

EXHIBIT "A"

**CHAPTER 436
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
DIVISION 035**

DISABILITY RATING STANDARDS

Temporary Rule Promulgation For Individual Claims

436-035-0500 (1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases pursuant to ORS 656.726(4)(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(4)(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 436-001-0000(2).

A92-9513 Following a sub-total amputation of the left index and middle fingers, the worker experiences cold intolerance at temperatures less than 55 degrees Fahrenheit. The Director assigns a value of 63% for the left index finger and 63% of the left middle finger for cold intolerance. The worker experiences medial and lateral instability of the distal interphalangeal joint of the left middle finger. The Director assigns an impairment value of 9% for joint instability of the left middle finger. These values shall be combined with any other applicable impairment values for the left index and left middle fingers, respectively. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A92-9513.

B92-8683 This worker sustained a laceration to the left great toe resulting in damage to the extensor tendon of the interphalangeal joint causing an extension lag. This extension lag results in a reduction in plantar flexion. The standards do not provide a value for the worker's lack of plantar flexion measured at -30 degrees (extension lag) equaling zero degrees of active plantar flexion. See OAR 436-035-0150(1). The value for zero degrees of retained plantar flexion is equal to 45% pursuant to OAR 436-035-0150(1). The Director therefore, assigns an impairment value of 45% for plantar flexion of the left great toe, interphalangeal joint. This value shall be combined with any other applicable impairment values for the left great toe. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. B92-8683.

G91-7494 This worker experienced a malunion of the right lower leg with 10 degrees of external rotatory malalignment following fractures of the tibia and fibula. The malalignment affects the function of the entire leg. The current standards do not address this malalignment. The Director assigns an impairment value of 17% of the right leg. This value shall be combined with any other

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ratable impairment findings. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G91-7494.

G91-9214 Following crush and laceration type injury to the right index finger, the worker experiences cold intolerance at temperatures less than 40 degrees Fahrenheit. The Director assigns a value of 15% for the right index finger for cold intolerance. This value shall be combined with any other applicable impairment values for the right index finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G91-9214.

H86-8025 Following a circular saw laceration to the left thumb and thenar eminence, this worker experiences cold intolerance at temperatures at or below 50 degrees Fahrenheit in the left thumb. The Director assigns a value of 35% for the left thumb for cold intolerance. This value shall be combined with any other applicable impairment values for the left thumb and then converted to the left hand. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. H86-8025.

A92-0994 This worker sustained an injury to the right ankle which resulted in the inability to reach the neutral (zero degrees) ankle position. This ultimately results in a reduction in plantar flexion. The standards do not provide a value for the worker's measured plantar flexion measured from -6 degrees to 35 degrees equaling 29 degrees of retained plantar flexion. The Director therefore, assigns an impairment value of 4.3% for plantar flexion of the right ankle. See OAR 436-035-0190(8). This value shall be added to appropriate right ankle and subtalar loss of range of motion for the total loss of motion and then combined with any other applicable impairment values for the right ankle. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A92-0994.

B84-4216 As a result of the accepted conditions and reparative surgery, the worker is unable to adduct her right shoulder to the neutral position resulting in a loss of abduction. Abduction measured from -7 degrees to 78 degrees equaling 71 degrees of abduction yields a 3.0% impairment value. See OAR 436-035-0330(5). The Director adopts the value of 3.0% for loss of abduction of the right shoulder. This value shall be added to any other right shoulder loss of range of motion values and then combined with any other applicable shoulder findings. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. B84-4216.

