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July 9, 1998

Bradley Scheminske
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Kruse Woods One, Suite 181
5285 SW Meadows Road
Lake Oswego, OR 97035-3227

Re: Petition for Public Records Disclosure Order:
Workers' Compensation Board Records

Dear Mr. Scheminske:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on July 2, 1998, asks the Attorney General to direct the Workers' Compensation Board (board) to make available records of the board that "identif[y] all active workers' compensation litigation cases now pending at the Board, including the Board's Hearings Division, and identifying such cases by name of claimant, name of employer, name of insurer, if any, and the identity of attorneys, if any, who have appeared in each case as a matter of record." For the reasons that follow, we respectfully deny your petition, in part because some of the materials are exempt from disclosure as workers' compensation "claim records" and in part because your petition is moot.

The Public Records law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. One of the exemptions is ORS 192.502(19), which exempts:

> Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

You are seeking records of the board that identify the workers' compensation cases where litigation is pending before the board. The information that you have requested includes the name of the claimant, employer, insurer, and attorney if any have appeared in that particular case. You contend that the information does not constitute "claim records" because it is not substantive (i.e., medical or vocational) information about a worker or that worker's claim.

In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; PGE v. Bureau of Labor and Industries (PGE), 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text and context of the statute, which includes other provisions of the same statute and related statutes. If the legislative intent is clear from the text and context, the search ends there. Only if the legislative intent is not clear, from the text and context of the statute, will we look to the legislative history to attempt to discern that intent. Id. at 611-612.

The legislature has not defined "claim records" in ORS 192.502. As used in ORS 192.502(19), the legislature may have intended to exempt from disclosure only those "claims records" that are substantive records (i.e., medical and vocational information) establishing the claim. On the other hand, the term "claim records" could also include any information that would establish that a worker has filed a workers' compensation claim or actions taken on or in respect to that claim. The second interpretation could include the board's docketing information, which is the subject of your public records request.

Because the text and context of this statute permits more than one plausible interpretation, we turn to the legislative history to ascertain its meaning. State v. Allison, 143 Or App 241, 251, 923 P2d 1224 (1996); see also Coultas v. City of Sutherlin, 318 Or 584, 590, 871 P2d 465 (1994). This exemption was created to prevent discrimination against persons who had previously filed a worker's compensation claim. ATTORNEYS GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 67 (1998). The exemption originated from House Bill 3069 (1993), which incorporated Senate Bill 1106 (1993). SB 1106 was introduced by Senator Karsten Rasmussen "to deal with an increasing abuse of information made available * * * regarding injured workers" and "to

prevent discrimination against injured workers." Minutes, Senate Labor & Government Operations Committee (SB 1106), April 21, 1993, Exhibit F.

Tom Mattis of the Department of Insurance (DIF) / testified that DIF would receive a call from an individual who would provide 15-20 social security numbers and ask whether those individuals had ever filed claims. Minutes, House Committee on Labor, Subcommittee on Labor (SB 1106), July 5, 1993, pages 11-12. According to Mr. Mattis, DIF suspected that the information was being used by employers to discriminate against workers in direct contradiction of the civil rights law, id., which "thwarts a central tenet of workers compensation to get workers back to work as soon as possible." Exhibit G. This testimony was supported by Sue Jordan, Civil Rights Division, Bureau of Labor and Industries, who stated that in the previous year the number one area of complaints were those from injured workers who felt that they had been retaliated against. Minutes, page 12-13.

Bradley Witt, Secretary-Treasurer for Oregon AFL-CIO, testified that public access to workers' compensation claim information was being used to deny employment opportunities to "victims of workplace injuries and diseases." Minutes, Exhibit J. Mr. Witt submitted several articles to support his position. An article titled Job Applicants Get the Boot When Injury Claims Probed, published in the BUSINESS JOURNAL, November 11, 1991, stated that employers could "screen out those accident-prone folks.... Just check through the state's list of workers' compensation filings--a public record available to all--and reject any job applicant who's had a recent accident." Id.

Senator Rasmussen's written testimony stated the purpose of the bill was to address "the misuse of workers compensation information which results in blacklisting" and that the bill was designed to "nip in the bud a form of discrimination * * * namely that people are being discriminated against because they have in the past filed workers' compensation claims[.]" Exhibit K.

