

TO: Members of House Business and Labor Committee
FR: Arthur Towers, Oregon Trial Lawyers Association
RE: House Bill 4138 Case Study
2-9-22

David Marmalejo

David Marmalejo was a diesel mechanic in Portland who severely injured his shoulder in a workplace incident in March 2016. There was no dispute that his ailment was caused by what happened on the job, that he needed treatment, and that he was eligible for workers' compensation. He received temporary disability payments until August of 2020 while he was recovering. Those funds were used to replace the paycheck he had been earning and to meet his daily needs. He knew that when his shoulder stopped getting better, his claim would close and he would no longer get the regular temporary disability benefit, but he would then receive a final payment for permanent damage to his shoulder.

He was notified in August 2020 that his claim was closed, and that he was due nearly \$28,000 because of permanent damage to his shoulder and his inability to return to his old job. He planned to use that money to help get his life started in a new direction.

However, the insurance company also notified him in August 2020 that his shoulder had stopped getting better in February 2020. This was news to David. The insurer went on to say that the payments from February to August would now be considered an "overpayment," and the \$28,000 in compensation for the permanent damage to his shoulder would be reduced to \$9,000.

In that August 2020 letter, the insurance company also notified David that the insurance company had made a mistake in his bi-weekly payments back in 2016. That would also result in a reduction of the final compensation that David had been counting on to get on with his life.

David didn't understand why his claim didn't close back in February if that is when his shoulder was stationary. He would have liked to get started back then to move forward. Instead, by August, he had much less money to figure out how to move forward. Finally, the insurance company also flat out denied any vocational re-training to help David learn skills for a job he could perform with a permanently damaged shoulder.

Postscript. David felt his shoulder was more badly damaged than the insurance company had determined. He learned from his attorney that he could appeal their decision to a medical arbiter. On appeal, a medical arbiter determined that because the damage was so serious the insurance company owed an extra \$14,000. This is a process that workers are supposed to be able to navigate without legal assistance.