

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
DISABILITY RATING STANDARDS

EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 35

EFFECTIVE DECEMBER 14, 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.

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

436-35-270 Standards for the Rating of Unscheduled Permanent Disability

(1) Rules 436-35-270 through 436-35-450 apply to the rating of unscheduled permanent partial disability under the Workers' Compensation Act.

(2) The rating of unscheduled permanent partial disability shall be impairment as

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modified by age, education (including formal education and skills), and adaptability to perform a given job. If there is no measurable impairment under these rules, no award of unscheduled permanent partial disability shall be allowed.

(3) As used in rules 436-35-270 through 436-35-310, the following definitions shall apply unless the context requires otherwise:

(a) "Dictionary of Occupational Titles" or (DOT) means the publication of the same name by the U.S. Department of Labor, Fourth Edition Revised 1991.

(b) "Physician's release" means written notifications provided by the attending physician to the worker and the worker's employer or insurer releasing the worker to work and describing any limitations the worker has. It also means written notification provided by the attending physician to the employer or insurer releasing the worker to a specific job offered by the employer.

(c) "Regular work" means the job the worker held at the time of injury, or employment substantially similar in nature, duties, responsibilities, knowledge, skills and abilities.

[ED. NOTE: Section 3(d)(A)(B), (e) and (g) are being moved to OAR 436-35-310. Section 3(d)(C), (f) and (h) are deleted.]

Hist: Formerly OAR 436-30-380
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 2-14-92 as WCD Admin. Order 6-1992, eff. 3-13-92
Amended 11-29-93 as WCD Admin. Order 93-056, eff. 12-14-93

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 impairment. The factor for adaptability, age and education will be given a neutral value of zero when the worker's wage earning capacity is not affected. A worker's wage earning capacity is not affected when:

(a) A worker's residual functional capacity as determined pursuant to OAR 436-35-310(5) is equal to or greater than the worker's base functional capacity as determined pursuant to OAR 436-35-310(4); and

(b) A worker with rateable impairment found in OAR 436-35-380 through OAR 436-35-450 are granted one through four percent impairment.

(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

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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 11-29-93 as WCD Admin. Order 93-056, eff. 12-14-93

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, the factor of age shall be given a value of + 1. For all other workers, a neutral 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 11-29-93 as WCD Admin. Order 93-056, eff. 12-14-93

436-35-300 Education

(1) The range of impact for the factor of education shall be from 0 to +5.

(2) 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 neutral 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.

(3) A value for a worker's Specific Vocational Preparation (SVP) time is allowed based on the job(s) the worker has performed during the five (5) years preceding the time of determination.

(a) SVP is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information and develop the facility needed for average performance in a specific job-worker situation. The SVP range is from 1 (lowest) to 9 (highest) associated with each DOT code. When a combination of DOT codes most accurately describes a worker's duties, the highest SVP shall apply if the worker has met the specific vocational preparation training time for that specific code.

(b) The worker's SVP value is the highest SVP of any job that the worker has met in the five years prior to determination as follows:

(A) A worker is presumed to have met the SVP training time after completing employment with one or more employers in that job classification for the maximum period specified in the table in section 4 of this rule.

(B) A worker has also met the SVP for a job after successfully completing an authorized training program, on-the-job training, vocational training or apprentice training for that job

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classification.

(4) 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) For those workers who have not met the specific vocational preparation training time for any job, a value of +4 shall be granted.

(6) 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
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 11-29-93 as WCD Admin. Order 93-056, eff. 12-14-93

436-35-310 Adaptability to Perform a Given Job

(1) The range of impact for this factor is from 0 to +7.

(2) For those workers who have rateable unscheduled impairment found in rules 436-35-320 through 436-35-375, the adaptability value is determined according to section (3) through (7) of this rule. Adaptability is measured by comparing Base Functional Capacity to the worker's maximum Residual Functional Capacity at the time of becoming medically stationary.

(3) For purposes of applying this rule the following definitions shall apply:

(a) "Base Functional Capacity" means an individual's demonstrated physical capacity before the injury or disease.

(b) "Residual Functional Capacity" (RFC) means an individual's remaining ability to perform work-related activities despite medically determinable impairment resulting from the accepted compensable condition.

(c) "Sedentary restricted" means the worker only has the ability to carry or lift docket, ledgers, small tools and other items weighing less than 10 pounds. A worker is also sedentary restricted if the worker can perform the full range of sedentary activities, but with permanent restrictions, as defined in this section and permanently restricted from performing two or more of the following activities: reaching, handling, fingering and/or feeling; or one or more of the following activities: talking, hearing and seeing.

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(d) "Sedentary (S)" means the worker has the ability to occasionally lift or carry docket, ledgers, small tools and other items weighing 10 pounds.

(e) "Sedentary/Light (S/L)" means the worker has the ability to do more than sedentary activities, but less than the full range of light activities. A worker is also sedentary/light if the worker can perform the full range of light activities, but with restrictions.

