

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
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ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the

Department of Consumer and Business Services, Workers' Compensation Division	436
Agency and Division	Administrative Rules Chapter Number
Fred Bruyns	(503) 947-7717
Rules Coordinator	Telephone
PO Box 14480, Salem, OR 97309-0405	
Address	

To become effective 01/01/2016 Rulemaking Notice was published in the November 2015 Oregon Bulletin.

**RULE CAPTION**

Procedures on refunds and hearing requests; attorney fees; implementation of House Bill 2764 (2015)

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

436-001-0435, 436-001-0500

**AMEND:**

436-001-0003, 436-001-0004, 436-001-0009, 436-001-0019, 436-001-0027, 436-001-0030, 436-001-0170, 436-001-0240, 436-001-0246, 436-001-0259, 436-001-0410, 436-001-0420

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 656.726(4)

**Other Authority:**

**Statutes Implemented:**

ORS chapter 656, as amended by HB 2764 (2015 Or Laws, ch. 521); ORS 293.445

**RULE SUMMARY**

The agency has amended OAR 436-001, "Procedural Rules, Rulemaking, Hearings, and Attorney Fees," to:

- Remove definitions of terms that are no longer used in OAR 436-001;
- Require that if a worker sends a written request for hearing or administrative review to an employer or insurer, and the request should have been sent to the division, the employer or insurer must promptly forward the request to the division;
- Provide that, when moneys are received in excess of the amounts due and payable to the director, or when moneys have been received to which the director has no legal interest, the director will refund or credit the excess amount; but for amounts less than \$20, when moneys are received for an assessment or a civil penalty, the director will refund the excess amount only upon receipt of a written request from the party entitled to the refund or credit;
- Implement House Bill 2764 (2015) by:
  - Explaining that the director must consider the proportionate benefit to the worker when determining the amount of an attorney fee awarded under ORS 656.262(11); and
  - Establishing criteria for determining a reasonable attorney fee under ORS 656.277(1).

