

Diving Into the Medical Arbitrator Process

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Department of Consumer
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History of the Medical Arbiter Program and the reconsideration process

The 1990s: Solving a problem in the Oregon workers' compensation system

Creating a Medical Arbiter Program would:

- Resolve disputes quicker
- Create an appeal process ensuring workers received benefits with little to no litigation
- Put an end to the “dueling doctor” syndrome

The Medical Arbiter Program is a process committed to the impartial evaluation of residual impairment related to Oregon injured workers.

What is reconsideration?

The Workers' Compensation Division's (WCD) ARU handles requests for reconsideration.

An administrative process for the review of disputed claim closures.

The order on reconsideration can be appealed to the Workers' Compensation Board Hearings Division.

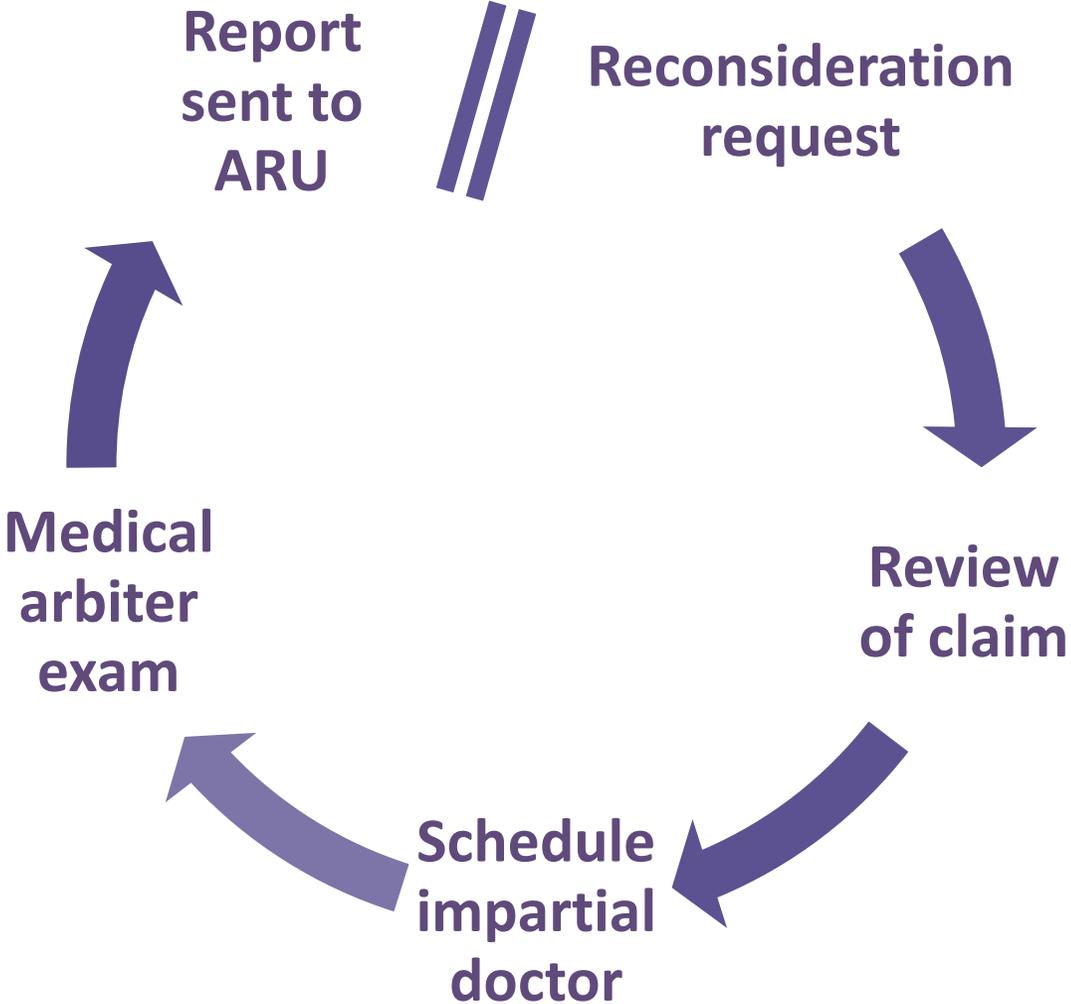
The ARU issues a legally binding order that references the arbiter physician's exam.

When is a medical arbiter examination scheduled?

A worker's claim has closed and either the insurer or worker has requested reconsideration of impairment findings.



What are the steps to scheduling an exam?



What are some challenges faced when scheduling a medical arbiter exam?