(f) "Light (L)" means the worker has the ability to occasionally lift 20 pounds and can frequently lift or carry objects weighing up to 10 pounds.

(g) "Medium/Light (M/L)" means the worker has the ability to do more than light activities, but less than the full range of medium activities. A worker is also medium/light if the worker can perform the full range of medium activities, but with restrictions.

(h) "Medium (M)" means the worker can occasionally lift 50 pounds and can lift or carry objects weighing up to 25 pounds frequently.

(i) "Medium/Heavy (M/H)" means the worker has the ability to do more than medium activities, but less than the full range of heavy activities. A worker is also medium/heavy if the worker can perform the full range of heavy activities, but with restrictions.

(j) "Heavy (H)" means the worker has the ability to occasionally lift 100 pounds and the ability to frequently lift or carry objects weighing 50 pounds.

(k) "Very Heavy (V/H)" means the worker has the ability to occasionally lift in excess of 100 pounds and the ability to frequently lift or carry objects weighing more than 50 pounds.

(l) "Restrictions" means that, by a preponderance of medical opinion, the worker is permanently limited by:

(A) Sitting, standing, or walking less than two hours at a time; or

(B) Precluded from working the same number of hours as were worked at the time of injury or eight hours per day, whichever is less; or

(C) From frequently performing at least two of the following activities: stooping/bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, or pushing/pulling.

(m) "Occasionally" means the activity or condition exists up to 1/3 of the time.

(n) "Frequently" means the activity or condition exists up to 2/3 of the time.

(o) "Constantly" means the activity or condition exists 2/3 or more of the time.

(4) The worker's Base Functional Capacity (BFC) is the most current of:

(a) The highest strength category assigned in the DOT for the most physically demanding job that the worker has successfully performed in the five (5) years prior to determination. When a combination of DOT codes most accurately describes a worker's duties, the highest strength for the combination of codes shall apply; or

(b) A second-level physical capacity evaluation as defined in OAR 436-10-040 performed prior to the date of the on-the-job injury; or

(c) For those workers who do not meet the requirements pursuant to OAR 436-35-300(3),

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and who have not had a second-level physical capacity evaluation performed prior to the on-the-job injury or disease, their prior strength shall be based on the worker's job at the time of injury.

(d) 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 Base Functional Capacity shall be the highest of:

(A) The job at injury; or

(B) A second-level physical capacities evaluation as defined in OAR 436-10-040 performed after the injury or condition which was not an accepted Oregon workers' compensation claim but before the current work related injury.

(e) The following classifications shall apply to establish BFCs: sedentary (S), light (L), medium (M), heavy (H) and very heavy (VH) as defined in section (3) of this rule.

(a) The attending physician's release; or

(b) A preponderance of medical opinion which includes but is not limited to a second-level PCE or WCE as defined in OAR 436-10-040 or any other medical evaluation which includes but is not limited to the worker's capability for lifting, carrying, pushing/pulling, standing, walking, sitting, climbing, balancing, stooping, kneeling, crouching, crawling and reaching. Where a worker fails to cooperate or use maximal effort in the evaluation, the medical opinion of the evaluator may establish the worker's likely RFC had the worker cooperated and used maximal effort.

(c) The following classification shall apply to establish RFC: restricted sedentary (RS), sedentary (S), sedentary/light (S/L), light (L), medium/light (M/L), medium (M), medium/heavy (M/H), heavy (H) and very heavy (VH) and restrictions as defined in section (3) of this rule.

(6) In comparing the worker's Base Functional Capacity (BFC) to the Residual Functional Capacity (RFC), the values for adaptability to perform a given job are as follows:

		RESIDUAL FUNCTIONAL CAPACITY (RFC)								
		RS	S	S/L	L	M/L	M	M/H	H	V/H
BASE FUNCTIONAL CAPACITY (BFC) (physical demand)	S	2	0	0	0	0	0	0	0	0
	L	4	3	2	0	0	0	0	0	0
	M	6	5	4	3	2	0	0	0	0
	H	7	6	6	5	4	3	2	0	0
	V/H	7	7	6	5	4	3	2	1	0

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

(8) For those workers who have rateable unscheduled impairment found in rules 436-35-380 through 436-35-450, adaptability is determined by comparing the worker's extent of impairment to the following Adaptability Scale:

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Total Impairment	Adaptability Value
0-4%	0
5-9%	1
10-19%	2
20-29%	3
30-39%	4
40-49%	5
50-59%	6
60% and over	7

(9) For those workers who have rateable unscheduled impairment found in rules 436-35-320 through 436-35-375 and also unscheduled impairments in rules 436-35-380 through 436-35-450 in the same claim, adaptability shall be determined by comparing both the adaptability scale in section (8) of this rule and the residual functional capacity scale in section (6) of this rule and using the higher of the two values for adaptability.

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 11-29-93 as WCD Admin. Order 93-056, eff. 12-14-93