

Dear Section Members:

As you know, the 2003 Legislature amended ORS 656.283(4) and 656.262(15) regarding the processing of multiple employer/insurer responsibility cases. Recently, concern has been expressed in the workers' compensation community about whether or not these statutory changes have been effective in expeditiously moving these cases toward an eventual hearing. Thus, WCB has been reviewing the matter. After receiving and considering input from ALJs in the Hearings Division, WCB has decided to adopt the following expectations for ALJ management of these important cases:

1. Within 30 days after the case is first postponed in order to join one or more additional employers/insurers, the assigned ALJ will either schedule a teleconference or in-person conference or send an initial letter to all existing attorneys. If the letter option is utilized, the specific topics and phrasing of the letter will be determined by the ALJ. However, the letter generally will contain at least the following elements:
 - A reference to ORS 656.283(4)(b), ORS 656.262(15), and OAR 438-006-0064, which govern the processing of these cases.
 - The attorneys will be advised that the ALJ will be keeping the file(s) and the ALJ will ask the attorneys, particularly the claimant's attorney, to apprise the ALJ in writing of all status changes regarding the addition of new employers/insurers and movement toward completing the medical record.
 - The attorneys will be advised to contact the ALJ if they feel the need for the ALJ's assistance/intervention at any time.
 - The attorneys will be reminded that it is their responsibility to keep the case moving, but that the ALJ will be reviewing the case periodically to determine if any action by the ALJ (e.g., a letter, interim order, or scheduling a conference) is warranted at that time to keep the case moving forward toward a hearing or alternate resolution.
2. After the initial conference is completed or the initial letter mailed, the ALJ will review the case every 90 days (or earlier if the ALJ considers it necessary in a particular case) to determine what action, if any, the

ALJ should take to move the case along: e.g., a letter, interim order, or telephone or in-person conference. It is expected that the ALJ will set whatever time limits/requirements the ALJ considers appropriate in each individual case to move the case along, specifically regarding:

- Joinder of parties.
 - Completion of discovery.
 - Claimant interviews.
 - Submission of medical evidence.
 - Dismissal of parties.
 - Setting of the hearing if the case cannot be settled.
3. If there is a compensability issue involved in the litigation, the ALJ can, at whatever stage the ALJ thinks is appropriate, encourage the attorneys to consider mediation. If they are interested in mediation, the ALJ can ask them to agree on an ALJ-mediator and then ask the claimant's attorney to contact that ALJ-mediator's secretary to request the scheduling of a mediation.

The above expectations are designed to produce a consistent overall Hearings Division approach to processing these cases, and at the same time allow the ALJ in each particular case the discretion to take the actions the ALJ considers necessary to expeditiously move the case toward a hearing or settlement.

Abbie Herman
Chair