing request. Such orders are classified as “joint” requests. The order type may be stipulation or disputed claim settlement.

Responsibility dispute – a dispute about which insurer is responsible for a claim. In a “pure” responsibility dispute, no insurer denies compensability, and the department publishes a “307 paying agent order” to designate an insurer to pay benefits until responsibility is determined. Responsibility disputes involve multiple cases, one from each of the worker’s hearing requests contesting an insurer’s denial. See ORS 656.307 and 656.308.

Sanction – a payment to an opposing party that a judge may order against an attorney for an appeal that is frivolous, filed in bad faith, or for the purpose of harassment. See ORS 656.390. Data are not automatically collected about attorney sanctions.

Time lag, request to order – the time from the original hearing request to the closing order. It includes the time from the request to the scheduled time of the hearing, the time from the hearing to record closure (i.e., it includes time that the record is kept open after the hearing was concluded), and the time required for the judge to write the order. Postponements greatly extend this time.



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