



# News & Case Notes

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## BOARD NEWS

### Bulletin 1 (Revised) - Annual Adjustment to Attorney Fee Awards Effective July 1, 2024

The maximum attorney fee awarded under ORS 656.262(11)(a), ORS 656.262(14)(a), and ORS 656.382(2)(d), which is tied to the increase in the state's average weekly wage (SAWW), will increase by 2.749 percent on July 1, 2024. On June 6, 2024, the Board published Bulletin No. 1 (Revised), which set forth the new maximum attorney fees. The Bulletin can be found on the Board's website at: <https://www.oregon.gov/wcb/Documents/wcbbulletin/bulletin1-2024.pdf>

An attorney fee awarded under ORS 656.262(11)(a) shall not exceed **\$5,973**, absent a showing of extraordinary circumstances. OAR 438-015-0110(3).

An attorney fee awarded under ORS 656.262(14)(a) shall be **\$456** per hour. OAR 438-015-0033. This rule concerns the reasonable hourly rate for an attorney's time spent during a personal or telephonic interview conducted under ORS 656.262(14).

An attorney fee awarded under ORS 656.308(2)(d) shall not exceed **\$4,308**, absent a showing of extraordinary circumstances. OAR 438-015-0038; OAR 438-015-0055(5).

These adjusted maximum fees apply to attorney fees awarded under ORS 656.262(11)(a) and ORS 656.308(2)(d) by orders issued on July 1, 2024, through June 30, 2025, and to a claimant's attorney's time spent during a personal or telephonic interview or deposition under ORS 656.262(14)(a) between July 1, 2024, and June 30, 2025.

### May 16, 2024, Board Meeting and June 28, 2024, Rulemaking Hearing to Consider Rule Amendments to OAR 438-005-0055, OAR 438-015-0050(1), and 438-015-0052(1)

At its May 16, 2024, public meeting, the Board agreed to propose amendments to the Board's rules regarding mandatory denial appeal language (OAR 438-005-0055) and attorney fee caps for certain Disputed Claim Settlements and Claim Disposition Agreements (OAR 438-015-0050(1) and OAR 438-015-0052(1)).

The proposed amendments to OAR 438-005-0055 (1) and (2) simplify and improve the readability of the appeal language required to be included in denials. Additionally, the amendments to OAR 438-015-0050(1) and OAR 438-015-0052(1) remove the 10 percent limit on attorney fee awards out of DCS and CDA proceeds exceeding \$50,000. The amendments provide that a claimant's attorney may receive a fee of up to 25 percent of the total DCS or CDA proceeds in the absence of extraordinary circumstances.

The Board will hold a public hearing on Friday, June 28, 2024, at 10:00 a.m. by teleconference to receive comments on these proposed amendments. Written comments may also be submitted in advance of the hearing.

Further information regarding the proposed amendments and the public hearing are found in the Statement of Need and Fiscal Impact found [here](#), the Exhibits found [here](#), and the Notice of Proposed Rulemaking can be found [here](#). Instructions on how to join the hearing via telephone are available [here](#).

## CASE NOTES

### COMPENSABLE INJURY: Record Established Both Legal and Medical Causation Based on Claimant's Testimony, a Video, Medical Records, and a Treating Physician's Unrebutted Opinion – ORS 656.005(7)(a), ORS 656.266(1)

*Tony Paez*, 76 Van Natta 315 (May 31, 2024). Applying *Harris v. Farmer's Co-op Creamery*, 53 Or App 618, *rev den*, 291 Or 893 (1981), ORS 656.005(7)(a), and ORS 656.266(1), the Board held that the claimant's injury claim was compensable because the record established legal and medical causation.

Regarding legal causation, the Board found that the claimant engaged in potentially causative work activities. See *Lisa L. Vedack*, 74 Van Natta 458, 460-62 (2022). The Board reasoned that the claimant testified that he was injured when boxes of frozen chicken fell at work and video footage confirmed that event. Additionally, the Board noted that the claimant notified a coworker and sought medical treatment directly after the event. Moreover, the Board explained that a treating physician reviewed the video footage and opined that the work incident likely caused an injury.

Turning to medical causation, the Board explained that the treating physician's unrebutted opinion persuasively attributed the claimant's disability or need for treatment to the work incident. Accordingly, the Board found that the claimant's injury claim was compensable.

### REMANDING: There Were Compelling Reasons to Remand For Further Development of the Record as to Whether the Interested Parties Were Notified of the

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## Scheduled Hearing and Whether Their Failure to Appear Was Justified – ORS 656.295(5), ORS 656.283(4)(a), OAR 438-006-0071(2)

*Stanley Bowyer*, 76 Van Natta 283 (May 6, 2024). Applying ORS 656.295(5), the Board held that the record was insufficiently developed regarding whether the failure of certain interested parties to appear at the scheduled hearing was unjustified under OAR 438-006-0071(2). The Board explained that the employer, insurer, and claim processing agent were not allowed the opportunity to show cause or present evidence regarding why they did not attend the scheduled hearing. Accordingly, the Board remanded to the Hearings Division for further development of the record regarding whether the interested parties were notified of the scheduled hearing and whether their failure to appear was unjustified.

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## APPELLATE DECISIONS COURT OF APPEALS

## Extent: Permanent Impairment Not Due to Accepted Conditions – No Entitlement to Permanent Disability Award – ORS 656.214, *Gramada v. SAIF*, 326 Or App 276 (2023)

*Artunyan v. SAIF*, 332 Or App 664 (2024). Applying ORS 656.214(1)(a), the court held that the claimant was not entitled to a permanent impairment award because the record did not establish that any impairment was caused by the accepted conditions. The court noted that although a medical arbiter found reduced range of motion, the arbiter concluded that this loss of use or function was wholly unrelated to the accepted conditions or their direct medical sequelae. Moreover, citing *Gramada v. SAIF*, 326 Or App 276 (2023), the court rejected the claimant's argument that in the absence of a combined condition denial, the claimant is required to prove only initial compensability to establish entitlement to permanent impairment. Accordingly, the court affirmed the Board's order that did not award permanent disability benefits.