- Location
- Language barriers
- Weather
- Specialty needs
- Impartial physician
- Time frames
- Suspensions

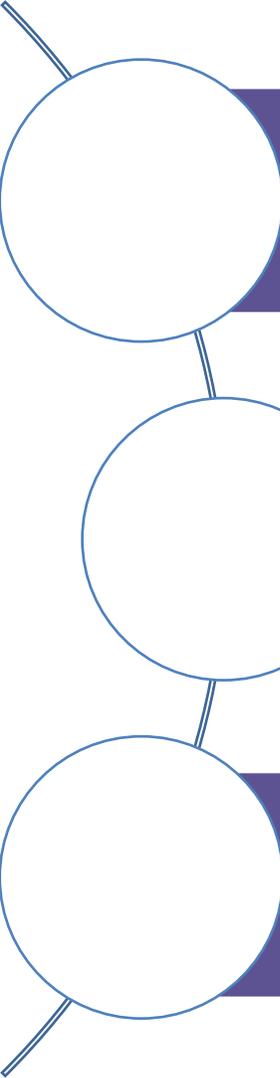
Medical arbiter exam objectives

**To help the department
resolve disputes**

**To provide an impartial
and comprehensive
evaluation**

**To report findings of
impairment in accordance
with the disability rating
standards (OAR 436-035).**

The medical arbiter examination

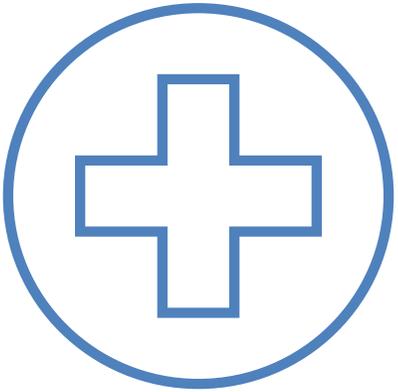


The medical arbiter evaluation is a highly focused exam directed at a specific body area or body system.

The findings upon examination must be observable, measurable, and reproducible.

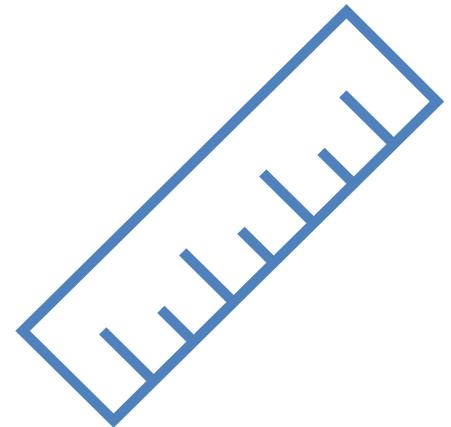
The medical arbiter is a neutral party who conducts an exam that must be objective and impartial.

The medical arbiter exam (cont.)



Arbiter physicians must limit their evaluation to obtaining physical findings and making an opinion whether those reflect permanent impairment.

The arbiter physician must provide impairment findings in accordance with the disability rating standards (OAR 436-035).



After the medical arbiter examination: now what?

The medical arbiter submits their report to the ARU.

The ARU issues a legally binding order.

The order on reconsideration can be appealed to the Workers' Compensation Board.

Workers' Compensation Dispute Resolution Processes

Cathy Ostrand-Ponsioen, legal issues coordinator



Department of Consumer
and Business Services

Overview

- ▶ Workers' Compensation Division (WCD)
- ▶ Workers' Compensation Board (WCB)
- ▶ Administrative review, hearings, board/director review, appeals
- ▶ Which disputes go where – it's not “one size fits all”

Disclaimers

Specific to
Oregon

Very high level

Lots of
exceptions!

Workers' compensation system participants



- Worker and employer
- Insurance carrier, service company
- Medical providers, managed care organization
- Attorneys

