

EXHIBIT "A"

**CHAPTER 436
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
DIVISION 35**

DISABILITY RATING STANDARDS

APPLICABILITY OF RULES

436-35-003 (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) The provisions of OAR 436-35-007 as adopted August 23, 1995 by temporary rule applies to the rating of permanent partial disability for all claims or causes of action existing or arising on or after June 7, 1995.

Stat Auth: ORS 656.726, ORS 183.355 and ORS 183.335

Stat Implemented: 1995 OR. Laws, Chapter 332, Sections 17, 18 and 20, ORS 656.214

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)
Amended 11-29-93 as WCD Admin. Order 93-056, eff. 12-14-93
Amended 9-21-95 as WCD Admin. Order 95-063, eff. 9-21-95. (Temp)

GENERAL PRINCIPLES

436-35-007 (1) Except for sections (3) and (4) of this rule, a worker is entitled to a value under these rules only for those findings of impairment that are permanent and were caused by the accepted injury and/or its accepted conditions. Unrelated or noncompensable impairment findings shall be

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excluded and shall not be valued under these rules. In the determination of permanent total disability, the effects of pre-existing disability shall be considered as provided in 436-30-055.

(2) If a noncompensable condition(s) arises after the date of injury and combines with a compensable condition(s), only disability due to the accepted condition(s) shall be rated pursuant to this rule, as long as the accepted condition(s) is medically stationary and remains the major contributing cause of the combined condition. Disability shall be determined as follows:

(a) The physician shall describe the current permanent impairment findings resulting from the total combined condition. The physician shall provide the percentage of those permanent impairment findings that are due only to the accepted condition(s). Only the portion of those impairment findings that are due to the accepted condition shall be valued.

Example: Accepted condition: Low back strain
 Noncompensable condition: pregnancy (mid-term)

The worker is released to regular work. In the closing examination, the physician describes range of motion findings and states that 60% of the range of motion loss is due to the accepted condition. Pursuant to these rules, the range of motion loss is valued at 10%. $10\% \times .60$ equals 6% impairment due to the compensable condition.

(b) In claims for hip(s), shoulder(s), spine, pelvis or abdomen, where a worker's adaptability factor (residual functional capacity) is affected by the accepted condition(s), the physician shall describe any loss of residual functional capacity due only to the accepted condition(s).

(c) For unscheduled conditions other than those noted in (2)(b) of this rule, adaptability shall be determined pursuant to OAR 436-35-310(8) and (9) based on the physician's estimated percentage of impairment.

(d) Workers with an irreversible finding(s) of impairment due to the compensable condition(s) as noted in this rule shall receive the full value awarded in these rules for the irreversible finding(s). This value is combined with impairment noted in subsection (a) of this rule. For purposes of this rule, irreversible findings are:

ARM

Arm angulation
Radial head resection
Shortening

EYE

Enucleation
Lens implant
Lensectomy

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GONADAL

Loss of gonads resulting in absence of, or an abnormally high, hormone level

HAND

Carpal bone fusion
Carpal bone removal

KIDNEY

Nephrectomy

LEG

Knee angulation
Length discrepancy
Meniscectomy
Patellectomy

LUNG

Lobectomy

SHOULDER

Acromionectomy
Clavicle resection

SPINE

Compression fractures
Diskectomy
Laminectomy

SPLEEN

Splenectomy

URINARY TRACT DIVERSION

Cutaneous ureterostomy without intubation
Nephrostomy or intubated ureterostomy
Uretero-Intestinal

OTHER

Amputations/resections
Ankylosed/fused joints
Displaced pelvic fracture ("healed" with displacement)
Loss of opposition
Organ transplants (heart, lung, liver, kidney)
Prosthetic joint replacements

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Example: Accepted condition: Low back strain with herniated disk at L5-S1 and diskectomy.
 Noncompensable condition: pregnancy (mid-term)

The worker is released to regular work. In the closing examination, the physician describes range of motion findings and states that 60% of the range of motion loss is due to the accepted condition. Pursuant to these rules, the range of motion loss is valued at 10%. $10\% \times .60$ equals 6%.

Diskectomy at L5-S1 (irreversible finding) = 9% per these rules.
 Combine 9% with 6% for a value of 14% impairment for the compensable condition.

(3) Where a worker has a pre-existing condition(s), the following applies:

(a) In accordance with 1995 Or. Laws Chapter 332 Section 3, disability caused solely by a worker's pre-existing condition shall be rated completely if work conditions or events were the major contributing cause of a pathological worsening of the pre-existing physical condition(s) or an actual worsening of the pre-existing mental disorder. Apportionment of disability is not appropriate.

(b) Where a worker's compensable condition combines with a noncompensable pre-existing condition(s), pursuant to ORS 656.005(7), the current disability resulting from the total combined condition shall be rated in accordance with these rules as long as the compensable injury remains the major contributing cause of the combined condition. Apportionment of disability is not appropriate.