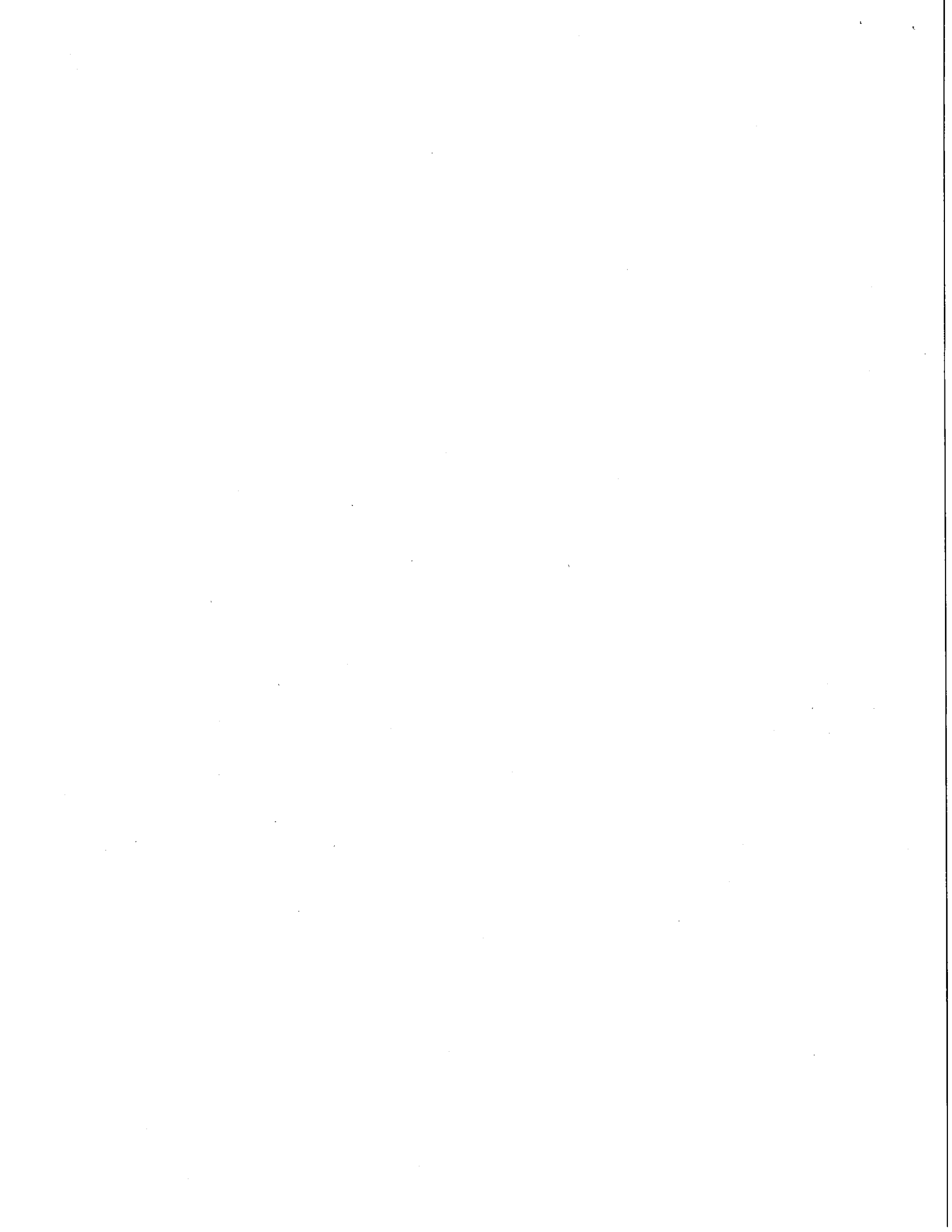
Fred Bruyns

fred.h.bruyns@oregon.gov

Rules Coordinator Name

Email Address

WCD 9-2015



**Authorization Page**  
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Fred Bruyns	fred.h.bruyns@oregon.gov
Rules Coordinator	Email Address
PO Box 14480, Salem, OR 97309-0405	503-947-7717
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**RULE CAPTION**

Procedures on refunds and hearing requests; attorney fees; implementation of House Bill 2764 (2015)

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:** 436-001-0435, 436-001-0500

**AMEND:**

436-001-0003, 436-001-0004, 436-001-0009, 436-001-0019, 436-001-0027, 436-001-0030, 436-001-0170, 436-001-0240, 436-001-0246, 436-001-0259, 436-001-0410, 436-001-0420

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 656.726(4)

**Other Auth.:**

Stats. Implemented: ORS chapter 656, as amended by HB 2764 (2015 Or Laws, ch. 521); ORS 293.445

**RULE SUMMARY**

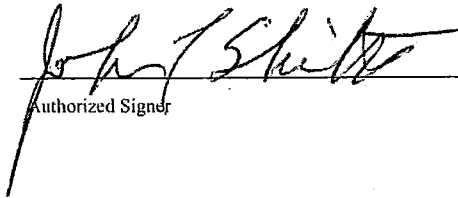
The agency has amended OAR 436-001, 'Procedural Rules, Rulemaking, Hearings, and

Attorney Fees, to:

- Remove definitions of terms that are no longer used in OAR 436-001;
- Require that if a worker sends a written request for hearing or administrative review to an employer or insurer, and the request should have been sent to the division, the employer or insurer must promptly forward the request to the division;
- Provide that, when moneys are received in excess of the amounts due and payable to the director, or when moneys have been received to which the director has no legal interest, the director will refund or credit the excess amount; but for amounts less than \$20, when moneys are received for an assessment or a civil penalty, the director will refund the excess amount only upon receipt of a written request from the party entitled to the refund or credit;
- Implement House Bill 2764 (2015) by:

Explaining that the director must consider the proportionate benefit to the worker when determining the amount of an attorney fee awarded under ORS 656.262(11); and

Establishing criteria for determining a reasonable attorney fee under ORS 656.277(1).

 John L. Skitts 12-10-2015  
Authorized Signer Printed Name Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

