

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

PUBLIC RULEMAKING HEARING

In the Matter of the Amendment of OAR: 436-060, Claims Administration))))))	TRANSCRIPT OF TESTIMONY
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The proposed amendment to the rules was announced in the Secretary of State’s *Oregon Bulletin* dated April. 1, 2024. On April 17, 2024, a public rulemaking hearing was held as announced at 3 p.m. from Room F, Labor & Industries Building, 350 Winter St. NE, Salem, Oregon and via video and telephone conference. Daneka Karma, from the Workers’ Compensation Division, was the hearing officer. The record will be held open for written comment through April 24, 2024.

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TRANSCRIPT OF PROCEEDINGS

Daneka Karma:

Good afternoon and welcome. This is a public rulemaking hearing.

My name is Daneka Karma, and I’ll be the presiding officer for the hearing today.

The time is now 3:01 p.m. on Wednesday, April 17, 2024. We are conducting this hearing from Conference Room F in the Labor & Industries Building in Salem, Oregon. However, we are also doing so virtually, by video and telephone conferencing. We are making an audio recording of the hearing.

The Workers’ Compensation Division of the Department of Consumer and Business Services proposes to amend chapter 436 of the Oregon Administrative Rules, specifically:

- OAR 436-060, Claims Administration

The department has:

- Summarized the proposed rule changes and prepared estimates of fiscal and economic impacts in the notice of proposed rulemaking filed with the Oregon Secretary of State;
- Published rulemaking notice to its postal and electronic mailing lists;
- Notified Oregon legislators as required by ORS chapter 183; and
- Posted public notice and the proposed rules to its website.

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The Oregon Secretary of State:

- Published the hearing notice in the *Oregon Bulletin* dated April 1, 2024.

This hearing gives the public the opportunity to provide comment about the proposed rules. In addition, the division will accept written comment through and including April 24, 2024, and will make no decisions until all of the testimony is considered.

We are ready to receive public testimony.

There is no one present in person.

Umm is there anyone who is participating by phone who would like to testify at this time?

Hearing no one, in a moment I will recess the hearing, but we will resume for additional testimony if anyone wishes to testify before 4:00 p.m. Again, the record remains open for written testimony through and including April 24th.

You may submit testimony in any written form.

I encourage you to submit your testimony by email or as attachments to email WCD.policy@dcbs.oregon.gov. However, you may also use U.S. mail.

We will acknowledge all testimony received.

This hearing is recessed at 3:03 p.m. and I will resume the hearing at 3:58 p.m. Thank you.

[3:12 p.m.] Good afternoon. This is Daneka Karma. I've received input that somebody would like to, umm, provide testimony today. Is there somebody on the phone who is prepared to testify?

Ted Heus [Quinn & Heus, LLC]:

This is Ted Heus here. I was going to make a few comments on a rule, but I haven't found that rule yet and I think my colleague Keith Semple was going to make the comment too. I'm not gonna throw him under the bus and confirm that, but I think that's what he wanted to do. But I don't know if he's still on the phone.

Keith Semple [Oregon Trial Lawyers Association]:

Yeah, I've been on the meeting and I haven't been able to hear anything, but I've seen you talking on the phone. I assume that we were all kind of in the dark waiting for tech support. Has the meeting actually started? Has anything actually been said so far?

Daneka Karma:

Yes, the meeting started promptly at 3:00 p.m. and I read a prepared script for today's public hearing. Um, we've had 20 participants on the phone and I asked if anybody was prepared to provide testimony. And at that time, no one was.

Keith Semple:

I see. Okay.

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Daneka Karma:

So, I recessed the meeting until somebody was prepared or wanted to testify.

Keith Semple:

I see that moved a lot quicker than I would have expected.

Well, I guess I'll just reference uh, the rule that I was concerned about. I think Ted and I for OTLA. I'm Keith Semple for Oregon Trial Lawyers Association, and I'll talk about the 010 rule that talks about providing the information to injured workers when the employer refers them for onsite medical treatment.

