

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

**In the Matter of the Amendment of OAR Chapter 436,)
Workers' Compensation Division, Division 035,)
Disability Ratings Standards, 436-035-0500,) **ORDER OF ADOPTION**
Temporary Rule Promulgation for Individual Claims,) **OF TEMPORARY RULES**
Subsections CAR7960 and DAU4251)**

The Director of the Department of Consumer and Business Services, pursuant to the rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335(5), temporarily amends OAR Chapter 436, Division 035, Disability Ratings Standards.

These rules are being adopted as Temporary Rules, as provided by ORS 183.335(5) and (6), without prior notice, and ORS 656.726(4)(f)(D) which provides for adoption of a temporary rule to rate a worker's disability which is not adequately addressed by the standards.

EXPLANATION

In Workers' Compensation Division (WCD) Claim in WCD No. CAR-7960, the worker suffered an injury to the right shoulder resulting in the inability to abduct the shoulder to measure internal and external rotation. The Standards do not address how to value this range of motion measured in a non-standard position. OAR 436-035-0500, CAR-7960, as adopted in this Order of Adoption of Temporary Rules, addresses this worker's impairment and provides benefits for permanent disability resulting from the accepted condition.

In WCD No. DAU-4251, the worker experiences a loss of function of the right ilioinguinal nerve resulting in persisting paresthesia and limitation in the ability to perform repetitive heavy lifting. The Standards do not address this loss of function. OAR 436-035-0500, DAU-4251, as adopted in this Order of Adoption of Temporary Rules, addresses this worker's impairment and provides benefits for permanent disability resulting from the accepted condition.

FINDINGS

Failure to act promptly will result in serious prejudice to the public interest.

IT IS THEREFORE ORDERED:

- (1) Temporary amendments to OAR Chapter 436, Division 035, Disability Rating Standards, are attached as Exhibit "A," incorporated by reference, and adopted on this 29th day of October, 2007, to be effective **October 29, 2007 through April 25, 2008.**
- (2) The attached Statement of Need and Justification is incorporated by reference.
- (3) The amended rules, the Certificate and Order for Filing, and the Statement of Need and Justification will be filed with the Secretary of State.

Order of Adoption, OAR 436-035-0500, Disability Ratings Standards

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- (4) The amended rules, with marked revisions, will be filed with Legislative Counsel, pursuant to ORS 183.715 within ten days after filing with the Secretary of State.

Dated this 29th day of October 2007.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Pursuant to ADA Guidelines, alternate format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Attachments

Distribution: TS, TT, Affected Claimants, Insurers, and Representatives

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 DISABILITY RATING STANDARDS
 TEMPORARY RULE PROMULGATION FOR INDIVIDUAL CLAIMS

EXHIBIT "A"
 OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 035

436-035-0500 Temporary Rule Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases under ORS 656.726(4)(f) 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 addressed in the disability standards.

(2) Temporary rules promulgated under ORS 656.726(4)(f) 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 under 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).

AAP-6549 As a result of the accepted bilateral costochondritis the worker experiences a loss of function due to permanent damage to the chest with work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury. The standards do not address this loss of function in the chest. The Director finds this loss of function similar to the loss experienced with permanent damage to the abdominal wall and resulting work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury and assigns an impairment value of 5% of the chest. See OAR 436-035-0375. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. AAP-6549.

CAR-7960 As a result of the accepted right shoulder strain and rotator cuff tear the worker is unable to abduct his right shoulder to 90 degrees in order to measure external rotation and internal rotation as required by the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Revised 1990 referenced in OAR 436-035-0011(10). The Director finds measuring the range of motion at the side results in similar values in external rotation and internal rotation as when measured in 90 degrees abduction and assigns an impairment value of 1% for external rotation and 2.5% for internal rotation of the right shoulder. See OAR 436-035-0330(9) and (11). These values shall be added to any other range of motion findings in the right shoulder and combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. CAR-7960.

DAU-4251 As a result of the accepted right inguinal hernia the worker experiences a loss of function due to persistent paresthesia of the ilioinguinal nerve resulting in limitations in the ability to perform repetitive heavy lifting. The standards do not address this loss of function in the abdomen. The Director finds this loss of function similar to the loss experienced with permanent damage to the abdominal wall with resulting limitations in lifting and assigns an impairment value of 5% of the right ilioinguinal nerve in the abdomen. See OAR 436-035-0375. This value shall be combined with any other applicable

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
DISABILITY RATING STANDARDS
TEMPORARY RULE PROMULGATION FOR INDIVIDUAL CLAIMS**

impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. DAU-4251.

