

Understanding the Reconsideration Process



**A guide for
injured workers**

Sample statement:

I was working as a waitress when I was injured. I have returned to work as a cashier. My hours have been cut back to only 34 hours a week, and I was working 40 hours when I got hurt. My doctor told me I would probably need more surgery. I am still seeing my doctor and had an appointment on June 23. My doctor sent me for more physical therapy. My claim should stay open because I still need medical care and am unable to return to my regular job. There is an error in the paperwork, in that I didn't graduate from high school and I don't have a GED.

WCD also may contact the parties to talk about coming to an agreement. Completing the reconsideration this way is called Alternative Dispute Resolution (ADR). Doing this **does not** change the amount of time allowed for the reconsideration process. The WCD reviewer will issue an Order on Reconsideration when the dispute is resolved or when he or she has completed reviewing all the records.

What is an Order on Reconsideration?

After looking at all the information, the WCD reviewer issues an order that talks about impairment findings, temporary and permanent disability, and any other issue you asked WCD to look at. It is an important legal document that records the decisions the WCD reviewer made and why.

Can my benefits – temporary or permanent disability – be lower after reconsideration?

Yes, they can. Reconsideration is a review of claim closure information, so your benefits could go up, go down, or stay the same.

What is premature closure?

It means the insurer closed the claim too soon — because you weren't medically stationary or there wasn't enough information.

What does medically stationary mean?

It is a term used by people in workers' compensation to mean that more time or treatment isn't likely to help you get better.

What are the temporary disability dates on the Notice of Closure?

These are dates your doctor said you were not able to work (temporary total disability or TTD) or were able to do only part of your usual job (temporary partial disability or TPD).

What are impairment findings?

They are a medical description of your loss of use or function (like strength, range of motion, etc.) due to the accepted condition shown on the Updated Notice of Acceptance. The insurer compares them to Oregon laws and rules to determine your permanent disability, if any. They are also one of the things WCD uses to decide if the insurer was correct when it rated your permanent disability.

What if I don't agree with the Order on Reconsideration?

You — or the insurer — can ask for a hearing at the Workers' Compensation Board (WCB). The request for a hearing must be made within 30 days from the date of the Order on Reconsideration. Send your letter asking for a hearing to:

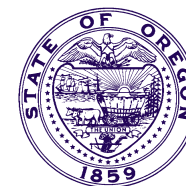
Workers' Compensation Board
2601 25th Street SE, Suite 150
Salem, OR 97302-1280

Important things to remember

- If you don't agree with your claim closure, you must ask for reconsideration **within 60 days** of the mailing date on the Notice of Closure.
- Any future disputes can be based only on the information WCD looked at during the reconsideration process. So, reconsideration is the last chance you have to send in new information for review.
- You can get help from WCD by calling the Appellate Review Unit at 503-947-7816 or the Benefits and Certification Unit at 800-452-0288 (toll-free).
- To ask for reconsideration, send your request to:

Workers' Compensation Division
Appellate Review Unit
350 Winter Street NE
P.O. Box 14480
Salem, OR 97309-0405

- WCD Web site is wcd.oregon.gov
- You also can get help from the **Ombudsman for Injured Workers**. They will explain your rights, the appeal process, and other benefits you might be able to get. You can reach the ombudsman by calling 503-378-3351 or 800-927-1271 (toll-free).
- Although you can go through the reconsideration process without an attorney, you have the right to talk to one about your case.



What is reconsideration?

Reconsideration is a review of the written record of an insurer's claim closure by the Workers' Compensation Division (WCD). Oregon law requires workers or insurers who think the Notice of Closure is not correct to request reconsideration as the first level of appeal.

How long do I have to ask for reconsideration?

You must request reconsideration *within 60 days* of the mailing date on the Notice of Closure.

How long does the insurer have to ask for reconsideration?

The insurer must make its request *within seven days* of the mailing date on the Notice of Closure. The insurer can only ask WCD to look at the impairment findings used to decide how much permanent disability you received.

How do I request reconsideration?

