

EXHIBIT "A"

CHAPTER 436
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
DIVISION 35

DISABILITY RATING STANDARDS

TEMPORARY RULE PROMULGATION FOR INDIVIDUAL CLAIMS

436-35-500 (1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases pursuant to ORS 656.726(3)(f)(C) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not adequately addressed in the disability standards.

(2) Temporary rules promulgated pursuant to ORS 656.726(3)(f)(C) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter in accordance with ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-01-000(2).

A64-0903 The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. This worker's loss of strength is due to the progression of Kienbock's disease and the collapse of the lunate (carpal bone). This condition is part of the accepted compensable injury and results in decreased grip strength. The strength loss shall be valued as if the nerves supplying the radial side flexor muscles were impaired. As a result, impairment due to strength loss is given the value of 22% of the left forearm. No other impairment value for strength is allowed. This impairment value is combined with all other ratable impairment findings. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. A64-0903.

B33-4465 At the time of claim closure, the rules did not address chondromalacia. This worker was diagnosed with progressive post-traumatic arthrosis (chondromalacia) of the left knee. Effective June 1, 1992, a standard was adopted to address the rating of chondromalacia. The Director therefore adopts application of OAR 436-35-230(13) to address this worker's impairment resulting from chondromalacia. This value may be combined with any other ratable impairment for the left knee. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. B33-4465.

B52-7039 At the time of claim closure, the rules did not address chondromalacia. This worker was diagnosed with grade II chondromalacia of the left knee. Effective June 1, 1992, a standard was adopted to address the rating of chondromalacia. The Director therefore adopts application of OAR 436-35-230 (13) to address this worker's impairment resulting from chondromalacia. This value may be combined with any other ratable impairment for the left knee. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. B52-7039.

B63-9980 The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. This worker's loss of strength is due to carpal bone surgery in the right palmar wrist. This surgery was done as part of the accepted condition and results in the objective finding of decreased strength. The strength loss shall be valued as if the nerve supplying that muscle group was impaired. As a result of the impairment from strength loss, this worker is entitled to 9% impairment of the forearm. This value is combined with any other ratable impairment findings. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. B63-9980.

C64-7847 This worker's loss of strength is due to deQuervain's tenosynovitis. The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. The deQuervain's tenosynovitis is an inflammation of the tendon sheaths of the first dorsal compartment which we find analogous in function to a musculotendinous unit. In this case, the strength shall be valued as if the nerve supplying that musculotendinous unit was impaired. As a result of the disability from strength loss, this worker is entitled to 10% impairment of the radial nerve. This disability shall be combined with other impairment values for the left wrist which are ratable under the current rules. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. C64-7847.

D50-0623 This worker has suffered an increase in disability due to malposition of the carpometacarpal joint in the right thumb resulting in loss of functional use and range of motion. The malposition is a greater functional loss for this worker than given by the current standards. In this case, the lack of active motion and the malposition of the joint is comparable to a surgical fusion. A value for the loss of this function has been determined by mathematically extending the existing values for a carpometacarpal joint surgical fusion. The impairment will be given the value of 51 percent of the hand. This impairment is combined with other ratable impairment in the right hand and offset as appropriate. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. D50-0623.

D60-2551 This worker's loss of strength is due to a fracture in the elbow joint which required subsequent muscle capsule releases and replacement of the radial head. The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. The anatomical change from the surgeries due to the injury have resulted in the loss of strength. The strength shall be valued as if the nerves supplying that muscle or muscle group were impaired. As a result of the impairment from strength loss, this worker is entitled to a value of 10% of the radial nerve. This impairment is combined with impairment for loss of range of motion, limitations in repetitive use and surgical values in the left elbow which are ratable under the current rules. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. D60-2551.

G45-4281 At the time of claim closure, the rules did not address chondromalacia. This worker was diagnosed with grade I chondromalacia of the right knee. Effective June 1, 1992, a standard was adopted to address the rating of chondromalacia. The Director therefore adopts application of OAR 436-35-230(13) to address this worker's impairment resulting from chondromalacia. This value may be combined with any other ratable impairment for the right knee. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. G45-4281.

I59-4285 This worker has suffered a rotational deformity of the left ring finger as a result of the accepted condition. The current rules do not address digital rotational deformities. This digital rotational deformity of greater than 30 degrees on active flexion results in a severe functional loss to the entire left ring finger. As a result, this rotational deformity is assigned a value of 60% of the left ring finger. This impairment is combined with other ratable impairment in the ring finger. Notwithstanding OAR 436-35-003, this rule applies only to WCD file No. I59-4285.