## PROCEDURAL RULES, RULEMAKING, HEARINGS, AND ATTORNEY FEES

### 436-001-0003

#### Applicability and Purpose of these Rules

- (1) OAR 436-001-0005 through 436-001-0009 establish supplemental procedures for rulemaking under ORS chapter 183 and apply to all division rulemaking on or after Jan. 1, 2010.
  - (2) OAR 436-001-0019 through 436-001-0300 establish supplemental procedures for hearings on matters within the director's jurisdiction.
    - (a) In general, the rules of the Workers' Compensation Board in OAR chapter 438 apply to the conduct of hearings, unless these rules provide otherwise.
    - (b) These rules do not apply to hearings requested under ORS 656.740.
    - (c) These rules apply to hearings held on or after Jan. 1, 2016.
  - (3) OAR 436-001-0400 through 436-001-0440 apply to attorney fees awarded by the director under ORS 656.262, 656.277, and 656.386, and to attorney fees awarded by the director or administrative law judge under ORS 656.385(1).
    - (a) These rules apply to orders issued and attorney fees incurred on or after Jan. 1, 2016, regardless of the date on which the claim was filed.
    - (b) For attorney fees that are ordered to be paid in reconsideration proceedings under ORS 656.268(6), OAR 436-030-0175 applies.
    - (4) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.
    - (5) OAR 436-001-0500 applies to any refund or credit processed by the director on or after Jan. 1, 2016, regardless of the date on which the payment was received.
- Statutory authority: ORS 656.726(4)  
Statutes implemented: ORS 656.704, ORS ch. 183

### 436-001-0004

#### Definitions

- (1) The following definitions apply to these rules, unless the context requires otherwise.
    - (a) "Administrative law judge" means an administrative law judge appointed by the Workers' Compensation Board, as defined in OAR 438-005-0040.
    - (b) "Board" means the Workers' Compensation Board and includes its Hearings Division.
    - (c) "Delivered" means physical delivery to the division's Salem office during regular business hours.
    - (d) "Director" means the director of the Department of Consumer and Business Services or the director's designee.
    - (e) "Division" means the Workers' Compensation Division.
    - (f) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules.
    - (g) "Final order" means a final, written action of the director.
    - (h) "Mailed" means addressed to the last known address, with sufficient postage and placed in the custody of the U.S. Postal Service.
    - (i) "Party" may include, but is not limited to, a worker, an employer, an insurer, a self-insured employer, a managed care organization, a medical provider, or the division.
    - (j) "Proposed and final order" means an order subject to revision by the director that becomes final unless exceptions are timely filed or the director issues a notice of intent to review the proposed and final order.
  - (2) Other words and phrases have the same meaning as given in ORS 183.310, where applicable.
- Statutory authority: ORS 656.726(4)  
Statutes implemented: ORS 656.704, ORS ch. 183

## Rulemaking

### 436-001-0009

#### Notice of Division Rulemaking

- (1) Except when adopting a temporary rule, the division will give prior public notice of the proposed adoption, amendment, or repeal of any rule by:
  - (a) Publishing notice of the proposed rulemaking action in the Secretary of State's Oregon Bulletin at least 21 days before the effective date of the rule;
  - (b) Notifying interested people and organizations on the division's notification lists of proposed rulemaking actions under ORS 183.335; and
  - (c) Providing notice to legislators as required by ORS 183.335(15).

(2) A person or organization may elect to receive email or hard-copy notification of proposed rulemaking actions conducted by the division.

(a) A person or organization may elect to subscribe to the division's e-mail notification service at:

<https://service.govdelivery.com/accounts/ORDCBS/subscriber/new>.

(b) A person or organization may elect to receive hard-copy notification by sending a request in writing, including the person or organization's full name and mailing address, to the following address:

Rules Coordinator, Operations Section/Policy Team

Workers' Compensation Division

350 Winter Street NE, PO Box 14480

Salem OR 97309-0405

Statutory authority: ORS 656.726 (4)

Statutes implemented: ORS 183.335 and 84.022

## Hearings

### 436-001-0019

#### Requests for Hearing

(1) A request for hearing on a matter within the director's jurisdiction must be filed with the division no later than the filing deadline. Filing deadlines will not be extended except as provided in section (7) of this rule.

(2) A request for hearing must be in writing. A party may use the division's Form 2839. A request for hearing must include the following information, as applicable:

(a) The name, address, and phone number of the party making the request;

(b) Whether the party making the request is the worker, insurer, medical provider, employer, any other party, or an attorney on behalf of a party;

(c) The number of the administrative order being appealed;

(d) The worker's name, address, and phone number;

(e) The name, address, and phone number of the worker's attorney, if any;

(f) The date of injury;

(g) The insurer's or self-insured employer's claim number;

(h) The division's file number; and

(i) The reason for requesting a hearing.