You must ask for reconsideration by mail or phone. To make your request by mail, you can get the form you need — a Request for Reconsideration (Form 440-2233a) — from the WCD Web site, wcd.oregon.gov. After you fill out the form, send it to the WCD Appellate Review Unit at the address on the back of this booklet. To ask for reconsideration by phone or get help completing the form, call the WCD Appellate Review Unit, 503-947-7816.

Important

- WCD staff must look at all sides fairly and can answer questions or give you information, but they cannot provide legal advice. If you need legal advice, contact a lawyer who specializes in workers' compensation law.
- You cannot request reconsideration of a permanent disability award if you asked for, received, and cashed a check from the insurer to pay your award in a "lump sum."

What happens after I request reconsideration?

When you ask for reconsideration, WCD sends a letter to "the parties" — you, your lawyer (if you have one), the insurer, and the insurer's lawyer (if it has one). The letter tells everyone that WCD has received the request and started the process.

What happens if the insurer requests reconsideration?

If the insurer asks for reconsideration, WCD sends a letter to all the parties, but the process doesn't start until 60 days after the mailing date on the Notice of Closure *unless*:

- You also ask for reconsideration ("cross request"), or
- You tell WCD that you do not want to request reconsideration and the process can begin.

If you ask for reconsideration or tell WCD that the process can start, WCD sends the parties another letter saying that the process is starting and telling the insurer to send a copy of your file to the parties and WCD.

Then what happens?

Once the process begins, these are the next steps:

- If WCD needs more information, the division sends a letter to the parties telling them what is needed. This may extend the reconsideration process up to an additional 60 days.
- If you have anything you want WCD to look at as part of the review, you need to submit it as soon as possible, after you ask for reconsideration.
- If you ask for a medical arbiter exam or WCD needs information from a medical arbiter, WCD schedules the exam and sends you a letter about the appointment.

- If WCD schedules a medical arbiter exam and you are not able to attend, you need to call WCD to set up another time. If you do not attend the exam or call WCD to reschedule, your benefits may end or be delayed.
- WCD issues the Order on Reconsideration as soon as possible after it receives the report from the medical arbiter exam.

How long does the reconsideration process take?

- If no one asks for a medical arbiter exam and everyone sends in all the information needed, WCD may issue an Order on Reconsideration within 18 working days after the process starts.
- If WCD schedules a medical arbiter exam or asks for more information, the review may take up to 60 calendar days longer. If this happens, WCD will send a Notice of Postponement to the parties.

What if I don't agree with the medical reports used to close my claim?

- If you disagree with medical reports or the rating of permanent disability and are **not** asking to have a medical arbiter exam, mark that box on the form.
- Send WCD and the insurer a letter saying why you think the medical information was incorrect or incomplete.
- Send copies of any missing reports to WCD and the insurer as soon as possible. Remember, reconsideration is a review of the written record, so everything you want WCD to look at must be submitted in writing.

What if I don't agree with the Updated Notice of Acceptance the insurer sent when it closed my claim?

The only medical conditions WCD can consider at reconsideration are the ones shown

as "accepted" on the Updated Notice of Acceptance. The Workers' Compensation Board must decide disputes over other conditions. If you think there was an error on the Updated Notice of Acceptance sent with the Notice of Closure, you must send the insurer a letter saying that you don't agree and why.

What if I don't agree with the impairment findings used to close my claim?

Mark the box on the Request for Reconsideration form that says you disagree with the impairment findings and want a medical arbiter exam. A medical arbiter exam is a physical exam done by a doctor WCD chooses to help settle disputes about permanent impairment. In the exam, the doctor only looks at the conditions the insurer had accepted when the claim closed. The medical arbiter's role is only to offer information about your impairment. The doctor will not treat you. If you want to know more about the medical arbiter exam, see "What is a medical arbiter examination?" on the WCD Web site at wcd.oregon.gov or call WCD at 503-947-7627 to ask for a copy of the brochure.

Do I get a hearing in front of the WCD reviewer?

No. The process to reconsider a Notice of Closure is informal and only looks at the written record. It is not a hearing. You may talk to the person doing the review about the process and send a letter explaining why you disagree with the closure. You can ask anyone to write something to help tell your side of the story. You also can send a "deposition" (testimony you give under oath and written down) to back up your points. Reconsideration is the last chance you have to share new information about your claim.