

APPELLATE PROCEDURE

- 1. Request for Board Review:** ORS 656.289(3); 656.295(2); OAR 438-011-0005. Must be in writing and mailed to the Board, with copies to other parties and their attorneys, within 30 days of ALJ's order. Should recite name of claimant, WCB Case Number(s), identity of the party requesting review, and contain a brief statement of the reason review is requested. OAR 438-011-0005(3). Should also recite whether payment of compensation awarded by the ALJ's order will be stayed under ORS 656.313. OAR 438-011-0005(4).

Practice Tip: If a party wants an ALJ to reconsider their decision, a motion for reconsideration should be filed as soon as possible. The ALJ retains authority to reconsider an order until a request for Board review is filed. *Willie D. Brown, Jr.*, 62 Van Natta 2808 (2010); *Dennis J. Dickens*, 58 Van Natta 685 (2006).

If an ALJ issues an abatement order the same day of, or before, the filing of a request for Board review, the ALJ retains authority to proceed with reconsideration. *William I. Long*, 48 Van Natta 2193 (1996); *David L. Rolfe*, 48 Van Natta 1031 (1996). In the absence of an appeal or an abatement, the ALJ's authority to reconsider expires 30 days after the mailing of the order. *McCormac v. Cottage Crafts*, 113 Or App 173 (1992).

If no motion for reconsideration is contemplated, file request for review early in the 30-day period. If the appealing party neglects to mail copies to all other parties, the Board's mailing of its computer-generated letter acknowledging the request to all parties, can provide the Board with authority to proceed with its review. *Argonaut Insurance v. King*, 63 Or App 847, 852 (1983); *Tamara L. Page*, 60 Van Natta 717 (2008).

If appealing within last 7 days of the 30-day appeal period, a party may wish to consider either filing through the portal, mailing the request via certified mail, hand delivering to a permanently staffed Board office (Portland, Salem, Medford), or faxing to the Board at (503)373-1684.

- 2. "Filing":** OAR 438-005-0046(1)(c). Presumed to be the date of mailing, if the request is mailed by registered or certified mail. Otherwise, "filing" presumed to be the date the request is actually received by the Board. If a request is not mailed by certified mail and is received by the Board untimely, it is presumed to be untimely unless the requesting party establishes that it was timely mailed. *See Randolph King*, 51 Van Natta 82 (1999) (affidavit from appealing party's attorney's assistant that the request was timely mailed to the Board rebutted presumption of untimely filing).

Practice Tip: Requests for Board review (and service on other parties) may also be filed by means of e-mail (OAR 438-005-0046(1)(f)) or by WCB’s portal (OAR 438-005-0046(1)(e), (g)). To file via e-mail, the address is request.wcb.@wcb.oregon.gov. The e-mail must be in the correct format/language. To file via the portal, the party’s attorney must register as a “user” at <https://portal.wcb.oregon.gov> and complete a request for Board review. OAR 438-005-0046(1)(g). Many requests for review are now being filed via the portal. The Board also allows filing, and service of documents, by fax. OAR 438-005-0046(1)(h). The Board’s fax number on Board Review is (503)373-1684.

3. **Cross-Request for Board Review.** ORS 656.289(3). Follow the same procedures for filing a request for Board review. In addition, a cross-request must be filed within 30 days of the ALJ’s order or within 10 days of the filing of the request for Board review (whichever occurs later). The party filing the cross-request must be “aggrieved” by the ALJ’s order. *Justin D. Morris*, 64 Van Natta 1586 (2012).

Practice Tip: The Board will consider additional issues raised by a responding party in its appellate briefs, even in the absence of a timely filed “cross-request.” However, if the appealing party withdraws its request for review, the Board loses its appellate authority to consider the respondent’s issues because no timely “cross-request” would have been filed. *Eder v. Pilcher Construction*, 89 Or App 425 (1988); *Antonio Chavez*, 62 Van Natta 2368 (2010).