D54-6838 This worker sustained a right ankle sprain which went on to develop post traumatic arthritis and non-union of the subtalar joint following two attempts at arthrodesis. The worker is unable to reach neutral (zero degrees) ankle position. This ultimately results in a reduction in plantar flexion. The standards do not provide a value for the worker's plantar flexion measured from -15 degrees to 43 degrees (maximum threshold level is 40) equaling 25 degrees (40-15 degrees) of plantar flexion. See OAR 436-035-0190(8). The value for 25 degrees of retained plantar flexion is equal to 5.5% pursuant to OAR 436-035-0190(8). The Director therefore, assigns an impairment value of 5.5% for plantar flexion of the right ankle. This value shall be added with any other applicable range of motion values for the total loss of motion in the right foot/ankle. In addition, the worker has post-traumatic subtalar arthritis in the right ankle. The standards do not address arthritis in the ankle. Therefore, the Director adopts the criteria as set forth in OAR 436-035-0230(13) for the ankle. The Director finds the worker's post-traumatic arthritis did not meet the criterion for "extensive arthritis," and

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therefore, assigns an impairment value of zero percent. See OAR 436-035-0007(26)(b). Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D54-6838.

D84-6587 Prior to becoming medically stationary regarding his accepted conditions, this worker dies as a result of causes unrelated to his accepted compensable injury. The Court of Appeals in Shaw v. Steinfelds Products, Inc., 160 Or App 77 (1999) ruled former OAR 436-035-0007(23)(b)(A) was inconsistent with ORS 656.218. Since the current OAR 436-035-0007 (24)(b)(A) is substantially the same as the former rule, the ruling by the Court applies. A medical arbiter panel opined expected permanent impairment for this worker would have included loss of range of motion in the right subtalar joint, significant loss of ability to repetitively use the right foot/ankle, and permanent preclusion of standing/walking for greater than two hours, cumulatively, in an eight hour period. In determining this worker's residual impairment, as if he had survived and become medically stationary, the Director assigns an impairment value of 20% for the right foot. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D84-6587.

D87-4580 This worker has erectile dysfunction as a result of the accepted L5-S1 disc herniation which is not addressed by the standards. The Director adopts a value of 20% for the penile (erectile) dysfunction (inability to maintain an erection). This value shall be combined with any other applicable impairment values in the unscheduled injured body parts/areas. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D87-4580.

E91-0653 This worker has permanent damage of the thumb and forearm due to impairment in the flexor pollicis longus muscle and the flexor digitorum profundus muscle bellies resulting in a loss of strength. These muscles are innervated by the median and ulnar nerves. The Director assigns the loss of strength for these muscles a value of 11% of the left forearm. This impairment is combined with any other impairment ratable under the current standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. E91-0653

F89-4935 This worker sustained a crush injury to the right foot resulting in an inability to reach neutral (zero degrees) toe position at the metatarsophalangeal (MTP) joint of the 2nd and 3rd toes. The standards do not provide a value for the worker's loss of 5 degrees of dorsiflexion. See OAR 436-035-0160(5). The Director assigns an impairment value of 3.5% for dorsiflexion of the right 2nd toe MTP joint and 3.5% for the right 3rd toe MTP joint. Each value shall be added to any other loss of motion in the MTP joint of the 2nd and 3rd right toes, respectively, and then combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies on to WCD file no. F89-4935.

G85-3029 This worker sustained multiple injuries to both lower extremities resulting in an inability to reach neutral (zero degrees) toe position at the metatarsophalangeal (MTP) joint of the left 2nd, 3rd, 4th, and 5th toes. The toes are in extension contraction position. The standards do not provide a value for the worker's loss of dorsiflexion. See OAR 436-035-0160(5). The Director therefore, assigns an impairment value of 10.5% for dorsiflexion of the left 2nd toe, 14.0% for dorsiflexion of the left 3rd toe, 21% for dorsiflexion of the left 4th toe, and 21% for dorsiflexion of the left 5th toe. Each toe value shall be added to

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any other loss of motion in the corresponding MTP joint of each involved toe. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G85-3029.

G87-5149 This worker experienced a malalignment of the right lower leg of 8 degrees (varus deformity) following fractures of the tibia and fibula. The current standards do not address this malalignment. Therefore, the Director establishes the minimum threshold impairment level for malalignment or angulation of the tibial shaft to be 10 degrees. In this case, the worker has not met this minimum threshold impairment level and the Director assigns an impairment value of zero percent of the right leg for the malalignment of the tibial shaft. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G87-5149.

