

DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
DISABILITY RATING STANDARDS

EXHIBIT "A"
TEMPORARY OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 35
EFFECTIVE JUNE 17, 1993
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436-35-003 Applicability of Rules

(1) These rules apply to the rating of permanent disability pursuant to chapter 656 and shall be applied to all claims closed on or after the effective date of these rules for workers medically stationary on or after July 1, 1990. For workers medically stationary prior to July 1, 1990, Administrative Order 6-1988 shall apply to the rating of permanent disability.

(2) For claims in which the worker was medically stationary after July 1, 1990 and a request for reconsideration has been made pursuant to ORS 656.268, disability rating standards in effect on the date of issuance of the Determination Order or Notice of Closure and any relevant temporary rules adopted pursuant to ORS 656.726(3)(f)(C) shall apply.

(3) The provisions of OAR 436-35-360(2) through (11) only apply to closing exams performed prior to October 1, 1991.

(4) Notwithstanding section (2) of this rule, the temporary rules contained in WCD Admin. Order 93-052 apply to all rating of permanent disability made on or after June 17, 1993.

Hist: Formerly OAR 436-30-003
Filed 6-3-87 as WCD Admin. Order 3-1988, eff. 7-1-88
Amended 12-21-88 as WCD Admin. Order 6-1988, eff. 1-1-89
Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, eff. 10-1-90
Amended 11-20-90 (temp) as WCD Admin. Order 20-1990 eff. 11-20-90
Amended 3-26-91 as WCD Admin. Order 2-1991, eff. 4-1-91
Amended 9-13-91 (temp) as WCD Admin. Order 7-1991, eff. 10-1-91
Amended 2-14-92 as WCD Admin. Order 6-1992, eff. 3-13-92.
Amended 6-1-92 as WCD Admin. Order 14-1992, eff. 6-1-92 (temp)
Amended 11-20-92 as WCD Admin. Order 17-1992, eff. 11-27-92
Amended 6-17-93 as WCD Admin. Order 93-052, eff. 6-17-93 (temp)

436-35-280 Assembling the Factors Relating to Unscheduled Disability

(1) Determine the basic value which represents impairment, using OAR 436-35-320 through 436-35-440. There shall be no unscheduled disability if the injury did not result in

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impairment. **The factors of age, OAR 436-35-290; education, OAR 436-35-300; and adaptability, OAR 436-35-310, shall only be applied for those losses identified in ORS 656.214(5) and described in OAR 436-35-320 through 436-35-500.**

- (2) Determine the appropriate value for the age factor using OAR 436-35-290.
- (3) Determine the appropriate value for the education factor using OAR 436-35-300.
- (4) Add age and education values together.
- (5) Determine the appropriate value for the adaptability factor using OAR 436-35-310.
- (6) Multiply the result from step four by the value from step five.
- (7) Add the result from step six to the impairment value and round off the resulting value pursuant to 436-35-007(13). This represents the percentage of permanent unscheduled disability to be awarded.

Hist: Formerly OAR 436-30-390
 Filed 6-3-87 as WCD Admin. Order 3-1988, eff. 7-1-88
 Amended 12-21-88 as WCD Admin. Order 6-1988, eff. 1-1-89
 Amended 3-26-91 as WCD Admin. Order 2-1991, eff. 4-1-91
Amended 6-17-93 as WCD Admin. Order 93-052, eff. 6-17-93 (temp)

436-35-290 Age

- (1) The range of impact for the age factor is from 0 to +1. The impact is based on the worker's age at the time of determination.
- (2) For workers, age 40 and above [who do not have a physician's release to or have not returned to either their regular work or work requiring greater strength than the job at injury], the factor of age shall be given a value of + 1. For all other workers, a value of 0 shall be given.

Hist: Formerly OAR 436-30-400
 Filed 6-3-87 as WCD Admin. Order 3-1988, eff. 7-1-88
 Amended 12-21-88 as WCD Admin. Order 6-1988, eff. 1-1-89
 Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, eff. 10-1-90
 Amended 3-26-91 as WCD Admin. Order 2-1991, eff. 4-1-91
Amended 6-17-93 as WCD Admin. Order 93-052, eff. 6-17-93 (temp)

436-35-300 Education

- (1) The range of impact for the factor of education shall be from 0 to +6.
- (2) [For workers who have a physician's release to or returned either to their regular work or work requiring greater strength, the factor of education shall be given a value of 0. For all other workers, the education factor is the sum of the values obtained pursuant to the following subsections of this rule.
- (3) A value of a worker's formal education is allowed as follows:
 - (a) For workers who have earned or acquired a high school diploma or GED certificate by the time of determination, a value of 0 shall be allowed. For purposes of this rule, a GED is a certificate issued by any certifying authority or its equivalent as referenced in the GED Examiner's Manual, Section 2, 1989 Revised.
 - (b) For workers who have not earned or acquired a high school diploma or a GED certificate by the time of determination, a value of +1 shall be allowed.
- (4) **(3)** A value for a worker's skills is allowed based on the jobs the worker has

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performed during the ten years preceding the time of determination as follows:

(a) Each job shall be identified by the DOT code which most accurately describes its duties.