PROCESSING TIPS FOR BOARD REVIEW

A. Procedural Motions

1. **Extensions for Briefing Schedule:** OAR 438-011-0020(3). Requirements: Must be in writing (mailed, faxed to (503)373-1684, or e-mailed to requests.wcb@wcb.oregon.gov) to the Board before expiration of the due date for the brief, give other party's position, and provide extraordinary circumstances beyond the control of the requesting party. (Efforts are underway to allow extension requests to be filed via the portal.) Questions regarding briefs/transcripts, contact Board Review at (503)934-0103.
2. **Motion to Dismiss:** The Board will respond promptly, either by order (denying or granting motion) or by letter (deferring action until review and/or asking other party to respond). Opposing party may respond to motion without Board invitation.
3. **Motion to Remand:** The Board will generally defer action until completion of the briefing schedule and once it reviews the merits of the case. Parties usually include their positions regarding the motion in their appellate briefs. If necessary, the Board will implement a revised or supplemental briefing schedule.
4. **Motion for Reconsideration:** The Board will attempt to respond before expiration of the 30-day appeal period. To give the Board sufficient time, parties should file motions as soon as possible after the Board's initial order. The Board will respond promptly, either by order on reconsideration, denying reconsideration, or by abatement order. Opposing party may respond without the Board's invitation.

B. Settlements - Procedural Matters

1. Immediately notify the Board (503)934-0103 when parties settle their dispute, but are still drafting the agreement. The caller must also confirm the announcement in writing. Thereafter, the Board will suspend the briefing schedule or its review, pending receipt of the proposed settlement.
2. If agreement resolves disputes that are pending before the Hearings Division, the Board and/or the court, it requires approval of both an ALJ and the Board. See ORS 656.298(9)(a); OAR 438-009-0015(5). For expeditious processing, send that agreement to the Board's Salem office.
3. If agreement resolves a dispute pending before the court, parties can send their settlement to the Board for approval. The Board has jurisdiction to consider the settlement and to enter any orders necessary to implement the settlement.

ORS 656.298(9); *Rebecca E. Seelye*, 60 Van Natta 332 (2008). If the settlement disposes of all issues pending before the appellate court, the court may dismiss the petition for judicial review. If the settlement only partially disposes of the pending issues, the appellate court may limit its review to the unresolved issues.

C. Address Changes/Attorney Resignations

1. Announcements concerning changes in parties' or their attorneys' addresses, notification regarding an attorney's resignation, or a party's change of representation should be promptly provided in writing to the Board Review Division at its Salem office. These announcements should be included in a separate letter from a request for review or an appellate brief.

FREQUENTLY ASKED QUESTIONS

1. How do I request Board review on the last day?

You can hand-deliver your written request to any of WCB's staffed offices. The addresses for WCB's staffed offices are:

Salem: 2601 25th St. SE, Ste. 150
Portland: 16760 SW Upper Boones Ferry Rd., Ste. 220
Medford: 115 W Stewart Ave., Ste. 102

You can also fax your request to (503)373-1684, e-mail your request to request.wcb@wcb.oregon.gov, or file it via the portal.

2. How long will it take for the Board to review my case?

Except in extraordinary circumstances, Board review shall be scheduled for a date no later than 90 days after the Board receives the request for review. After the Board conducts its review and completes its research/deliberations and prepares its order, the Board will issue its decision within 30 days.

3. What factors have an effect on the Board's review?

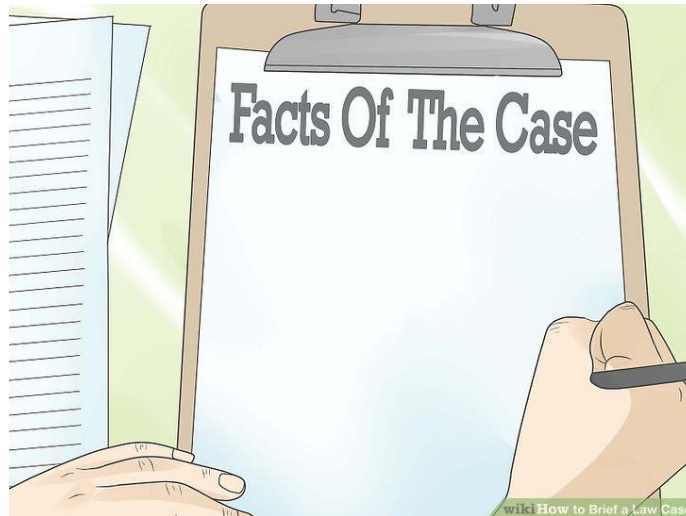
Whether the parties request extensions of the briefing schedule, whether procedural motions were raised, the complexity of the case, the extent of the record, the potential significance or novelty of the issues raised, and whether the Members can reach a consensus.