G93-3700 Following a laceration and the development of infection resulting in significant necrosis of the left index finger, the worker lost 60% of the volume of the distal phalanx. The standards do not address this disability. The Director finds this loss of function similar to the loss of function experienced with amputation or digit resection, and assigns an impairment value of 10% for the left index finger. See OAR 436-035-0030(6). This value shall be combined with any other applicable impairment values for the index finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G93-3700.

H88-4596 This worker sustained an injury to his left foot resulting in a Lisfranc dislocation fracture. The worker lacks 10 degrees of arc of motion in the dorsiflexion of the 2nd toe metatarsophalangeal (MTP) joint. The Director assigns an impairment value of 7% for the 2nd toe MTP joint. See OAR 436-035-0160(5). This value is added to the value for decreased plantar flexion for the total loss of motion in the left 2nd toe MTP joint. In addition, the worker has post-traumatic arthritis in the left ankle. The standards do not address arthritis in the ankle. Therefore, the Director adopts the criteria as set forth in OAR 436-035-0230(13) for the ankle. The Director finds the worker's post-traumatic arthritis did not meet the criterion for "extensive arthritis," and therefore, assigns an impairment value of zero percent. See OAR 436-035-0007(26)(b). Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. H88-4596.

H93-6091 Following a new fracture of a previously fractured left thumb, there was atrophy of the distal phalanx fleshy pad due to vascular damage. The standards do not address this disability. The Director finds this loss of function similar to the loss of function experienced with amputation or digit resection of the fleshy pad and assigns an impairment value of 10% for loss of the fleshy pad of the left thumb. See OAR 436-035-0030(5) and OAR 436-035-0110(6)(f). This value shall be combined with any other applicable impairment values for the left thumb. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. H93-6091.

Stat Auth: ORS 656.726(4)

Stat Impltd: ORS 656.268(6); ORS 656.726(4)(f)(C)

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Amended 7/15/94 as WCD Admin. Order 94-056, eff. 7/15/94 (Temp) (C43-2644) (C50-4886) (D61-6586) (E38-6617) (E51-8953) (G37-3015)

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Amended 11/14/94 as WCD Admin. Order 94-061, eff. 11/14/94 (Temp) (A56-6922) (A68-8532) (B67-0517) (B69-2864) (C66-4016) (D69-1873) (D71-7397) (G68-3895)

Amended 01/26/95 as WCD Admin. Order 95-050, eff. 01/26/95 (Temp) (C51-2235) (C51-9086) (D59-9600) (D69-3198) (E74-0161) (F68-5951) (G55-5440) (G69-3682) (I75-8738)

Amended 03/02/95 as WCD Admin. Order 95-051, eff. 03/02/95 (Temp) (A69-9328) (I73-9896)

Amended 04/13/95 as WCD Admin. Order 95-052, eff. 04/13/95 (Temp) (A32-5947) (C54-7329) (F62-2845)

Amended 05/31/95 as WCD Admin. Order 95-053, eff. 05/31/95 (Temp) (A66-7308) (H69-9099)

Amended 07/11/95 as WCD Admin. Order 95-055, eff. 07/11/95 (Temp) (A55-1299) (A68-5802) (B75-0788) (C72-7919) (E47-5755) (F72-6107) (G52-8324)

Amended 10/05/95 as WCD Admin. Order 95-064, eff. 10/05/95 (Temp) (A72-7487) (B67-2012) (B75-5795) (G55-8472) (H77-3065)

Amended 11/02/95 as WCD Admin. Order 95-067, eff. 11/02/95 (Temp) (C77-9244) (F74-8492) (G72-5640) (I59-0763)

Amended 12/07/95 as WCD Admin. Order 95-072, eff. 12/07/95 (Temp) (A79-2845) (B78-6344) (D67-0149) (D75-7661) (F72-4844) (H75-1172)

Amended 02/01/96 as WCD Admin. Order 96-054, eff. 02/01/96 (Temp) (A74-3939) (A79-7277) (C76-4285) (E71-9980) (E74-3188) (F54-7926) (F69-1607) (F70-0225) (F77-9704) (I75-7201)