Example: (No apportionment):
 Accepted condition (remains major contributing cause): Herniated disk L5-S1/diskectomy.
 Pre-existing condition: degenerative joint disease (spine).
 Closing Exam ROM = 10%, (pursuant to these rules).
 Surgery (Lumbar diskectomy) = 9%
 Combine: 10% and 9% which equals 18% low back impairment due to this injury.
 The worker is released to regular work. (Social/Vocational factoring equals zero.)

(4) If the compensable injury is no longer the major contributing cause of the combined or consequential condition and a denial has been issued pursuant to ORS 656.262(6) and (7), apply the following:

(a) If the worker's compensable condition(s) is medically stationary, the disability due to the compensable condition shall be rated pursuant to the method in (2) of this rule.

(b) If the worker's condition is not medically stationary:

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(A) Impairment shall be determined based on an examination which describes current impairment findings resulting from the total combined condition. The physician shall estimate the future likely percentage of those impairment findings that would be present at the anticipated time the worker's condition would become medically stationary. The physician shall then estimate the percentage of those findings that would be due only to the compensable condition. The total combined impairment value shall be adjusted according to the estimated percentages. Only the portion of those impairment findings that are anticipated at the time of medically stationary status and are due to the accepted condition(s) shall be valued.

Example: Accepted condition: Chronic lumbar strain.
 Pre-existing condition: Degenerative lumbar disk disease.
 Major contributing cause denial has been issued for the pre-existing condition.
 The compensable condition is not yet medically stationary.

In the closing examination, the physician describes range of motion findings for the lumbar spine considering compensable and noncompensable conditions. Pursuant to these rules, the range of motion loss is valued at 10%. The physician estimates the percentage of impairment findings anticipated to be evident when the worker becomes medically stationary is 50% of the findings. Then the physician estimates the percentage of impairment findings that would be due only to the accepted condition as 50% (at the projected time of medically stationary status).

10% (total impairment findings) $\times .5 = 5\%$ likely impairment due at anticipated time of medically stationary status. 5% likely impairment (at med. stat.) $\times 0.5$ (due to the compensable injury) = 2.5% rounded to 3% likely impairment due to the compensable condition at the time of medically stationary status.

(B) To estimate an adaptability factor when the accepted condition(s) is to the shoulder(s), hip(s), spine, pelvis or abdomen, the physician shall estimate the worker's future likely residual functional capacity pursuant to OAR 436-35-310 (3)(c)-(o), that would be due only to the compensable condition(s) at the anticipated time the condition(s) would become medically stationary.

(C) For unscheduled conditions other than those noted in (4)(b)(B) of this rule, adaptability shall be determined pursuant to OAR 436-35-310(8) and (9) based on the physician's estimated percentage of impairment.

Example: The physician describes the impairment findings at the closing examination.
 The impairment findings are determined to equal an impairment value of 31% pursuant to the (4)(b)(A) of this rule. A corresponding adaptability factor of 4 is determined in accordance with OAR 436-35-310(8).

(c) Workers with an irreversible finding(s) of impairment due to the compensable injury shall be rated in accordance with (2)(d) of this rule.

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Example: Accepted Condition: Herniated disk with diskectomy L5-S1
 Pre-existing/noncompensable condition: Degenerative lumbar disk disease and chronic lumbar strain.

A major contributing cause denial has been issued for the pre-existing conditions. The compensable condition is not yet medically stationary.

In the closing examination, the physician describes range of motion findings for the lumbar spine considering the compensable and noncompensable conditions. Pursuant to these rules, the range of motion loss is valued at 10%. The physician's estimated percentage of the findings due at the anticipated time of medically stationary status is 50%. Then the physician's estimated percentage of impairment due to the accepted condition is 50%.

10% x .50 equals 5% likely range of motion due at anticipated time of medically stationary status. 5% x .5 = 2.5(3%) likely range of motion loss due to the compensable injury. Irreversible finding value: diskectomy L5-S1 = 9% (per these rules). Combine 9% and 3% = 12% likely permanent impairment due to the compensable condition at anticipated time of medically stationary status.

(5) If a worker has a prior award of permanent disability under Oregon Workers' Compensation Law, the award shall be considered in subsequent claims pursuant to ORS 656.222 and ORS 656.214. Unless the preponderance of evidence demonstrates that a condition or finding of impairment rated for disability in the prior claim has returned to a normal state, an offset will be applied in a manner provided in this section. A condition or finding is considered returned to a normal state if that condition or finding would not be recognized as an impairment under these rules.

(a) A worker is not entitled to be doubly compensated for a permanent loss of use or function for a scheduled body part which would have resulted from the current injury but which has already been produced by an earlier injury and had been compensated by a prior award. Only that portion of such loss which was not present prior to the current injury shall be awarded. The following factors shall be considered when determining the extent of the current disability award:

(A) The worker's loss of use or function for the current disability under the standards;

(B) The conditions or findings of impairment from the prior awards which were still present just prior to the current claim; and

(C) The combined effect of the prior and current injuries.