4. Can new information be sent to the Board on my case?

Yes. However, the Board cannot consider any information that was not admitted as evidence at the hearing level. But, if the Board considers the new information relevant, it may be presented to, and considered by the ALJ, provided that the Board decides to remand the case to the Hearings Division.

5. When will I receive the compensation due that was awarded by the ALJ's order (compensation stayed)?

A Board order becomes final 30 days after it is issued. If the compensation due is temporary disability ultimately found payable under the Board order for a period *before* the Board order, payment should begin within 14 days from the date the Board order becomes final. (Any ongoing temporary disability due *after* the Board order must begin to be paid within 14 days from the date of the Board order.) If the compensation due is permanent disability ultimately found payable under the Board order, payment should begin within 30 days from the date the Board order becomes final.



BRIEFING

BRIEFING SCHEDULE PRACTICE TIPS

Common Questions:

1. When is my brief due?

The appellant's brief is due 21 days from the date the Briefing Notice is distributed to the parties or their counsels. Respondent's/cross-appellant brief is due 21 days from the filing of the appellant's brief. The appellant's reply/cross-respondent brief is due 14 days from the filing of the respondent's brief, and the cross-reply is due 14 days from the filing of the appellant's cross-respondent's brief.

2. How do I file a brief?

The brief may be mailed to the Board at 2601 25th St. SE, Suite 150, Salem, OR 97302, or faxed to the Board Review Division at (503)373-1684. (Although the Board's rules allow an extension to be filed via the portal, that portion of the redesigning program is not yet complete.) Parties must send a copy of their brief to the other parties' attorneys, or if unrepresented, the other parties.

3. Do I have to send the brief certified mail?

The Board does not require parties to mail their briefs certified. The Board often receives briefs accompanied by a certificate of service by mail, certifying that the party mailed the brief to the Board on the date specified in the certificate.

4. My brief is due on a holiday or weekend. Is it really due that day?

If the due date falls on a Saturday, Sunday or a **state**-observed holiday, the brief will be due the next working day. (Columbus Day is not a state-observed holiday. Therefore, although no postal service is provided on Columbus Day, the Board's permanently-staffed offices are open.)

6. How do I file an extension request for my brief?

A request for extension must be filed with the Board in writing on or before the due date of the brief. "Filing" includes physical delivery at a permanently staffed office (Portland, Salem, Medford), by mail, fax, or e-mail to request.wcb@wcb.oregon.gov. A copy of the request must be provided to the opposing party's attorney, or if unrepresented, to the party. (Although the Board's rules allow an extension to be filed via the portal, that portion of the redesigning program is not yet complete.) The extension request should include the following information:

- Claimant's name.
- WCB case number.
- The type of brief the extension is for; *i.e.*, appellant's, respondent's, reply, cross-reply.
- The original due date of the brief.
- The length of the requested extension (7, 14, 21 days?)
- The extraordinary circumstances that warrant the extension request.
- The position of the opposing party.

7. When will I receive notice of the Board's decision regarding my brief extension request?

Once the request is received by the Board Review Division, the decision will usually issue the following business day. Decisions are not announced by telephone, but the Board Review staff can confirm that the request has been received and whether the request contained all required information.

(Although the Board's rules allow an extension to be filed via the portal, that portion of the redesigning project is not yet complete. Once the portal "redesign" project is completed, portal users will be able to check their case to determine whether their extension request has been granted.)

8. I didn't receive the entire transcript/other party's brief; will the briefing schedule be extended/suspended?

The Board will suspend/extend the briefing schedule if the party meets the extraordinary circumstances detailed in number 6 in the extension/"waiver of rules" request. In submitting written notice to the Board, the requesting party should include the position of the other parties.

9. Can I fax my extension request?

Yes. The request can be faxed to the attention of the Board Review Division at (503)373-1684. It must be received by the Board on or before the original due date of the brief. The request may also be submitted through WCB's portal (once the portal has been developed to process such requests).