Stat Auth: ORS 656.726(4)
Stat Impltd: ORS 656.268(6); ORS 656.726(4)(f)(C)
Hist: Filed 12/31/92 as Admin. Order 18-1992, eff. 12/31/92 (Temp) (A58-7576) (D60-5352)
Amended 4/28/93 as WCD Admin. Order 93-051, eff. 4/28/93 (Temp) (A58-2159) (B59-4533) (E61-4228) (I59-2031)
Filed 6/29/93 as Admin. Order 93-053, eff. 6/29/93
Amended 9/2/93 as WCD Admin. Order 93-054, eff. 9/2/93 (Temp) (I64-3064)
Amended 10/22/93 as WCD Admin. Order 93-055, eff. 10/22/93 (Temp) (A61-7196) (F60-7468)
Amended 5/26/94 as WCD Admin. Order 94-053, eff. 5/26/94 (Temp) (A64-0903) (B33-4465) (B52-7039) (B63-9980) (C64-7847) (D50-0623) (D60-2551) (G45-4281) (I59-4285)
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)
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)
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)
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)
Amended 04/13/00 as WCD Admin. Order 00-054, eff. 04/14/00 (Temp) (A92-0994) (B84-4216) (D54-6838) (D84-6587) (D87-4580) (E91-0653) (F89-4935) (G85-3029) (G87-5149) (G93-3700) (H88-4596) (H93-6091)
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)
Amended 10/13/00 as WCD Admin. Order 00-057, eff. 10/13/00 (Temp) (A95-0778) (A95-1645) (C92-4439) (C93-6258) (E91-8135) (E94-2036) (F93-6308) (H75-6914) (H92-7893) (H95-0015) (H95-3028)
Amended 01/12/01 as WCD Admin. Order 01-050, eff. 01/12/01 (Temp) (A51-3646) (A94-8686) (A96-7137) (E38-6617) (E91-1129) (E97-6899) (F95-1474) (G89-1516) (G91-0652) (H83-2574) (H96-0745) (H97-8463) (I94-6278) (I95-9534)
Amended 04/13/01 as WCD Admin. Order 01-052, eff. 04/13/01 (Temp) (A89-1510) (D98-5601) (E91-8215) (H94-8094) (I82-8270) (I95-4862)
Amended 07/13/01 as WCD Admin. Order 01-055, eff. 07/13/01 (Temp) (A95-9779) (A97-6962) (A99-7375) (C82-7198) (D78-1251) (D92-8385) (E94-4832) (E95-3421) (G95-9549) (G98-5992) (I94-6363) (I95-4150)
Amended 10/12/01 as WCD Admin. Order 01-059, eff. 10/12/01 (Temp) (A88-3505) (A94-7875) (D96-5976) (H27-1040)
Amended 1/14/02 as WCD Admin. Order 02-050, eff. 1/15/02 (Temp) (A86-5186) (A92-1955) (B92-5284) (B94-5965) (B99-2810) (C94-4437) (C94-6417) (D99-4441) (F91-6956) (F99-6321) (G88-7374) (G90-8668) (G98-7613) (H99-2218) (I90-2482)
Amended 4/12/02 as WCD Admin. Order 02-055, eff. 4/15/02 (Temp) (B98-4396) (C94-4084) (GAB-8958) (H99-4180) (H99-7843) (I95-8643)
Amended 7/12/02 as WCD Admin. Order 02-058, eff. 7/15/02 (Temp) (A98-3699) (A99-4990) (AAA-3578) (BAA-5736) (C98-7653) (CAB-4735) (D95-5595) (FAA-6263) (F98-7538) (HAA-2339) (I98-6486) (IAA-3456)
Amended 10/11/02 as WCD Admin. Order 02-062, eff. 10/15/02 (Temp) (A94-9455) (A98-1082) (BAA-4505) (EAA-6555) (G97-5865) (H98-7207) (I92-7577) (I95-6917)
Amended 1/14/03 as WCD Admin. Order 03-051, eff. 1/15/03 (Temp) (BAD-0991) (DAC-2018) (EAE-0535) (FAA-9983) (G93-5860) (IAC-5199)
Amended 1/14/03 as WCD Admin. Order 03-050, eff. 2-1-03; Amended 4/11/03 as WCD Admin. Order 03-054, eff. 4/15/03 (Temp) (AAB-9871) (BAD-2834) (BAD-5597) (E82-3081) (EAB-6007) (EAD-0843) (F98-7114) (FAA-9841) (G92-9449) (G94-9409) (HAC-1026) (HAD-6042)
Amended 7/14/03 as WCD Admin. Order 03-059, eff. 7/15/03 (Temp) (D90-4836) (FAC-7333)
Amended 1/21/04 as WCD Admin. Order 04-050, eff. 1/21/04 (Temp) (BAC-1977) (GAD-9630) (HAE-2463)
Amended 4/19/04 as WCD Admin. Order 04-058, eff. 4/19/04 (Temp) (AAG-7056) (EAG-5154)
Amended 7/15/04 as WCD Admin. Order 04-061, eff. 7/15/04 (Temp) (GAH-6929) (HAG-9396)
Amended 5/16/05 as WCD Admin. Order 05-060, eff. 5/16/05 (Temp) (CAG-0633) (CAJ-3451) (FAE-4316)
Amended 7/14/06 as WCD Admin. Order 06-058, eff. 7/17/06 (Temp) (AAP-4748) (H99-0974)
Amended 6/27/07 as WCD Admin. Order 07-054, eff. 6/27/07 (Temp) (AAP-6549)
Amended 10/29/07 as WCD Admin. Order 07-069, eff. 10/29/07 (Temp) (CAR-7960) (DAU-4251)

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form

I certify that the attached copies* are true, full and correct copies of the
TEMPORARY Rule(s) adopted on

October 29, 2007 by the
Date prior to or same as filing date.

Department of Consumer and Business Services,
Workers' Compensation Division
Agency and Division

OAR 436-035
Administrative Rules Chapter No.

Fred Bruyns
Rules Coordinator

(503) 947-7717
Telephone

350 Winter Street NE, Rm 27; Salem, Oregon; PO Box 14480, Salem OR 97309-0405
Address

to become effective October 29, 2007 through April 25, 2008
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION:

Promulgation of temporary disability standards to address the impairment of individual injured workers

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

AMEND: 436-035-0500

ORS 656.726(4)
Statutory Authority:

ORS 183.335; OAR 137
Other Authority:

ORS 656.268(6); ORS 656.726(4)(f)(D)
Statutes being Implemented

RULE SUMMARY

Promulgation of temporary disability standards to address the impairment of an individual
injured worker in

WCD files CAR-7960 and DAU-4251.

/s/ John L. Shilts
Authorized Signer

10/29/07
Date

John L. Shilts, Administrator, Workers' Compensation Division
Printed name

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

