

Senate Bill 802
Relating to Disability Benefits/Notification Process/Reconsideration Proceedings
Chief Sponsor Senator Brown (at the request of IWC)

Permanently disabled workers receive inadequate benefits. A study presented to MLAC in 2001 suggests that the Oregon Workers' Compensation system replaces only 42 percent of the paycheck lost in the 10 years following a disabling workplace injury. Unfortunately, the state's goals for workers' compensation are no longer balanced. The Oregon Benchmarks measure only the cost of workers' compensation insurance to employers.

Unbelievably, fewer than a dozen workers yearly have qualified for permanent total disability (PTD) benefits. In 2001, the first year of insurer determination, the figure was minus one. Before "reform," Oregon allowed anywhere from 100 to 200 PTD grants every year, at a rate much closer to the national average than now. Workers have few rights to present evidence regarding their disabilities.

The Oregon Supreme Court stated in the December 2000 decision of *Koskela v. Willamette Industries, Inc.*¹ that the "post-1995 statutory scheme for assessing whether a worker should receive an award of PTD benefits fails to satisfy procedural due process requirements" and that some kind of oral evidentiary hearing should be provided yet Oregon statutes have not changed to reflect this ruling. Workers must be allowed to make a meaningful record on the elements of proof that are necessary to meet the burden of proof and persuasion required to establish the extent of their disabilities.

The Injured Workers Coalition suggest the following remedies:

- Raise the cap on permanent partial disability (PPD) benefits. Workers' compensation benefits should replace the earnings lost by a worker due to the lingering effects of permanent disability.
- Restore benefits to the most severely disabled workers. Pay permanent total disability (PTD) benefits if the worker is unable to do sustained work at a living wage.
- Consider all relevant factors in awarding permanent disability benefits.
- Correct current statutes so they comply with the Oregon and United States Constitutions. The worker's right to present evidence must not be infringed.
- Provide a timely reconsideration process.

Statistics:

Reville, Boden, Biddle, and Madesich. *New Mexico Workers' Compensation Permanent Partial Disability and Return-to-Work: An Evaluation*

DCBS. *Return to Work in the Oregon Workers' Compensation System* (June 2001)

DCBS. *Permanent Total Disabilities in the Oregon Workers' Compensation System, 2000* (October 2001)

DCBS. *Various Characteristics of the Workers' Compensation System* (ask for 2001 statistics)

¹ <http://www.publications.ojd.state.or.us/S46351.htm>