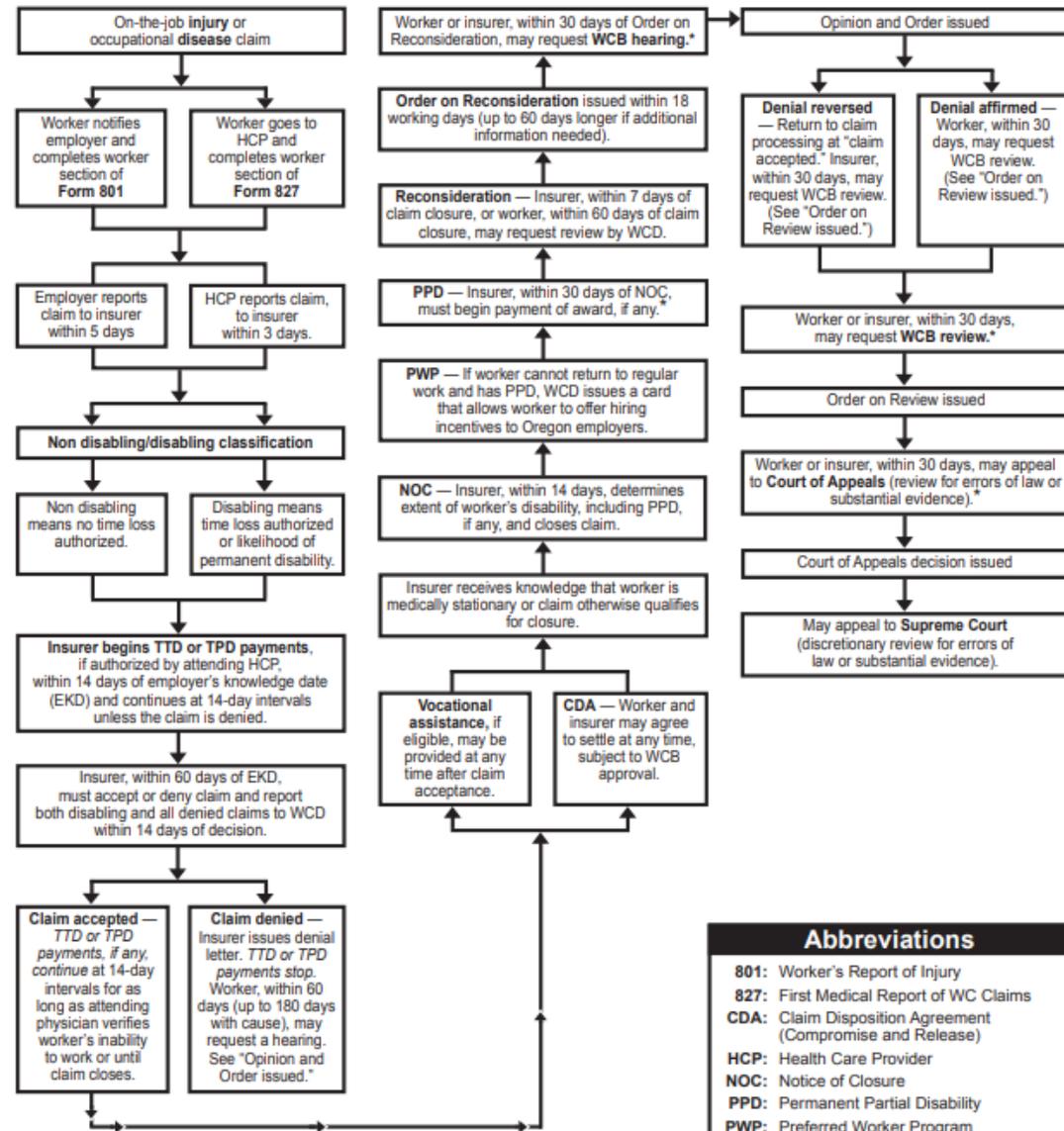


- Department of Consumer and Business Services (DCBS), WCD, WCB, and ombuds offices
- Court of Appeals, Supreme Court

Claim Process

Workers' Compensation Flowchart

(This is an overview. Some programs and processes are not covered.)



Abbreviations	
801:	Worker's Report of Injury
827:	First Medical Report of WC Claims
CDA:	Claim Disposition Agreement (Compromise and Release)
HCP:	Health Care Provider
NOC:	Notice of Closure
PPD:	Permanent Partial Disability
PWP:	Preferred Worker Program
TTD:	Temporary Total Disability
TPD:	Temporary Partial Disability
WCB:	Workers' Compensation Board
WCD:	Workers' Compensation Division

* Some compensation is stayed (not paid) during appeal (see ORS 656.313)

Disputes

Coverage

Time loss – authorization, rate

Expense reimbursement

Compensability

Claims processing penalties

Claim closure – extent of
permanent partial disability
(PPD)

