

**ADMINISTRATIVE ORDER NO. 99-062
EFFECTIVE DECEMBER 21, 1999**

**OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 002**

**PROCEDURAL RULES GOVERNING FOR CONTESTED CASES REGARDING WORKERS'
COMPENSATION DIVISION DETERMINATIONS OF NONSUBJECTIVITY**

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EXHIBIT "A"

OREGON ADMINISTRATIVE RULES, CHAPTER 436, DIVISION 002

436-002-0001 Authority

[These rules are adopted under the director's general rulemaking authority under ORS 656.726 and the director's specific authority and responsibility under ORS chapter 183 and ORS 656.704.]

Stat. Auth.: ORS 656.704(2), 656.726(3)

Stats. Implemented: ORS Chapter 183, ORS 656.245, 656.248, 656.260, 656.262, 656.268, 656.283, 656.327, 656.385, 656.388, 656.447

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Filed 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0003 Applicability and Purpose

(1) The rules contained in OAR 436, Division 002 establish procedures under the provisions of ORS Chapter 183 and Chapter 656 governing contested case hearings where a determination by the Compliance Section of the Workers' Compensation Division that a worker is not a subject worker is in issue.

(2) These rules apply to all cases pending before the Hearings Division of the Workers' Compensation Board on, or after, the effective date of these rules in which a worker has filed a hearing request challenging a determination by the Compliance Section of the Workers' Compensation Division that the worker is not a subject worker of a subject employer.]

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.704(2) and 183.310 through 183.550

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0005 Definitions

[The following definitions apply to these rules unless the context requires otherwise.

(1) "Administrative Law Judge" or "ALJ" means an Administrative Law Judge employed by the Hearings Division of the Workers' Compensation Board.

(2) "Administrator" means the administrator of the Workers' Compensation Division or designated representatives of the director of the Department of Consumer and Business Services for administration of the Workers' Compensation Division, ORS Chapter 656 and OAR Chapter 436.

(3) "Board" means the Workers' Compensation Board.

(4) "Contested case" means a proceeding as defined in ORS 183.310(2).

(5) "Department" means the Department of Consumer and Business Services, the director and all employees.

(6) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(7) "Filing" of a hearing request means properly mailed, faxed, or physically delivered.

(8) "Final order" means either (1) a proposed and final order of an ALJ to which no timely exceptions or director notice of intent to review are filed or, (2) an order of the director's designee, the WCD.

(9) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(10) "Nonsubjectivity determination" means a determination by the Compliance Section that a worker is not a subject worker and, therefore, the alleged employer is not a subject employer.

(11) "Party" means an alleged worker, an alleged employer, or any other person otherwise provided by statute or these rules to participate in the hearing or proceedings.

(12) "Proposed and final order" means an order of an ALJ on behalf of the director, subject to timely filing of exceptions or director notice of intent to review.

(13) "Service" of a nonsubjectivity determination means delivery of the determination by certified mail to the last known mailing address of the alleged worker or in any manner provided by Oregon Rules of Civil Procedure 7 D.

(14) "WCD" means the Workers' Compensation Division of the Department of Consumer and Business Services.

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(15) The other words and phrases used in OAR 436-002 have the same meaning as given in ORS 183.310.]

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.704(2), ORS 183.310 through 183.550

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0010 Delegation of Authority

[Pursuant to ORS 656.704(2) and ORS 656.726, the director hereby delegates to the Hearings Division the authority to conduct hearings on behalf of the director in cases concerning a worker's challenge of a nonsubjectivity determination. For purposes of such hearings, an ALJ employed by the Hearings Division shall be considered a presiding officer with authority to issue a proposed and final order on behalf of the director pursuant to the Administrative Procedures Act.]

Stat. Auth.: ORS 656.704(2),656.726(3)

Stats. Implemented: ORS 656.704(2), ORS 183.310 through 183.550

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0015 Rules of Evidence and Procedure

[Hearings regarding nonsubjectivity determinations shall be governed by the rules of procedure and evidence governing hearings held by the Hearings Division as set forth in OAR Chapter 438, Divisions 005, 006, 007, and 009, except where those procedures are inconsistent with these rules, ORS Chapter 183, or other applicable statutes.]

Stat. Auth.: ORS 656.704(2),656.726(3)

Stats. Implemented: ORS 656.704(2), ORS 183.310 through 183.550

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0020 Designation of Proposed and Final Order

[Pursuant to these rules, an order issued by the ALJ on behalf of the director is a proposed and final order subject to revision by the director's designee, the WCD.]

Stat. Auth.: ORS 656.726(3), 656.704(2))

Stats. Implemented: ORS 656.704(2) and 656.447

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0025 Role of the Workers' Compensation Division

(1) In any proceeding under these rules, the director's designee, the WCD is entitled to notice of all related matters and copies of all related documents. In addition, the WCD is entitled to present evidence, testimony, and argument.

