

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(3).

A92-0994 This worker sustained an injury to the right ankle which resulted in the inability to reach the neutral or zero 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 or zero 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

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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 definitive initial criterion for the minimum threshold of "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. 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 been in terms of 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 or zero 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 or zero 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 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

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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 newly established 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 definitive initial criterion for the minimum threshold of "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.

A87-9693 This worker's accepted post-traumatic headache condition has reached a level of severity which results in nausea, inability to take prescription medication, and permanent work restrictions resulting in a loss of earning capacity. The Director assigns an impairment value of 30% for the headaches as a result of the head injury. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A87-9693.

A91-6214 This worker sustained an injury to the left wrist which resulted in the inability to reach the neutral or zero wrist position in radial deviation. This ultimately results in a reduction in ulnar deviation. The Standards do not provide a value for the worker's ulnar deviation measured from -3 degrees to 35 degrees equaling 32 degrees of retained ulnar deviation. See OAR 436-035-0080(5). However, the value for 32 degrees of ulnar deviation does not meet the minimum threshold to receive a value pursuant to OAR 436-035-0080(7) and OAR 436-035-0007(26). The Director finds that while loss of radial deviation of -3 degrees is not covered in the Standards, the value for the resulting decrease in ulnar deviation of 32 degrees does not meet the minimum threshold to receive an impairment value. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A91-6214.

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A94-0992 Following a fan laceration to the right index finger, this worker experiences cold intolerance at temperatures at or below 50 degrees Fahrenheit in the right index finger. The Director assigns a value of 35% 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. A94-0992.

B87-3845 This worker has impotence and infertility secondary to the accepted spinal cord injury and a displaced healed right sacroiliac joint which are not addressed by the Standards. The Director adopts a value of 20% for the sexual dysfunction and a value of 10% for the displaced right sacroiliac fracture. These values shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. B87-3845.

B94-3184 Following injury to the right hand and ulnar digital nerve repair of the right ring finger, the worker experiences hypersensitivity of the finger. The Director assigns a value of 10% for hypersensitivity of the ulnar aspect of the right ring finger. This value shall be combined with any other applicable impairment values for the involved right ring finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. B94-3184.

D87-6070 Due to a laceration of the right forearm, this worker experiences cold intolerance at or below 50 degrees Fahrenheit in the right hand/forearm. The Director assigns a value of 35% for the right forearm for cold intolerance. This value shall be combined with any other applicable impairment values for the right forearm. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D87-6070.

D91-9673 This worker sustained a left ankle and foot injury requiring an open reduction and bone graft for non-union of a fractured fifth metatarsal. The worker is unable to reach neutral or zero ankle position in dorsiflexion. This ultimately results in a reduction in plantar flexion. The Standards do not provide a value for the worker's plantar flexion measured from -7 degrees to 42 degrees (maximum threshold level is 40 degrees) equaling 33 degrees of (40-7) of plantar flexion. See OAR 436-035-0007(26) and OAR 436-035-0190(8). The value for 33 degrees of retained plantar flexion is equal to 2.8% pursuant to OAR 436-035-0190(8). The Director, therefore, assigns an impairment value of 2.8% for plantar flexion of the left ankle. This value shall be added with any other applicable range of motion values for the total loss of motion in the left foot/ankle. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D91-9673.

F91-6225 As a result of the accepted condition and reparative surgery, the worker is unable to extend her left hip to the neutral position resulting in a loss of flexion. Flexion measured from -10 degrees to 95 degrees equals 85 degrees yielding a 3.0% impairment value. See OAR 436-035-0220(6). The Director adopts the value of 3.0% for loss of flexion of the left hip. This value shall be added to any other left hip loss of ranges of motion values and then combined with any other applicable hip findings. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. F91-6225.

H87-1056 Following a severe crush injury to the right middle and ring fingers, this worker experiences cold intolerance at temperatures at or below 60 degrees Fahrenheit in the right middle and ring fingers. The Director assigns a value of 88% for the right middle finger and 88% of the right ring finger for cold intolerance. The Director adopts a value of 10% for the right middle finger as a result of scarring causing the middle finger to cross underneath the ring finger producing a loss of use or function when flexing the fingers. The worker has a dorsal angulation of the right ring finger. The Director assigns an impairment value of 10% for dorsal angulation of

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the right ring finger. These values shall be combined with any other applicable impairment values for the right middle and right ring finger and then converted to the right hand. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. H87-1056.

H93-2234 This worker sustained an injury to the right ankle which resulted in the inability to reach the neutral or zero 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 -3 degrees to 38 degrees equaling 35 degrees of retained plantar flexion. The Director therefore assigns an impairment value of 2.0% for plantar flexion of the right ankle. See OAR 436-035-0190(8). This value shall be added to any other appropriate right ankle and subtalar impairment values for loss of range of motion to obtain 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. H93-2234.

H93-3196 Following a crush injury to the left index finger, this worker experiences cold intolerance at temperatures at or below 55 degrees Fahrenheit in the left index finger. The Director assigns a value of 63% for the left index finger for cold intolerance. This value shall be combined with any other applicable impairment values for the left index finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. H93-3196.

I41-4835 This worker has residual mild instability of the metacarpophalangeal (MP) joint of the left thumb due to the accepted left thumb fracture with repair of the ulnar collateral ligament. This impairment is not addressed by the Standards. The Director assigns a value of 2.0% for mild metacarpophalangeal joint instability of the left thumb. This value shall be combined with any other applicable impairment findings for the left thumb. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. I41-4835.

I95-6917 This worker sustained a crush like laceration of the right long finger. Subsequently, the worker developed severe hypersensitivity at the distal tip of the finger resulting in a significant loss of use or function. The Director finds the loss of use or function due to marked hypersensitivity similar to the loss of sensation ("total loss") of 1/2 the distal phalanx of the right long finger. The Director assigns an impairment value of 15% for the right long finger. See OAR 436-035-0110(1). This impairment value is combined with any other ratable impairment under the Standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. I95-6917.

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)
Amended 8/31/94 as WCD Admin. Order 94-057, eff. 8/31/94 (Temp) (A66-7148) (C66-9882) (F67-9790) (G37-9847) (G66-0945) (G68-2891) (I66-9214) (I67-8572)
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)
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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)

Amended 01/08/97 as WCD Admin. Order 96-072, eff. 02/15/97

Amended 03/12/97 as WCD Admin. Order 97-052, eff. 03/13/97 (Temp) (C84-3004) (D82-9639) (G83-6389)

Amended 05/14/97 as WCD Admin. Order 97-054, eff. 05/14/97 (Temp) (D29-9140)

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)

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Amended 07/13/00 as WCD Admin. Order 00-056, eff. 7/14/00 (Temp) (A87-9693) (A91-6214) (A94-0992) (B87-3845) (B94-3184) (D87-6070) (D91-9673) (F91-6225) (H87-1056) (H93-2234) (H93-3196) (I41-4835) (I95-6917)