Responsibility

Attorney fees

Vocational assistance

Classification

Managed care

Aggravation

New or omitted condition

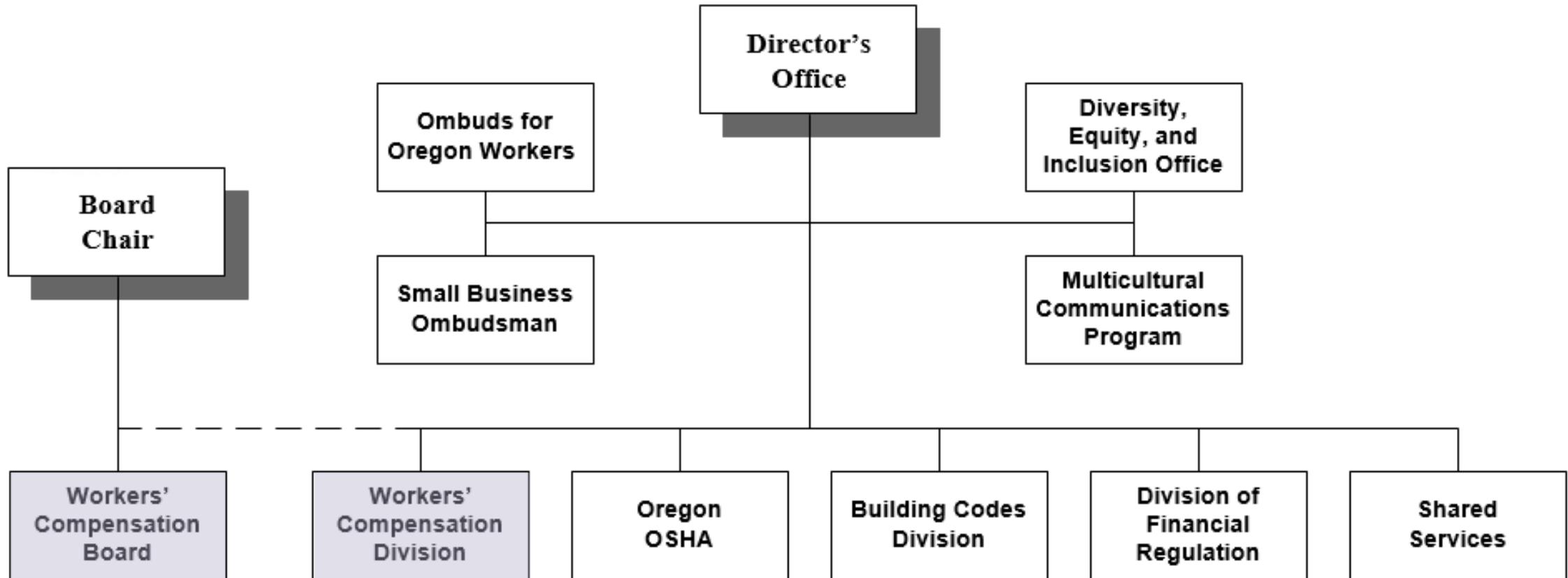
Medical services – fees,
causation, appropriateness

Board's own motion



Which road
goes
where?

Department of Consumer and Business Services



Ombuds offices

Ombuds for Oregon Workers

- Independent advocate for workers by helping them understand their rights, benefits, protections, and responsibilities within the workers' compensation system and workplace safety and health laws and rules.

Small Business Ombudsman

- Independent advocate for small businesses, entrepreneurs, and the professional advisers who serve them.
- Premium calculation, audit disputes, coverage questions, claims, and policy provisions.
- Outreach and education.

Workers' Compensation Division



We ensure an equitable workers' compensation system for all.

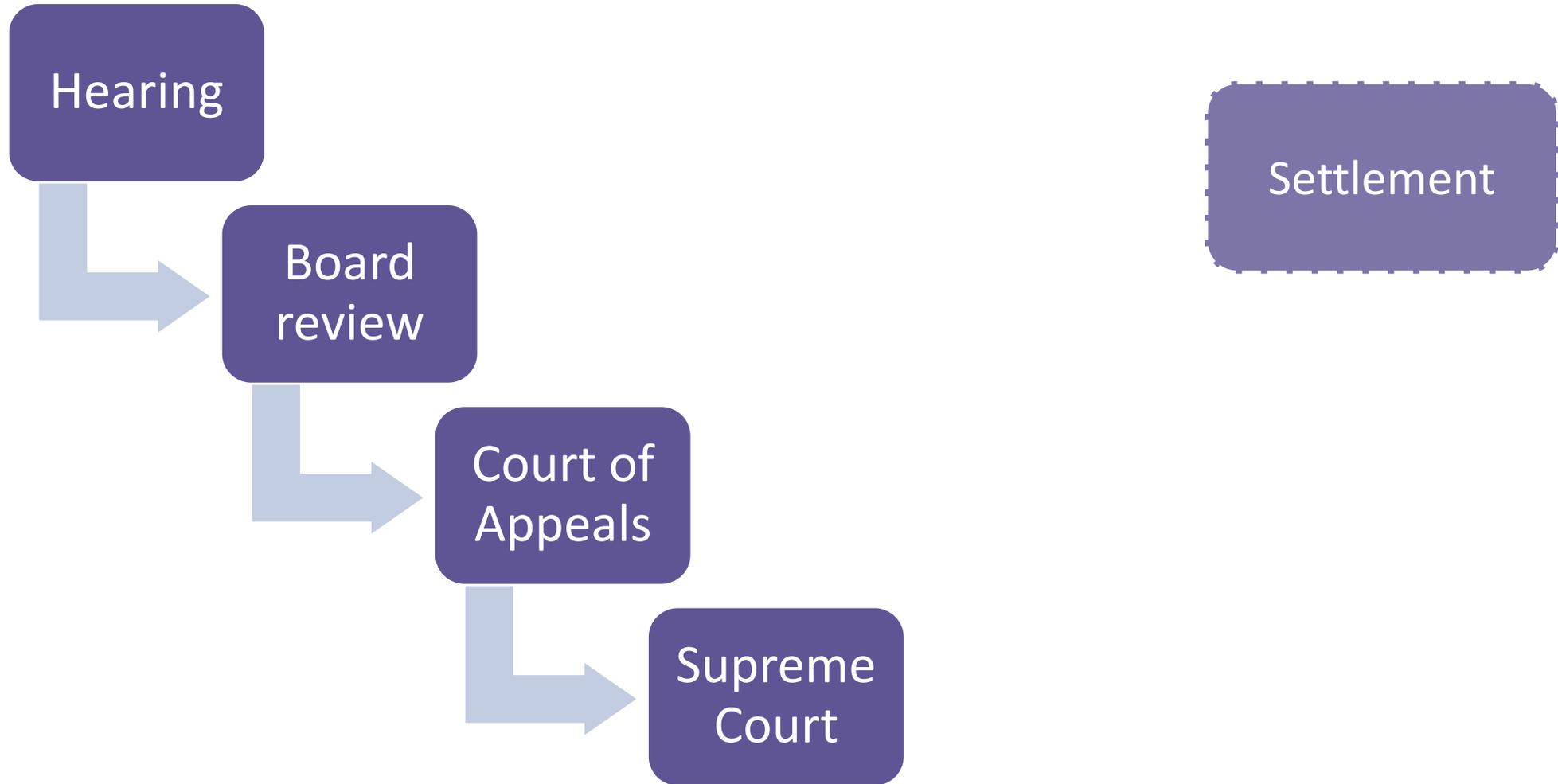
- Administer, regulate, and enforce the workers' compensation law
- Administrative dispute resolution