C43-2644 This worker's loss of function in the thumbs is due to degenerative osteoarthritis as a result of ligamentous laxity in the carpal-metacarpal joint. The rules do not address this loss of function. As a result of the disability from this condition, this worker is entitled to 5% impairment of each hand. This value is combined with any other impairment values ratable under the rules. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. C43-2644.

C50-4886 This worker's disability is not appropriately addressed by the Standards in effect at the time of the claim closure. The Director adopts the application of OAR 436-35-270 through 436-35-310, effective December 14, 1993, to appropriately address this worker's disability. Notwithstanding OAR 436-35-003, this rule applies only to WCD file C50-4886.

D61-6586 This worker's loss of strength is due to a triscaphoid arthrodesis for treatment of a scapholunate disassociation. The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. For this worker, the wrist joint is unable to sustain power gripping which would be a flexion function. Therefore, the strength loss shall be based as if the nerve supplying the flexion muscle or flexion muscle group were impaired. As a result of the impairment from strength loss, this worker is entitled to 9% impairment of the forearm. This disability is combined with other impairment ratable under the rules. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. D61-6586.

E38-6617 This worker underwent Bristow repair and malleolar screw removal in the left shoulder. On remand, the Board found these procedures were not addressed by the applicable standards. Bristow repair of a dislocating shoulder improves the function of the shoulder and reduces the chance of dislocation. Removal of the screw fixation device does not result in recognized loss of shoulder function. In this case, the impairment value for these procedures shall be a value of zero. This value may be combined with any other applicable impairment values for the left shoulder. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. E38-6617.

E51-8953 This worker is able to walk and stand no more than one hour in an eight hour period. The current standards do not address this level of limitations on standing and/or walking. As a result of this impairment, this worker is entitled to a value of 30% for the right foot and 30% for the left foot. These values will be given in lieu of a rating under OAR 436-35-200 (4). These values will be combined with any other applicable impairment values. Notwithstanding OAR 436-35-003, this rule applies to only WCD file no. E51-8953.

G37-3015 At the time of claim closure, the rules did not address chondromalacia. This worker was diagnosed with grade II chondromalacia of the right knee. Effective June 1, 1992, a standard was adopted to address the rating of chondromalacia. The Director therefore adopts application of OAR 436-35-230(13) to address this worker's impairment resulting from chondromalacia. This value may be combined with any other ratable impairment for the right knee. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. G37-3015.

A66-7148 This worker has experienced head trauma which has resulted in episodic post-traumatic headaches requiring medication and interruption of daily activities to treat. The rules allow for valuing episodic neurological disorders imposing similar restrictions. Therefore, as a result of this loss of function, this worker is entitled to a value of 30% for post-traumatic headache. This value may be combined with other applicable impairment values. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. A66-7148.

C66-9882 This worker suffered an alteration in the longitudinal alignment of the distal interphalangeal joint due to a ligament injury in the left middle finger. The applicable rules do not address this finding. In this case, the impairment value for alteration in longitudinal alignment of the distal joint due to instability will be 18% of the left middle finger. This value may be combined with any other applicable impairment values for the left middle finger. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. C66-9882.

F67-9790 This worker has a functional loss of strength due to unresolved deQuervain's tendinitis. The rules value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. The Director finds the deQuervain's tendinitis analogous in function to a musculotendinous unit. In this case, the strength shall be valued as if the nerve supplying that muscle or muscle group were impaired. As a result of the disability from strength loss, this worker is entitled to 10% impairment of the forearm. This value is combined with any other impairment values which are ratable under the current rules. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. F67-9790.

G37-9847 At the medical arbiter examination, the worker was found to have a 50% reduction in chest excursion. On remand, the Board found that reduction of chest excursion is not addressed by the applicable standards. The medical evidence does not establish any impairment associated with the reduced chest wall excursion. In this case, the impairment value for reduced chest wall excursion shall be a value of zero. Notwithstanding OAR 436-35-003, this rule applies to only WCD file no. G37-9847.

G66-0945 This worker's loss of strength is due to the altered mechanics of the flexor tendons following surgery. The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. The loss of strength in this case shall be based on the nerve supplying the flexor muscle group. As a result of the impairment from strength loss, this worker is entitled to 2% impairment of the right forearm. This impairment is combined with other impairment ratable under the rules. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. G66-0945.

G68-2891 This worker's loss of strength is due to periosteal irritation following a fracture. The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. The periosteal irritation has produced a loss of muscle strength and shall be valued as if the nerve supplying that muscle or muscle group was impaired. As a result of the impairment from strength loss, this worker is entitled to 2% impairment of the superficial branch of the common peroneal nerve. This value is combined with other ratable impairment values under the rules. Notwithstanding OAR 436-35-003, this rule applies to only WCD file no. G68-2891.