This legislative history demonstrates an intent to protect from disclosure the identity of workers who have filed claims in order to protect them from discrimination. The docketing information that you have requested contains the names of injured workers. Disclosure of that information could result in the type of discrimination that this exemption was created to eliminate. We conclude therefore that the information you seek constitutes "claim records" for purposes of ORS 191.502(19).

You argue that even if the information you seek constitutes "claim records," it is not exempt because ORS 192.502(19) applies only to records in the "custody and control of the Director of DCBS (Director)." Neither the statute nor the administrative rules support your interpretation. ORS 192.502(19) plainly states that it exempts "[w]orkers' compensation claim records of the Department of Consumer and Business Services." (Emphasis added.) The administrative rule adopted by the Director parrots the statute. OAR 440-005-0005. The board was created within DCBS, and the Hearings Division was created as a part of the board. ORS 656.712, 656.708. All board records, therefore,

are records of DCBS and exempt from disclosure under ORS 192.502(19) unless they are disclosable under one of the exceptions in that exemption. /

There are four exceptions to the workers' compensation "claim records" exemption. The first exception is for those records that are necessary for the insurer, self-insured employer or third party administrator to process a claim. ORS 192.502(19)(a). Patty Appling, a paralegal in this office, contacted your office and spoke with your assistant, Cheryl, who confirmed that you do represent insurers and self-insured employers. Your records request, however, is not limited to those cases in which your office is involved; you are seeking information on all hearings pending before the board. Therefore, we find that the information you seek is not necessary for an insurer, self-insured employer or third party claim administrator to process workers' compensation claims. Accordingly, we conclude that the information this exception is not satisfied.

Secondly, "claim records" are disclosable when disclosure is necessary for the director or other governmental agencies to carry out their duties or powers. ORS 192.502(b). You do not claim that this exception applies, nor are there any facts to support such a conclusion.

The third exception is when the records can be disclosed in such a manner that the identity of the worker who is subject to the claim is protected. ORS 192.502(19)(c). In Ms. Fraser's letter dated June 19, 1998, she stated that the board would evaluate the feasibility of your request if you agreed to allow the board to redact the workers' names. Ms. Fraser informs us that you have not contacted her or the board in response to that offer. Moreover, the name of the injured worker is one of the pieces of information that you are specifically seeking in your petition. We therefore conclude that the board could not comply with your records request in a manner that would protect the identity of those workers.

The last exception is when a worker or worker's representative requests review of the worker's claim records. Your assistant told Ms. Appling that you do not represent injured workers. Thus, this exception would not apply.

You also argue that the public records exemption for workers' compensation claims is not applicable once litigation commences. However, you do not provide any support for this conclusion, nor are we aware of any case law which would support your position. The only exceptions to the workers' compensation "claim records" exemption are those listed in the exemption and discussed above, none of which except "claim records" during the board's hearing and review process. We therefore conclude that claim records remain exempt from disclosure while litigation is pending before the board.

Lastly, you argue that the information you have requested is published in the board's facilities by posting hearing notices outside the hearing rooms and that it is also published on the Internet, in the Van Natta workers' compensation reporter and the reporters for the Court of Appeals and Supreme Court. Ms. Fraser advised this office that the hearing notices are no longer posted at the board. She did confirm, however, that the

board does post the board orders on the Internet and provide them to the publisher of the Van Natta reporters. That information is published pursuant to ORS 192.502(19)(b), which allows disclosure when the information is necessary for the Director or another governmental agency to perform its duties. The Orders on Review are binding on the Administrative Law Judges. Ms. Fraser advised us that the orders are published because those are the best methods of distributing the information to the parties who appear before the board and who need to be advised of the law that will be applied to their cases. Ms. Fraser advised this office that the board is willing to provide you with the information that you have requested at the time that the orders are either posted on the Internet or provided for publication in the Van Natta reporter.

In sum, the records that you seek constitute "claim records" and are exempt from disclosure pursuant to ORS 192.502(19). Moreover, that information does not satisfy any of the exceptions to the exemption. Therefore, the information is not disclosable except to the extent that the information is published. The board has agreed to provide you with the requested information to the extent that it is published in either a reporter or on the Internet. Accordingly, we deny your petition in part because the records are exempt from disclosure under ORS 192.502(19) and in part your petition is moot due to the board's agreement to provide certain of the information to you.

Sincerely,



David Schuman
Deputy Attorney General

CXP:AV/JGG12428
cc: Joan Fraser, WCB Administrator