Workers' Compensation Board

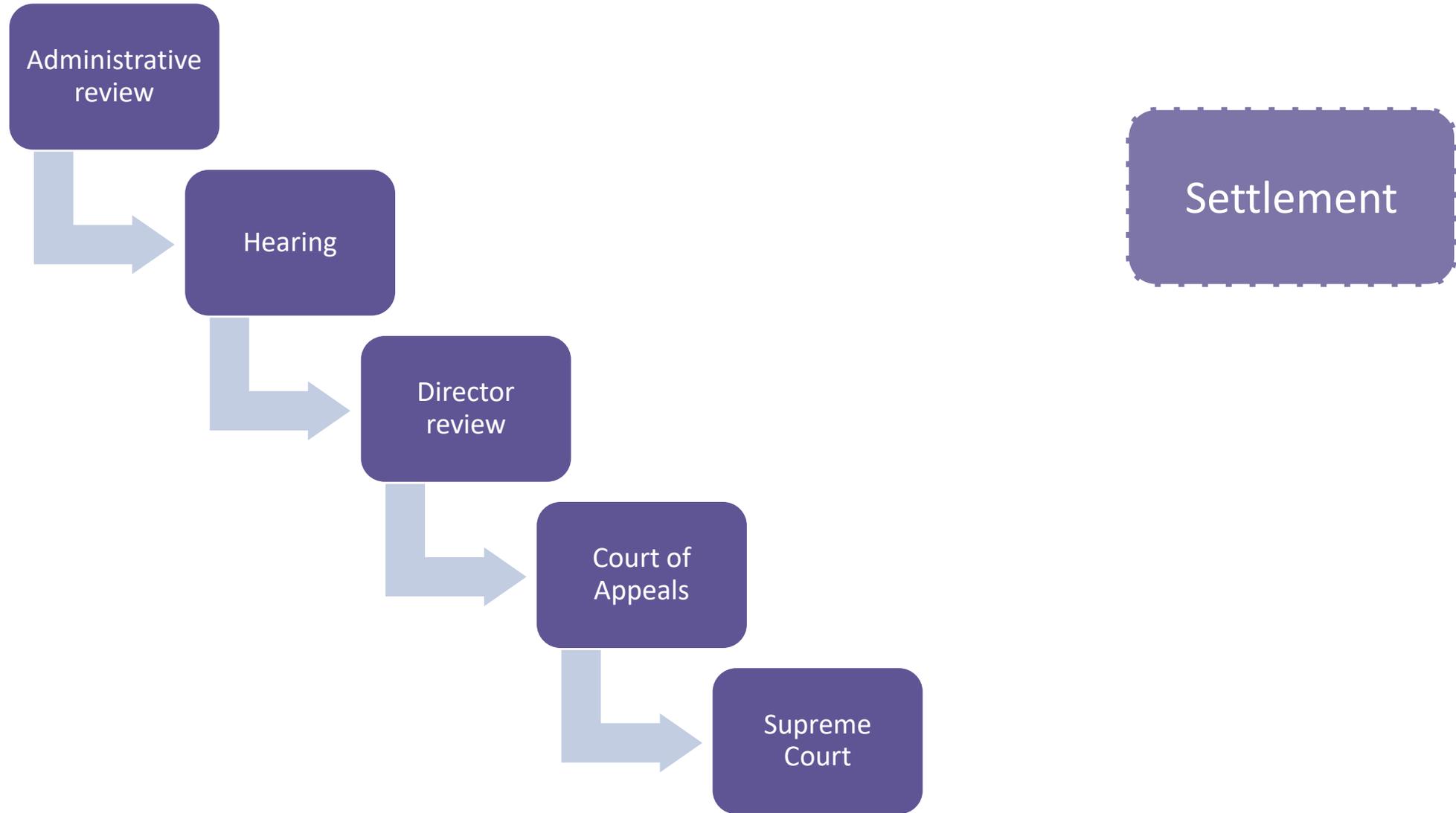


Provide timely and impartial resolution of disputes arising under Oregon Workers' Compensation Law and the Oregon Safe Employment Act.

WCB process



WCD process

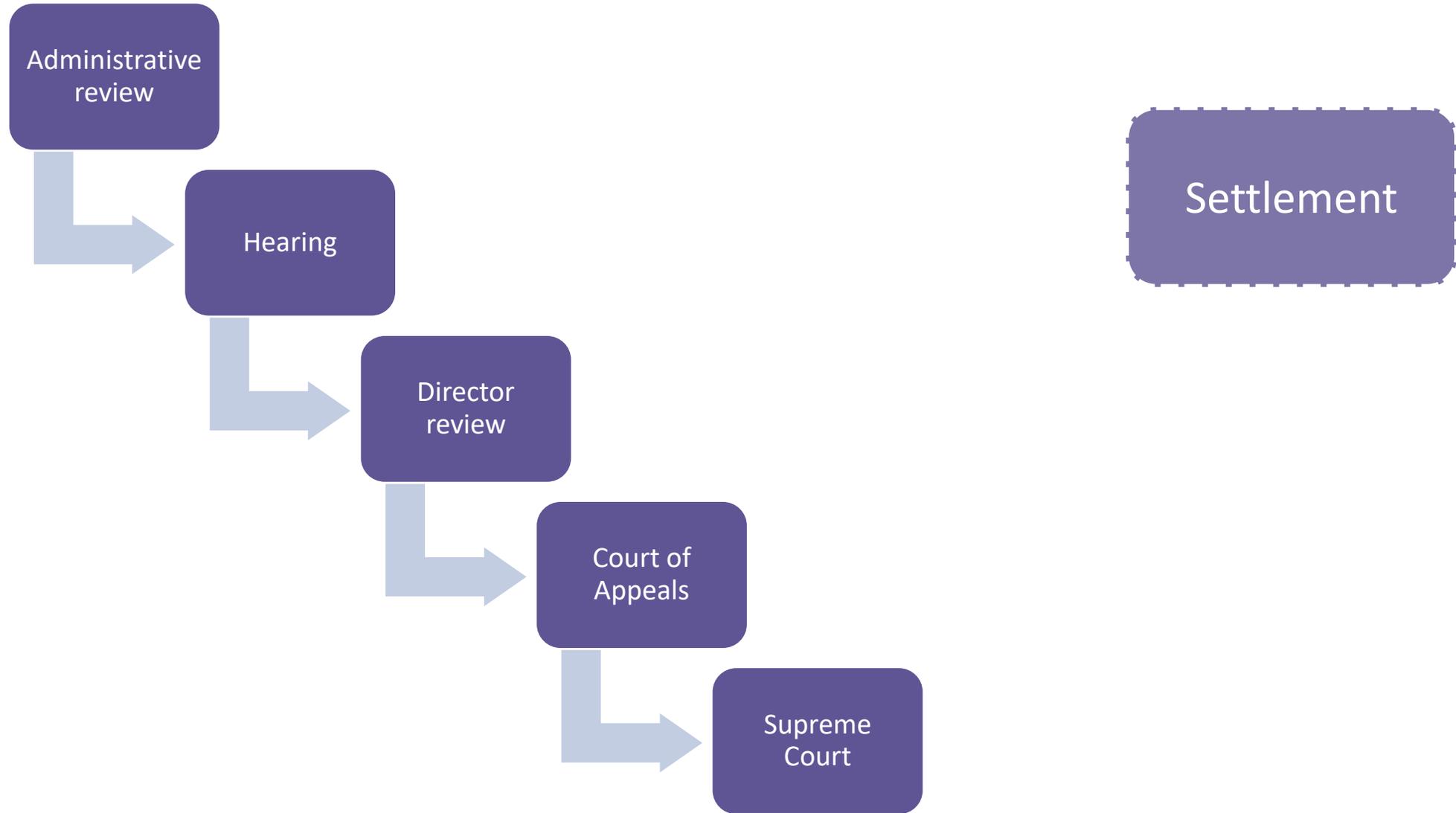


Administrative review

- Must request administrative review before requesting a hearing.
- Parties do not need to be represented by an attorney.
- Review is conducted by staff members who are not judges.
- The record is developed at administrative review.
- WCD units
 - Medical Resolution Team (MRT)
 - Sanctions
 - Employment Services Team (EST)
 - Appellate Review Unit (ARU)



WCD process





Which disputes go where?