(3) Requests for hearing may be filed in any of the following ways:

(a) By mail, to the following address:

Hearings Coordinator, Operations Section/Policy Team

Workers' Compensation Division

350 Winter Street NE, PO Box 14480

Salem OR 97309-0405

(b) By hand-delivery, to the following address:

Hearings Coordinator, Operations Section/Policy Team

Workers' Compensation Division

350 Winter Street NE, 2<sup>nd</sup> floor

Salem OR 97301

(c) By fax, to 503-947-7514, if the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(d) By e-mail, to [wcd.hearings@oregon.gov](mailto:wcd.hearings@oregon.gov). If the request for hearing is an attachment to the e-mail, it must be in a format that Microsoft Word 2010® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(e) By using the online form, available on the division's website.

(4) The requesting party must send a copy of the request to all known parties and their legal representatives, if any.

(5) Timeliness of requests for hearing will be determined under OAR 436-001-0027.

(6) The director will refer timely requests for hearing to the board for a hearing before an administrative law judge. The director may withdraw a matter that has been referred if the request for hearing is premature, if the issues in dispute become moot, or if the director otherwise determines that the matter is not appropriate for hearing at that time.

(7) The director will deny requests for hearing that are filed after the filing deadline. The party may request a limited hearing on the denial of the request for hearing within 30 days after the mailing date of the denial. The request must be filed with the division. At the limited hearing, the administrative law judge may consider only whether:

- (a) The denied request for hearing was filed timely; or
- (b) Good cause existed that prevented the party from timely requesting a hearing on the merits. For the purpose of this rule, "good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.

Statutory authority: ORS 656.726(4) and ORS 84.013

Statutes implemented: ORS 656.704

#### **436-001-0027**

##### **Timeliness; Calculation of Time**

(1) Timeliness of any document required by these rules to be filed or submitted to the division is determined as follows:

- (a) If a document is mailed, it will be considered filed on the date it is postmarked.
  - (b) If a document is faxed or e-mailed, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date.
  - (c) If a document is delivered, it must be delivered during regular business hours to be considered filed on that date.
- (2) The date and time of receipt for electronic filings is determined under ORS 84.043.
- (3) Time periods allowed for a filing or submission to the division are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.
- (4) If an employer or insurer receives a written request for hearing or administrative review from a worker, and the request should have been filed with the division, the employer or insurer must promptly forward the request to the division.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.704

#### **436-001-0030**

##### **Role of the Workers' Compensation Division**

(1) In any hearing, the director may request to:

- (a) Receive notice of all matters;
- (b) Receive copies of all documents; and
- (c) Present evidence, testimony, and argument.

(2) The director may appear in a matter by filing an entry of appearance. The director may be represented by an agency representative, assistant attorney general, or special assistant attorney general as authorized by the Department of Justice. If the director enters an appearance, all notices and documents in the hearing must be provided to the director's representative. An agency representative may represent the director in the following categories of hearings:

(a) Hearings held before the administrative law judges of the Workers' Compensation Board to determine the correctness of:

(A) An order under ORS 656.052 declaring a person, as defined in ORS 656.005(23), to be a noncomplying employer ("NCE Orders");

(B) A nonsubjectivity determination under ORS 656.052 declaring either that a person, as defined in ORS 656.005(23), is not a subject employer or is not a subject worker ("NSD Orders");

(C) An order assessing a civil penalty under ORS 656.735, 656.740, 656.745(2), or 656.750;

(D) An order under ORS 656.745(1) assessing a civil penalty against an employer or insurer with prior written consent of the Attorney-in-Charge of the Business Activities Section of the Department of Justice; and

(E) An order under ORS 656.254(2) imposing sanctions to enforce medical reporting requirements.

(b) In cases assigned to lay representatives in accordance with subsection (a), above:

(A) Lay representatives are authorized to handle all settlement negotiations related to proposed NCE Orders, NSD Orders, and civil penalty or forfeiture orders. All settlement documents will be reviewed for legal sufficiency by the Department of Justice unless they conform to a form settlement document approved by the Attorney-in-Charge of the Business Activities Section. All settlement documents submitted to the Department of Justice will be accompanied by the original proposed order and any subsequent orders issued by the division.

(B) If the division issues a worker nonsubjectivity denial instead of referring the claim to the assigned claims agent,

the division's lay representative(s) may handle settlement negotiations resulting from that worker nonsubjectivity denial. Once a request for hearing has been filed contesting that worker nonsubjectivity denial, the lay representative(s) have seven calendar days within which to finalize any pending settlement negotiations and must coordinate settlement discussions with the assigned assistant attorney general or special assistant attorney general, who will assume representation on the case. The assistant attorney general or special assistant attorney general assigned to the case may extend the seven-day time period by authorizing the lay representative(s) to continue settlement negotiations. All settlement documents will be reviewed for legal sufficiency by the attorney assigned to the case before submission to an administrative law judge.

