



Expert testimony in the Oregon Workers' Compensation system

By Brian M. Solodky ■ February 13, 2019

The Oregon Workers' Compensation Board rules allow for expert testimony to be admitted via written reports. The parties to a dispute typically present narrative reports prepared by medical professionals to the Board in an effort to satisfy their respective burdens of proof concerning causation, disability ratings, etc. This evidentiary system is efficient and it reduces litigation expense. There are circumstances, however, that you will want to consider the utility of having a medical expert attend the hearing and offer live testimony to the Board.



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When evaluating the merits of expert testimony at hearing, it is important to note Oregon law requires employers/insurers to give advance notice of live, expert testimony 28 days prior to hearing. Workers, on the other hand, must give notice 14 days ahead of hearing. This disparity creates some strategic concerns that may warrant employers/insurers to reserve the right to call an expert witness at hearing 28 days ahead of time; otherwise, we run the risk of unopposed testimony from the worker's expert if they opt to have live medical testimony at hearing.

Most often, workers present expert testimony at hearing in cases involving mental stress, permanent total disability, or other "high value" situations. These are precisely the same cases employers/insurers should preemptively discuss the benefits of expert testimony at hearing. The key is to identify the expert and have the conversation regarding the potential benefits of live testimony early on to ensure the 28 day disclosure requirement is satisfied.

Whether to call an expert as a witness for hearing depends on a multitude of factors including, but not limited to: the strength of the expert's opinion; the parties' right to post-hearing rebuttal evidence to address a particular standard of proof; the issue(s) pending before the Board, and; the existence of contrary expert analysis. As with any decision regarding litigation strategy, it is important to communicate with your legal counsel. Oregon law puts the onus on employers/insurers to tip their hand to the opposing party early. It's always better to reserve a right and not need it, than vice versa.

The attorneys at Reinisch Wilson Weier are happy to help you weigh the pros and cons of expert witnesses in claims you may be adjudicating. ■

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