Amended 03/20/96 as WCD Admin. Order 96-058, eff. 03/20/96 (Temp) (A76-0401) (B74-7423) (B76-5803) (E73-6324) (F72-3750) (G41-0094) (G71-9125)

Amended 07/03/96 as WCD Admin. Order 96-063, eff. 07/03/96 (Temp) (B72-2366) (C69-5254) (C75-2485) (C75-4352) (D58-5410) (E60-2070) (E67-3492) (E75-7774) (E76-8051) (E78-0741) (F41-3719) (F71-5463) (G79-8212) (H66-7437) (H67-5437) (H74-6802) (I58-7732)

Amended 08/07/96 as WCD Admin. Order 96-067, eff. 08/07/96 (Temp) (B81-6992) (E73-5763) (F77-1642) (F78-3857) (F79-7581) (G77-2943) (I77-7807)

Amended 10/31/96 as WCD Admin. Order 96-071, eff. 10/31/96 (Temp) (A75-6135) (A81-4630) (B70-9869) (C78-2717) (D75-4912) (D79-9425) (E76-7631) (E80-1282) (F74-8492) (G72-8281) (I61-2741) (I79-2365) (I80-9262)

Amended 01/15/97 as WCD Admin. Order 97-050, eff. 01/15/97 (Temp) (A82-2866) (B77-8377) (D81-7448) (I82-0858)

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Amended 09/09/97 as WCD Admin. Order 97-060, eff. 09/09/97 (Temp) (B85-1508) (E84-8454) (H78-6911) (I43-6347) (I82-6879)

Amended 03/31/98 as WCD Admin. Order 98-054, eff. 03/31/98 (Temp) (A83-5359) (A85-2018) (C81-9952) (E55-9496) (E72-7758) (F61-8155) (F83-7544) (F86-6621) (G32-9876) (G60-2516) (G74-2871) (G81-2430) (G83-2249) (G85-5641) (H81-4914) (I86-3008) (I86-9133)

Amended 7/13/98 as WCD Admin. Order 98-056, eff. 7/15/98 (Temp) (A83-5562) (A86-1481) (B86-5204) (E84-8500) (E85-7684) (F79-5346) (G69-1876) (G86-8605) (G87-7426) (G88-7067) (H87-5177) (I82-2391)

Amended 10/15/98 as WCD Admin. Order 98-058, eff. 10/15/98 (Temp) (A83-2469) (A83-2921) (A85-8493) (A86-6157) (A86-7591) (A86-7963) (A87-9961) (B89-7196) (D75-3984) (D83-4235) (F87-2368) (I86-0887)

Amended 01/11/99 as WCD Admin. Order 99-050, eff. 01/15/99 (Temp) (A81-8005) (A84-0262) (A85-3518) (A86-8939) (B88-3694) (D88-4287) (D89-0679) (F83-8609) (F85-3096) (H91-0152) (I84-4190)

Amended 04/13/99 as WCD Admin. Order 99-053, eff. 04/15/99 (Temp) (B82-5920) (B83-1332) (D87-5966) (D90-9018) (D91-3299) (E89-7114) (F45-1513) (H86-4536) (H91-8266) (I86-3678) (I86-6219)

Amended 07/15/99 as WCD Admin. Order 99-058, eff. 07/15/99 (Temp) (A88-7382) (A89-0780) (A91-0674) (C91-0512) (D81-0814) (D87-3420) (E90-7599) (F87-8389) (G76-8267) (G81-2920) (G89-0989) (I87-8203) (I90-5353) (I90-9959)

Amended 10/15/99 as WCD Admin. Order 99-060, eff. 10/15/99 (Temp) (A84-7550) (A89-0685) (A89-6055) (B61-4705) (C87-7555) (C92-3595) (F77-3561) (G84-8924) (G90-0827)

Amended 01/14/00 as WCD Admin. Order 00-050, eff. 01/14/00 (Temp) (A92-9513) (B92-8683) (G91-7494) (G91-9214) (H86-8025)

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