(c) Notwithstanding subsections (a) or (b) above, and under ORS 656.704, the Department of Justice will represent the division in all matters pertaining to a claim.

(3) The administrative law judge must not allow an agency representative appearing under section (2) of this rule to present legal argument as defined by this rule.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge must provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) An agency representative appearing under section (2) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at:

[http://www.doj.state.or.us/help/pdf/code\\_of\\_conduct\\_oah\\_contested.pdf](http://www.doj.state.or.us/help/pdf/code_of_conduct_oah_contested.pdf).

Statutory authority: ORS 183.452, 656.704, 656.726(4)

Statutes implemented: ORS 180.220(2), 180.235, 183.452, and 656.704

#### **436-001-0170**

##### **Duties and Powers of the Administrative Law Judge**

(1) The administrative law judge may conduct the hearing in any manner, consistent with these rules, that will achieve substantial justice.

(2) Unless provided otherwise by statute or rule and except as stated in section (3) of this rule, any order issued by an administrative law judge regarding a matter within the director's jurisdiction is a proposed and final order subject to review by the director under OAR 436-001-0246.

(3) When appropriate, the administrative law judge may issue an interim order. An interim order is not subject to review by the director under OAR 436-001-0246.

(4) The administrative law judge may dismiss requests for hearing as provided in OAR 436-001-0296.

(5) When appropriate, the administrative law judge may remand a dispute to the director for further administrative action.

(6) The administrative law judge may consolidate matters in which there are common parties or common issues of law or fact.

(7) The administrative law judge may separate matters to promote efficient disposition of the matters.

(8) Consolidation of matters under section (6) of this rule or under ORS 656.704(3)(c) is only for the purpose of hearing. The administrative law judge must issue a separate order for matters other than those concerning a claim.

(9) On the motion of a party, the division, or the administrative law judge, the administrative law judge may continue a hearing to allow the presentation of oral or written legal argument by the Department of Justice.

(10) The administrative law judge may send the division a written question regarding which rules or statutes apply to a matter, or regarding the division's interpretation of the rules and statutes. If the administrative law judge sends

such a question, the administrative law judge must provide a written summary of the context in which the question arises, provide a reasonable time for the division to respond, and send a copy to all parties.

(11) The administrative law judge may conduct a hearing by telephone if all parties agree.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.704

#### **436-001-0240**

##### **Exhibits and Evidence**

(1) Within 21 days after referral of the request for hearing to the board, the division will provide the parties and the administrative law judge copies of all documents that were relied upon in the underlying action or order, with an index.

(2) Not less than 28 days before the hearing, or within seven days of receipt of the division's document index and documents, whichever is later, the petitioner(s) must provide copies of any additional exhibits they will offer at hearing to the other parties, the administrative law judge, and the director's representative, if the director has filed an entry of appearance. The exhibits must be marked and include a supplemental index, numbered to coincide in chronological order with the division's exhibits and exhibit list. For example, an exhibit that is chronologically between the division's exhibits 5 and 6 would be marked as "Exhibit 5a" or "Ex. 5a."

(3) Not less than 14 days before the hearing, the respondent(s) and cross-petitioner(s) must provide copies of any additional exhibits they will offer at hearing to the other parties, the administrative law judge, and the director's representative, if the director has filed an entry of appearance. The exhibits must be marked and indexed in the same manner as provided in section (2).

(4) Unless withdrawn, all exhibits offered will be included in the hearing file, whether or not they are admitted into the evidentiary record.

(5) At the discretion of the administrative law judge, an accurate description or photograph of an object or real evidence may be substituted for the object or real evidence. The party offering the evidence is responsible for providing the description or photograph, and for retaining custody of the object until the case is closed.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.704

#### **436-001-0246**

##### **Proposed and Final Orders - Exceptions, Correction, Director Review**

(1) Under ORS 656.704(2)(a), a party must seek director review of a proposed and final order before petitioning for judicial review under ORS 183.482.

(2) The parties or the division may initiate director review of a proposed and final order by filing exceptions as follows:

(a) Written exceptions, including any argument, must be filed with the division within 30 days of the mailing date of the proposed and final order.