(2) The director's designee, the WCD, may appear and be represented by a contested case representative, assistant attorney general or special assistant attorney general as authorized by the Department of Justice. When the WCD is represented by a contested case representative, the Department of Justice shall be allowed reasonable opportunity to make legal argument on behalf of the WCD.

(3) In any proceeding where the director has chosen to be represented, the director's representative shall be served with notice of hearing and all documents provided to and by the parties.]

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 180.220(2), 180.235, 183.450(7), and 656.704(2)

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
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436-002-0030 Consolidation

[(1) The ALJ shall have discretion to consolidate hearing requests regarding nonsubjectivity determinations with compensability and/or responsibility issues involving the same claimant.

(2) The ALJ's decision regarding nonsubjectivity determinations shall be issued as a separate proposed and final order when the matter is decided in a consolidated hearing.]

Stat Auth.: ORS 656.726(3), 656.704(2)

Stats. Implemented: ORS 183.310 through 183.508 and 656.704(2)

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0035 Filing of Request For Hearing

[(1) Requests for hearing shall be filed with the director's designee, the WCD, within 30 days from the date of service of the WCD nonsubjectivity determination. Upon receipt of a request for hearing, the WCD will forward a copy of the request to the Hearings Division. The Hearings Division shall docket the case for hearing and shall advise the WCD regularly as to the status of the case, including date of hearing, any motions filed, and issuance of the proposed and final order. The Hearings Division shall copy the WCD with any notices or orders which the Hearings Division sends to the parties in the case.

(2) Hearing requests shall be filed at:

**Department of Consumer and Business Services
Workers' Compensation Division, Policy Section
350 Winter Street NE, Rm. 330
Salem, Oregon 97310
Fax No. (503) 947-7514**

(3) All proceedings before the Hearings Division under these rules shall be captioned as follows:

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION BOARD
HEARINGS DIVISION**

"In the Matter of the Nonsubjectivity Determination of:"

(4) Exceptions to a proposed and final order before the WCD, under these rules, shall be captioned as follows:

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

"In the Matter of the Nonsubjectivity Determination of:"]

Stat Auth.: ORS 656.726(3)

Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0039 Compulsory Joinder

[In any hearing pursuant to these rules where any insurance carrier is alleged to have contracted to provide the alleged employer with workers' compensation insurance covering the date of injury, the ALJ shall join such insurance carrier as a necessary party to the hearing and shall serve the carrier, at least 30 days prior to such hearing, with notice thereof.]

Stat Auth.: ORS 656.726(3)

Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)

Hist: Filed 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0040 Proposed and Final Orders, Filing Exceptions

[(1) A proposed and final order issued by the ALJ under these rules shall:

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- (a) comply with all of the requirements prescribed in ORS 183.470;
- (b) state the date the order was mailed to the parties, the WCD, and their representatives;
- (c) contain the following notice:

Notice of Review and Appeal Rights

As provided in ORS 183.460, the parties are entitled to file written exceptions, including argument, to this Proposed and Final Order. The exceptions must be served on the parties and filed with the Administrator of the Workers' Compensation Division at the address set forth below within 30 days following the date of service of this order. Written responses to exceptions must be filed within 20 days of service of the exceptions. Replies, if desired, must be filed within 10 days of service of the response.

If no exceptions are filed, this order shall become final upon expiration of 30 days following the date of service on the parties.

After this order becomes final, you are entitled to judicial review pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition with the Court of Appeals within 60 days from the date that this order becomes final.

Mail any exceptions and a copy of any petition for judicial review to:

**Hearings Unit, Administrator's Office
Workers' Compensation Division
Department of Consumer and Business Services
350 Winter Street NE, Rm. 330
Salem, Oregon 97310**

(2) Except as otherwise provided in these rules, if no exceptions are filed within 30 days after the date of service of the order, the proposed and final order becomes a final order. After the order becomes a final order, any party aggrieved by the order has 60 days to appeal the order to the Court of Appeals pursuant to these rules and ORS 183.480.

(3) The director's designee, the WCD, may give notice of intent to review within 30 days of the date of service of the proposed and final order.

(4) After completion of the director's review of exceptions or director's notice of intent to review, the director's designee, the WCD, shall issue a final order.

(5) "Date of service" means the date of mailing or delivery.]

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99

436-002-0045 Final Orders

[(1) Final orders issued under these rules shall comply with all of the requirements prescribed in ORS 183.470.

(2) The date of service of the order to the parties shall be specified in writing and be part of or be attached to the order.

(3) Review of final orders shall be pursuant to ORS 183.480 et. seq.]

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)

Hist: Filed 7/31/97 as WCD Admin. Order 97-059, (Temp.) eff. 8/1/97
Amended 01/26/98 as WCD Admin. Order 98-053, eff. 01/27/98
Repealed 12/21/99 as WCD Admin Order 99-062, eff. 12/21/99