I66-9214 This worker suffered left chronic epididymitis. The applicable rules do not address this finding. In this case, the impairment value will be 5% of the groin. This value may be combined with any other applicable impairment values. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. I66-9214.

I67-8572 The Standards in effect at the time of claim closure do not address the worker's non-physical changes effecting earning capacity. OAR 436-35-270 through 310 (effective December 14, 1993), does adequately address non-physical changes effecting earning capacity. Therefore, the Director adopts OAR 436-35-270 through 436-35-310, effective December 14, 1993, to address this worker's disability. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. I67-8572.

A56-6922 This worker has suffered traumatic amputations on the dominant left hand. The rules do not provide a value for loss of use of the dominant extremity. The statute does not contemplate dominance in assigning degree values to extremity areas. In this case, the impairment value for loss of use of the dominant hand shall be a value of zero. Notwithstanding OAR 436-35-003, this rule applies to only WCD file no. A56-6922.

A68-8532 This worker suffered an injury to the right lower ribs resulting in intercostal symptoms which are continuing and affect earning capacity. The applicable rules do not address this finding. In this case, the impairment value for persistent intercostal symptoms affecting earning capacity shall be 3%. This value may be combined with other applicable impairment values. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. A68-8532.

B67-0517 This worker has experienced a malalignment of the tibia following a fracture which has affected function. There are two components of malalignment of the tibial shaft: leg length loss and rotational deformity. The rules currently value loss of leg length, but do not address rotational deformities. Therefore, in this case, the rotational deformity shall be valued as 8% of the leg. This value is combined with any other ratable impairment findings. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. B67-0517.

B69-2864 This worker's loss of strength is due to a fracture of the lateral malleolus of the left ankle. The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. In this case the strength loss shall be valued as if the nerve supplying the muscle or muscle group were injured. As a result of the impairment from loss of strength, this worker is entitled to 4% impairment of the left foot (ankle). This value is combined with any other ratable impairment findings. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. B69-2864.

C66-4016 This worker's loss of strength is due to deQuervain's tenosynovitis. The rules currently value loss of strength based on either nerve injury, or loss of muscle tissue, or disruption of a musculotendinous unit. The deQuervain's tenosynovitis is an inflammation of the tendon sheaths of the first dorsal compartment which we find analogous in function to a musculotendinous unit. In this case, the strength shall be valued as if the nerve supplying that musculotendinous unit were impaired. As a result of the disability from strength loss, this worker is entitled to 25% impairment of the radial nerve. This disability shall be combined with other impairment values for the left wrist which are rateable under current rules. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. C66-4016.

D69-1873 This worker experienced a crush injury to the fingers resulting in sensitivity to cold exposure. The rules do not provide a rating for this finding. This condition produces similar residuals to Raynaud's Disease which is addressed in the standards. This worker's residuals are similar to a Raynaud's Phenomenon which occurs with exposures to temperatures approximating 0 degrees Centigrade. In this case, the worker's cold intolerance shall be valued at 3% of the finger. This value may be combined with other ratable impairment values. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. D69-1873.

D71-7397 This worker's loss of strength is due to a radial head resection following a comminuted fracture with fragment separation. The rules currently value loss of strength based on either nerve injury, loss of muscle tissue, or disruption of a musculotendinous unit. The anatomical change from the surgery has resulted in the loss of strength. The strength shall be valued as if the nerve supplying that muscle or muscle group was impaired. As a result of the impairment from strength loss, this worker is entitled to 14% of the forearm. This impairment is combined with any other impairment ratable under the current rules. Notwithstanding OAR 436-35-003, this rule applies to only WCD file no. D71-7397.

G68-3895 This worker experienced a crush injury to the hand resulting in a loss of strength due to tendon scarring and tethering, and sensitivity to cold exposure. The rules do not provide a rating for these findings. The loss of strength produces residuals similar to those expected with a disruption of a musculotendinous unit which is addressed in the standards. In this case, the loss of strength shall be valued at 9% of the hand. The cold sensitivity produces similar residuals to Raynaud's Disease which is addressed in the standards. This worker's residuals are similar to a Raynaud's Phenomenon which occurs with exposures to temperatures approximating 0 degrees Centigrade. In this case, the worker's cold intolerance shall be valued at 3% of the hand. These values may be combined with other ratable impairment values. Notwithstanding OAR 436-35-003, this rule applies only to WCD file no. G68-3895.

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