(b) A written response to the exceptions must be filed within 20 days of the date the exceptions were filed.

(c) A written reply to the response, if any, must be filed within 10 days of the date the response was filed.

(d) Exceptions, responses, and replies may be filed in any of the following ways:

(A) By mail, to the following address:

Hearings Coordinator, Operations Section/Policy Team  
Workers' Compensation Division  
350 Winter Street NE, PO Box 14480  
Salem OR 97309-0405

(B) By hand-delivery, to the following address:

Hearings Coordinator, Operations Section/Policy Team  
Workers' Compensation Division  
350 Winter Street NE, 2<sup>nd</sup> floor  
Salem OR 97301

(C) By fax, to 503-947-7514, if the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(D) By e-mail, to [wcd.hearings@oregon.gov](mailto:wcd.hearings@oregon.gov). If the exception, response, or reply is in an attachment to the e-mail, the attachment must be in a format that Microsoft Word 2010® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(3) The director may extend the time periods in section (2) upon a party's written request that explains the need for

the delay, or on the director's own motion.

(4) If exceptions are timely filed, the director may issue a final order or an amended proposed and final order, request the administrative law judge to hold further hearing, or remand the matter for further administrative action.

(5) Within 30 days of the mailing date of the proposed and final order, the director may issue a notice of intent to review the proposed and final order, even if no exceptions are filed.

(6) All proposed and final orders must contain language notifying the parties of their right to file exceptions, how to file, and the timeframes.

(7) The administrative law judge may withdraw a proposed and final order for correction of errors within 10 calendar days of the mailing date of the order. The time for filing exceptions begins on the date the corrected proposed and final order is mailed.

(8) If no exceptions are timely filed or if no notice of intent to review is issued, the proposed and final order will become final 30 days after the mailing date of the order.

(9) Any requests for review or requests for reconsideration of a proposed and final order filed with the board or administrative law judge within 30 days of the mailing date of the order will be forwarded to the director and treated as timely exceptions under this rule.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.704

#### **436-001-0259**

##### **Ex Parte Communication**

An ex parte communication is an oral or written communication to the director during director review of the matter not made in the presence of all parties to the dispute, concerning a fact in issue, but does not include communication from division staff or the Department of Justice about legal issues or facts in the record. Ex parte communications received during director review will be promptly disclosed to all parties, and the parties will be allowed a reasonable opportunity to respond.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.704, OL 2005 ch 26

#### **Attorney Fees**

#### **436-001-0410**

##### **Attorney fees awarded under ORS 656.385(1)**

(1) In cases in which the director or administrative law judge awards a fee under ORS 656.385(1):

(a) The fee must fall within the ranges of the matrix in subsection (1)(d), unless extraordinary circumstances are shown or the parties otherwise agree.

(b) Extraordinary circumstances are not established merely by exceeding eight hours or a benefit of \$6,000.

(c) The matrix in subsection (1)(d) shows the maximum fee and fee ranges as percentages of the maximum fee under ORS 656.385(1), as adjusted annually by the same percentage increase, if any, to the average weekly wage defined in ORS 656.211. Before July 1 of each year the director will publish, in Bulletin 356 (available on the division's website), the matrix showing the maximum fee and fee ranges as dollar amounts after the annual adjustment to the statutory maximum fee. Dollar amounts will be rounded to the nearest whole dollar. If the average weekly wage does not change or decreases, the maximum attorney fee awarded under ORS 656.385(1) will not be adjusted for that year.

(d)

<b>Estimated Benefit Achieved</b>	<b>Professional Hours Devoted (Fees as percentage of adjusted maximum attorney fee under ORS 656.385(1))</b>		
	<b>1-4 hours</b>	<b>4.1-8 hours</b>	<b>over 8 hours</b>
<b>\$1-\$2,000</b>	5.0% - 35.0%	15.0% - 50.0%	40.0% - 62.5%
<b>\$2,001-\$4,000</b>	10.0% - 40.0%	30.0% - 65.0%	52.5% - 75.0%
<b>\$4,001-\$6,000</b>	15.0% - 50.0%	40.0% - 72.5%	65.0% - 87.5%
<b>Over \$6000</b>	20.0% - 65.0%	52.5% - 90.0%	77.5% - 100.0%

(2) For purposes of applying the matrix in medical disputes under ORS 656.245, 656.247, 656.260, and 656.327, the following may be considered in determining the value of the results achieved or the benefit to the worker:

- (a) The fee allowed by the medical fee schedule in OAR 436-009 for the medical service at issue.
- (b) The overall cost of the medical service at issue.