(b) All jobs identified by the DOT assign a Specific Vocational Preparation (SVP) time needed to learn the techniques, acquire information and develop the facility necessary for average performance in a specific job-worker situation. SVP's range from 1 (lowest) to 9.

(c) An individual has met the SVP for an occupation after remaining in the field long enough to meet the training/skill requirements of that occupation through on-the-job, vocational or apprentice training. A worker has also met the SVP by successfully performing the duties and tasks in other similar jobs which have a higher SVP.

(d) A worker is presumed to have met the SVP for an occupation with a SVP of 5 or higher after performing six months or more with one employer in that job. A worker performing a job with a SVP of 1-4 is presumed to meet the SVP after completing employment with one or more employers in that job classification for the maximum period specified in the table below.

(e) The SVP for each job is obtained from the DOT. Determine the highest SVP met by the worker and assign a value according to the following table:

SVP	VALUE	TRAINING TIME
1	+4	Short demonstration
2	+4	Short demonstration up to 30 days
3	+3	30+ days - 3 months
4	+3	3+ months - 6 months
5	+2	6+ months - 1 year
6	+2	1+ year - 2 years
7	+1	2+ years - 4 years
8	+1	4+ years - 10 years
9	+1	10+ years

[(5)] **(4)** For workers who do not hold a current license or certificate of completion necessary for employment in an Oregon job with an SVP of 4 or less and who have not achieved an SVP of 5 or higher for the ten (10) years preceding the time of determination, an additional value of +1 shall be allowed.

[(6)] **(5)** The values obtained in sections (2) through (5) of this rule shall be added to arrive at a final value for the education factor.

Hist: Formerly OAR 436-30-410
Filed 6-3-87 as WCD Admin. Order 3-1988, eff. 7-1-88
Amended 12-21-88 as WCD Admin. Order 6-1988, eff. 1-1-89
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Amended 3-26-91 as WCD Admin. Order 2-1991, eff. 4-1-91.
Amended 6-17-93 as WCD Admin. Order 93-052, eff. 6-17-93 (temp)

436-35-310 Adaptability to Perform a Given Job

(1) The range of impact for this factor is from [0] **+1** to +7. The adaptability factor is [based on a comparison of the strength demands of the worker's job at time of injury with the worker's maximum RFC at time of determination.] **a**

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comparison of the highest prior strength (physical demand) based on the jobs the worker has performed during the ten years preceding the time of determination as compared to the worker's maximum residual capacity at time of determination.

(a) For a job to qualify pursuant to section (1) of this rule, the worker must meet the requirements as outlined in OAR 436-35-300(3).

(b) For those workers who do not meet the requirements pursuant to OAR 436-35-300(3), the prior strength shall be based on the worker's job at time of injury.

(c) Where a worker's highest prior strength has been reduced as a result of an injury or condition which is not an accepted Oregon workers' compensation claim, the job at injury shall be used to determine prior strength. (For example, if a worker's highest prior strength in year three is very heavy, and an intervening injury in year six reduced the worker's capacity to medium and the job at injury is medium or less, the prior strength will be established at the strength for the job at injury.)

(2) [For workers who at the time of determination have a physician's release to regular work, or have either returned to or have the RFC for regular work or work requiring greater strength than work performed on the date of injury, the value for factor of adaptability is 0.

(3) For all [other] workers [who do not meet the criteria of section (2) of this rule], the adaptability value is calculated according to this section and section [(4)] **(3)**. Those workers determined by these rules to have the RFC to do more than the requirements of one category of RFC, but not the full range of requirements for the next higher category, the classification established between the two categories shall be used (for example, if the worker has returned to "light" work with restrictions; or if the worker's maximum lift and/or carry capacity is between sedentary and light, use S/L). For purposes of this rule, categories of RFC are defined as sedentary (S), light (L), medium (M), heavy (H) and very heavy (VH).

		RESIDUAL FUNCTIONAL CAPACITY (RFC)								
		RS	S	S/L	L	M/L	M	M/H	H	V/H
PRIOR STRENGTH (physical demand)	S	2	[0] <u>1</u>							
	L	4	3	2	[0] <u>1</u>					
	M	6	5	4	3	2	[0] <u>1</u>	[0] <u>1</u>	[0] <u>1</u>	[0] <u>1</u>
	H	7	6	6	5	4	3	2	[0] <u>1</u>	[0] <u>1</u>
	V/H	7	7	6	5	4	3	2	[0] <u>1</u>	[0] <u>1</u>

- RS = Restricted Sedentary
- S = Sedentary
- S/L = Sedentary/light
- L = Light
- M/L = Medium light
- M = Medium
- M/H = Medium/heavy
- H = Heavy
- V/H = Very heavy

[(4)] **(3)** For those workers determined by these rules to have a RFC established between the two categories and also have restrictions, the next lower classification shall be used. (For

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example, if a worker's RFC is established at S/L but also has restrictions, use S).

Hist: Formerly OAR 436-30-430
Filed 6-3-87 as WCD Admin. Order 3-1988, eff. 7-1-88
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Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, eff. 10-1-90
Amended 3-26-91 as WCD Admin. Order 2-1991, eff. 4-1-91
Amended 2-14-92 as WCD Admin. Order 6-1992, eff. 3-13-92
Amended 6-17-93 as WCD Admin. Order 93-052, eff. 6-17-93 (temp)