“[M]atters in which a worker’s right to receive compensation, or the amount thereof, are directly in issue.” *ORS 656.704(3)(a)*.



Matters “other than” matters concerning a claim.



Workers' Compensation Board

Matters concerning a claim



Workers' Compensation Division (the 'director')

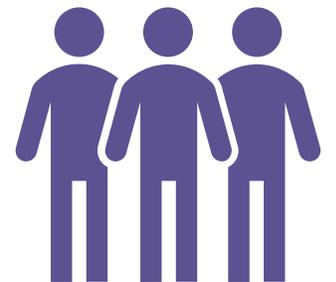
Matters other than matters concerning a claim

Medical services –
appropriateness

Medical fees

Penalties

Vocational
assistance



Other types of matters – hybrid process

Designation of
paying agent

Claim
classification

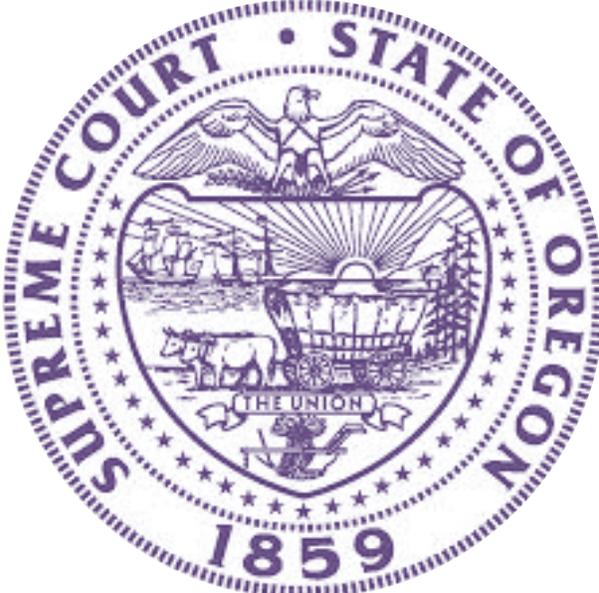
Reconsideration
of claim closure

Noncomplying
employer and
subjectivity
determinations

Civil penalties



Appeals



Settlement

Alternative
dispute
resolution

Mediation

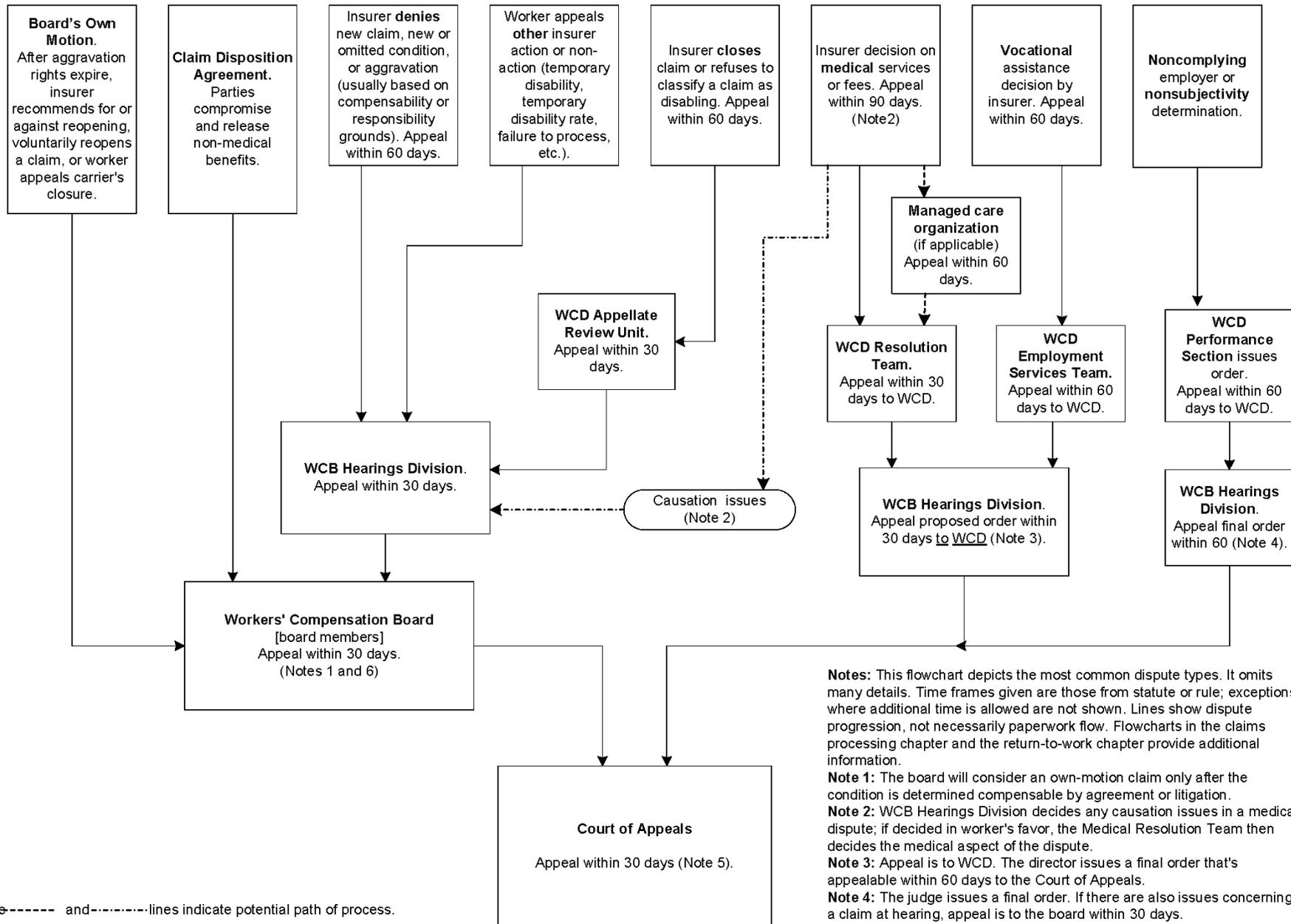
Claim disposition
agreement (CDA)