(3) For purposes of applying the matrix in vocational disputes under ORS 656.340, the value of vocational assistance or a training plan, unless determined to be otherwise, falls within the highest range of the matrix for "benefit achieved." In addition, the following may be considered in determining the value of the results achieved or the benefit to the worker:

- (a) The actual or projected cost of the service at issue.
- (b) The maximum spending limit in the fee schedule for vocational assistance costs in OAR 436-120-0720 for the service at issue.

Statutory authority: ORS 656.385(1), 656.726(4)

Statutes implemented: ORS 656.262, 656.385, 656.388, and 656.704; 2015 Or Laws, ch. 521, section 6

#### **436-001-0420**

##### **Attorney fees awarded under ORS 656.262(11)**

In cases in which the director awards a fee under ORS 656.262(11):

- (1) OAR 438-015-0110 applies.
- (2) The director may use the matrix in OAR 436-001-0410 as a guide in determining the amount of the fee.
- (3) The director must consider the proportionate benefit to the worker when determining the amount of the fee.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.262; 2015 Or Laws, ch. 521, section 2

#### **436-001-0435**

##### **Attorney fees awarded under ORS 656.277(1)**

- (1) Attorney fees assessed under ORS 656.277(1) will be based on a reasonable hourly rate multiplied by the time devoted by the attorney to obtaining the reclassification order.
- (2) The director will determine a reasonable hourly rate of no less than \$150 per hour and no more than \$400 per hour.
- (3) When determining the time devoted by the attorney to obtaining the reclassification order, the director may consider time devoted by the attorney to requesting reclassification from the insurer or self-insured employer and investigating issues related to the classification of the worker's claim.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.277(1); 2015 Or Laws, ch. 521, section 3