I was a little confused about what that rule might add to the current rules because it seemed to me if the worker had to report the injury as a worker's comp claim verbally, and be treated by an onsite medical person, it seemed like additional information should be provided.

I guess at minimum I think that should be "or." That if the worker is treated by onsite medical obviously there's an issue um that that worker should be provided information about their rights. When we had the advisory committee meeting, I expressed a lot of concern and so did another attorney about onsite medical being a de facto um way of controlling care and directing care.

So I guess I'm a little disappointed that we weren't able to come up with a rule that put a little bit more um information in front of the worker when they're being told by an employer who they've informed of a, of an injury that they need to go see the onsite doctor and they can just kind of do that under the radar directing care, which often has the effect of delaying the claim.

The worker is just doing what they're told by the employer, I mean it just seems to me that if employer can't direct you to go to occupational medicine without that being improper, why should they be able to direct you with their, to their in-house doctor right down the hall? They have even more control over that individual than they do their favorite occupational health clinic.

So, I would really like the department to kind of consider how that, umm, can chill the claim process for injured workers and at minimum they should be provided some information about their rights as soon as they're being sent down the hall to the employer's doctor.

So, I'd like to see that be at least an "or" and I'd like to see some consideration given to how that onsite medical care can discourage a worker from filing the claim to begin with until time passes and opportunities might be missed.

Then the worker is that much further behind the curve and getting real medical treatment and starting to establish the claim processing requirements for other parts of the claim.

That's all I have on that one.

Daneka Karma:

Umm, thank you. Um, um... I'm sorry. Just to just a moment here. And, you mentioned that this was related to rule 010. Did you mean rule 10? 0010?

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Keith Semple:

Yes, sorry about that.

Daneka Karma:

That is OK and thank you for your comments, although you missed the beginning of the meeting, I did mention that we will accept all written comments through April 24th of 2024 and we will make no decisions until all of the testimony has been considered. But we'll definitely consider the testimony that you've provided today.

Keith Semple:

Thank you.

Daneka Karma:

Thank you.

Ted Heus:

And, this is Ted Heus. I represent workers and I am a member of the firm Quinn and Heus, and I just wanted to make a quick comment on the changes too.

I believe it is 436-060-0155, subsection 4 that deals with the jurisdiction over proceedings involving penalties and attorney fees under .262.

Um, it seems like they are changing the language to become uh... from mandatory transferring of jurisdiction from the director to the Worker, to the to the Workers Compensation Board and changing, you know, some "will refer" to "may transfer" using what is understood from a legal perspective to be discretionary language and jurisdiction is of course not a discretionary thing.

There's nothing in the statutes that allow either the board or the director to assume or deny jurisdiction based on its discretion.

The statutory requirements are the statutory requirements, and if those are met, then jurisdiction lies either with the director or the board.

So, I would request that the WCD take a look at that language and make a decision on what criteria it wants to apply in interpreting the statute to transfer jurisdiction either from the board or to the board, um but it cannot be up to the discretion of either the board or the Director.

It has to be in compliance with the facts as they are and under the statutory requirements as they are, and that's all the comments I have on that.

Daneka Karma:

Thank you, Ted. At this time, is there anybody else who would like to testify?
Okay, umm, I'm going to leave the meeting chat open. So, if anybody joins or decides that they want to testify, you can either call me on my phone number listed, um, on the public meeting

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notice. So... I'm looking for that right now. Uh, area code 503-509-6785 or you can just let us know in the chat. I'll be recessing the meeting, so the hearing is recessed at 3:19.

Daneka Karma:

All right. The hearing is resumed at 3:58 p.m.

Is there anyone who would like to provide testimony at this time?

And, again, I have posted the email address in the chat if you would like to provide written comments um you can send them to that email address and again you can also send them a USPS U.S. Postal Service.

And hearing no one the time is 4:00 p.m.

Thank you for coming.

This hearing is adjourned.

Transcribed from a digital audio recording by Daneka Karma, April 18, 2024.