Disputed claim
settlement (DCS)

Stipulation



Disputes flowchart



The----- and-----lines indicate potential path of process.

Notes: This flowchart depicts the most common dispute types. It omits many details. Time frames given are those from statute or rule; exceptions where additional time is allowed are not shown. Lines show dispute progression, not necessarily paperwork flow. Flowcharts in the claims processing chapter and the return-to-work chapter provide additional information.

Note 1: The board will consider an own-motion claim only after the condition is determined compensable by agreement or litigation.

Note 2: WCB Hearings Division decides any causation issues in a medical dispute; if decided in worker's favor, the Medical Resolution Team then decides the medical aspect of the dispute.

Note 3: Appeal is to WCD. The director issues a final order that's appealable within 60 days to the Court of Appeals.

Note 4: The judge issues a final order. If there are also issues concerning a claim at hearing, appeal is to the board within 30 days.

Note 5: Court of Appeals decisions may be reviewed by the Oregon Supreme Court, but the high court's review is discretionary.

Note 6: Alternatively, the mediating administrative law judge may approve a CDA. Only CDA disapprovals are appealable to the courts.

Reminders

- It's not “one size fits all”
- There are lots of exceptions
- Each process has different rules, requirements, and time frames



Workers' Compensation Board

Our mission is to provide timely and impartial resolution of disputes arising under Oregon Workers' Compensation Law and the Oregon Safe Employment Act.



Hearings

- [Request a hearing](#)
- [Forms and other requests](#)
- [Mediation services](#)
- [Interpreter services](#)



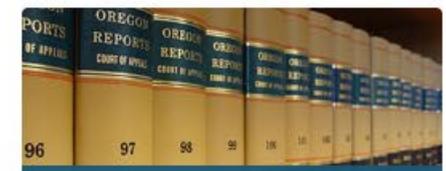
Board Review

- [Request Board Review](#)
- [Board forms](#)
- [Orders](#)
- [Own Motion information](#)



Don't have an attorney?

- [What you need to know](#)
- [Ombuds Office for Oregon Workers](#)
- [Lawyer referral service](#)
- [En Español](#)



Legal resources

- [Laws and rules](#)
- [Bulletins](#)
- [Frequently asked questions](#)
- [Practice tips](#)

wcb.oregon.gov

WCD Oregon Workers' Compensation Division

Mission: To advance a leading workers' compensation system that represents integrity and fairness for Oregonians.



Workers

- [Reporting an injury and filing a claim](#)
- [Managed care organizations \(MCOs\) and enrollment](#)
- [Getting paid for time off](#)
- [Returning to work](#)



Employers

- [Order compliance poster](#)
- [Return-to-work programs](#)
- [Self-insurance](#)
- [Worker leasing](#)



Industry services

- [Insurers information](#)
- [Health care providers](#)
- [Look up an employer's coverage](#)
- [Disability calculators](#)



Resources

- [Electronic Data Interchange \(EDI\)](#)
- [Contested case orders](#)
- [Laws and rules](#)
- [Out-of-state coverage](#)
- [Statistics and reports](#)

wcd.oregon.gov

Questions?

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Department of Consumer
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