### **Overpayments**

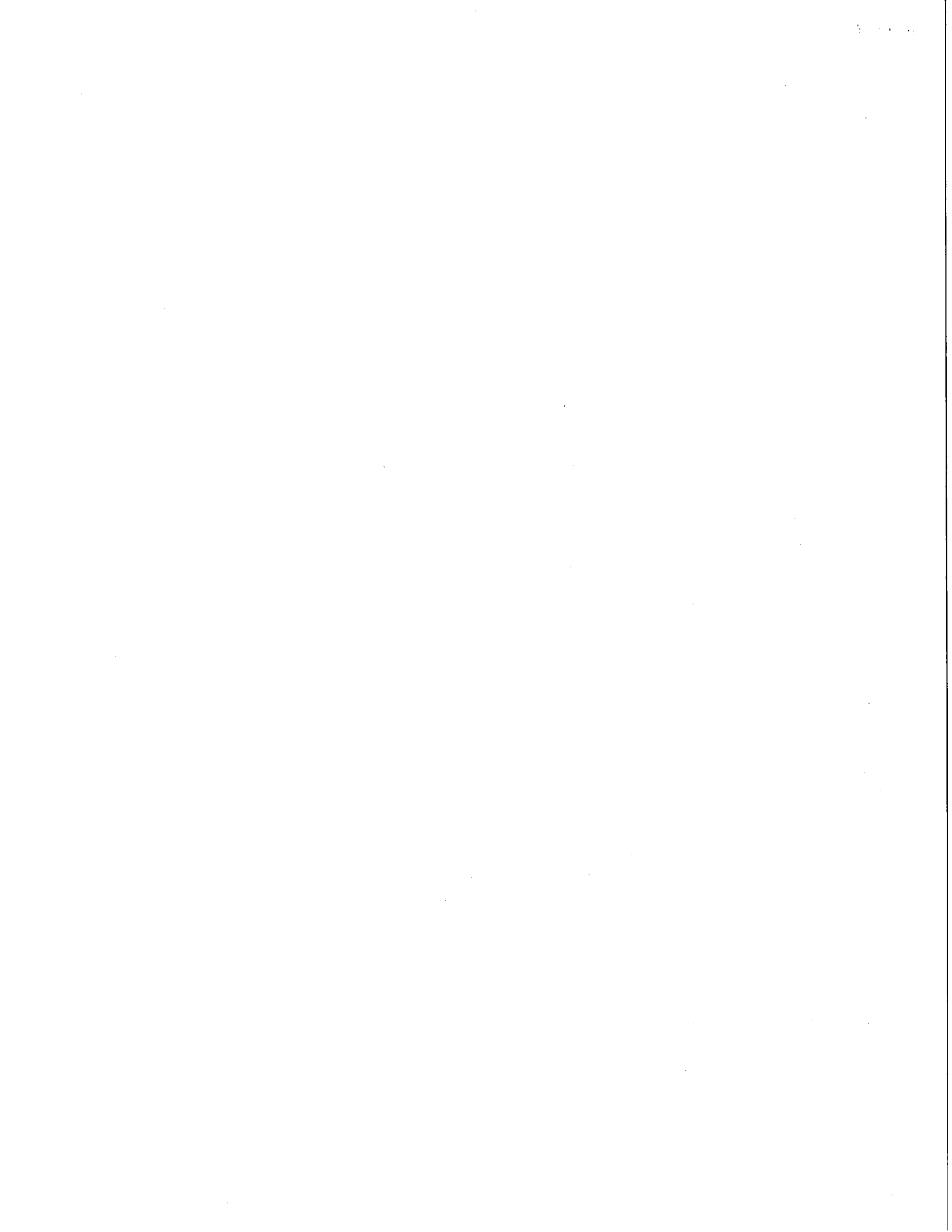
#### **436-001-0500**

##### **Refund of overpayments**

When the director receives a payment in excess of the amount legally due and payable to the director, the director will refund or credit the excess amount. However, when the excess amount is less than \$20 and the payment was for an assessment or civil penalty issued under ORS chapter 436 or ORS chapter 656, the director will refund or credit the excess amount only if a written request for refund or credit is received within two years of the date that the excess amount was received by the director.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.506, 656.612, 656.614, 656.735, 656.745, 656.750, 656.780, and 293.445



(d)

Estimated Benefit Achieved	Professional Hours Devoted (Fees as percentage of adjusted maximum attorney fee under ORS 656.385(1))		
	1-4 hours	4.1-8 hours	over 8 hours
\$1-\$2,000	5.0% - 35.0%	15.0% - 50.0%	40.0% - 62.5%
\$2,001-\$4,000	10.0% - 40.0%	30.0% - 65.0%	52.5% - 75.0%
\$4,001-\$6,000	15.0% - 50.0%	40.0% - 72.5%	65.0% - 87.5%
Over \$6000	20.0% - 65.0%	52.5% - 90.0%	77.5% - 100.0%

(2) For purposes of applying the matrix in medical disputes under ORS 656.245, 656.247, 656.260, and 656.327, the following may be considered in determining the value of the results achieved or the benefit to the worker:

- (a) The fee allowed by the medical fee schedule in OAR 436-009 for the medical service at issue.
- (b) The overall cost of the medical service at issue.

(3) For purposes of applying the matrix in vocational disputes under ORS 656.340, the value of vocational assistance or a training plan, unless determined to be otherwise, falls within the highest range of the matrix for "benefit achieved." In addition, the following may be considered in determining the value of the results achieved or the benefit to the worker:

- (a) The actual or projected cost of the service at issue.
- (b) The maximum spending limit in the fee schedule for vocational assistance costs in OAR 436-120-0720 for the service at issue.

Statutory authority: ORS 656.385(1), 656.726(4)

Statutes implemented: ORS 656.262, 656.385, 656.388, and 656.704; 2015 Or Laws, ch. 521, section 6

#### **436-001-0420**

##### **Attorney fees awarded under ORS 656.262(11)**

In cases in which the director awards a fee under ORS 656.262(11):

- (1) OAR 438-015-0110 applies.
- (2) The director may use the matrix in OAR 436-001-0410 as a guide in determining the amount of the fee.
- (3) The director must consider the proportionate benefit to the worker when determining the amount of the fee.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.262; 2015 Or Laws, ch. 521, section 2

#### **436-001-0435**

##### **Attorney fees awarded under ORS 656.277(1)**

- (1) Attorney fees assessed under ORS 656.277(1) will be based on a reasonable hourly rate multiplied by the time devoted by the attorney to obtaining the reclassification order.
- (2) The director will determine a reasonable hourly rate of no less than \$150 per hour and no more than \$400 per hour.
- (3) When determining the time devoted by the attorney to obtaining the reclassification order, the director may consider time devoted by the attorney to requesting reclassification from the insurer