(b) A worker is not entitled to be doubly compensated for a permanent loss of earning capacity in an unscheduled body part which would have resulted from the current injury but which had already been produced by an earlier injury and had been compensated by a prior award. Only that portion of such lost earning capacity which was not present prior to the current injury shall be awarded. The following factors shall be considered when determining the extent of the current disability award:

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(A) The worker's total loss of earning capacity for the current disability under the standards;

(B) The conditions or findings of impairment from prior awards which were still present just prior to the current claim;

(C) The worker's social-vocational factors which were still present just prior to the current claim;
and

(D) The extent to which the current loss of earning capacity includes impairment and social-vocational factors which existed before the current injury.

(6) (Only the methods described in the AMA Guides to the Evaluation of Permanent Impairment (Guides), 3rd Edition (Revised), copyright 1990, and methods the Director may prescribe by bulletin shall be used to measure and report impairment under these rules, except that the goniometric method for measuring spinal range of motion as described in the Guides, 2nd Edition, may be used until September 30, 1991. The utilization of an inclinometer as described to measure spinal range of motion in the 3rd Edition (Revised) to measure impairment is not mandatory until October 1, 1991.

(7) When a claim has been reopened pursuant to ORS 656.273, the worker's condition at the time of determination is compared with the worker's condition as it existed on the last award or arrangement of compensation. If the worker's condition has permanently worsened, the worker is entitled to have the extent of permanent disability redetermined. If the workers' condition has not permanently worsened, the worker is not entitled to have the extent of permanent disability redetermined under these rules. If a claim has multiple accepted conditions which are either newly accepted since the last arrangement of compensation and/or which have permanently worsened, the extent of permanent disability shall be redetermined. There shall be no redetermination for those conditions which are either unchanged or improved. In any case, the impairment value for those conditions not permanently worsened shall continue to be the same impairment values that were established at the last arrangement of compensation.

(8) Any time a worker ceases to be enrolled and actively engaged in training pursuant to ORS 656.268(8), the worker is entitled to have the amount of permanent disability for an accepted condition reevaluated under these rules. The reevaluation may increase, decrease or affirm the worker's permanent disability award.

(9) Except as provided by ORS 656.325 and 656.268(8), where a redetermination of permanent disability pursuant to ORS 656.273 results in an award that is less than the cumulative total of the worker's prior arrangements of compensation in the claim, the award shall not be reduced.

(10) Impairment findings made by a consulting physician or other medical providers (e.g. occupational or physical therapists) at the time of claim closure may be used to determine impairment if the worker's attending physician concurs with the findings as prescribed in OAR 436-10-080.

(11) Impairment is determined by the attending physician except where a preponderance of medical opinion establishes a different level of impairment. On reconsideration, where a medical arbiter

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is used, impairment is determined by the medical arbiter, except where a preponderance of medical opinion establishes a different level of impairment.

(12) Unless otherwise specifically stated in these rules, all range of motion percentage values in a single joint are first added, then rounded to a whole number, and then combined with other applicable impairment value percentages.

(13) Impairment values, determined under these rules, are first rounded to the nearest whole number before combining. (For example, 3.5 and above, round up to 4.0 and 3.49 and below, round down to 3.0.)

(14) The combined value is obtained by inserting the values for A and B into the formula $A + B(1.0 - A)$. The larger of the two numbers is A and the smaller is B. The whole number percentages of impairment are converted to their decimal equivalents (e.g. 12% converts to .12; 3% converts to .03). The resulting percentage is rounded to a whole number (in accordance with 436-35-007(11)). Upon combining the largest two percentages, the resulting percentage is combined with any lesser percentage(s) in descending order using the same formula until all percentages have been combined prior to performing further computations. After the calculations are completed, the decimal result is then converted back to a percentage equivalent. Example: $.12 + .03(1.0 - .12) = .12 + .03(.88) = .12 + .0264 = .1464 = 14.6 = 15$. The Director may by bulletin prescribe a combined values chart to be used in this computation process.

(15) All scheduled and unscheduled disability is awarded in 1% steps, rounding to the nearest whole number (e.g. 3.5 and above, round up; 3.49 and below, round down). This does not apply to loss of hearing, which is rounded to the next higher hundredth of 1%. An impairment value of 1.0 shall be established for a cumulative impairment found less than 0.50.

(16) To determine impairment due to loss of strength, a 0 to 5 grading system shall be used. A preponderance of medical opinion shall be used to identify the named spinal nerve root, peripheral nerve, or plexus which is responsible for the loss of strength. The grading shall be valued as follows:

(a) Muscle Grading System

%	Grade	
0%	5/5:	The worker retains range of motion against gravity with full resistance applied.
20%	4/5:	The worker retains range of motion against gravity with some resistance applied.
50%	3/5:	The worker retains range of motion against gravity without resistance applied.
75%	2/5:	The worker retains range of motion with gravity, but has to have some assistance.
90%	1/5:	The worker has evidence of slight muscle contractility; no joint motion.
100%	0/5:	The worker has no evidence of muscle contractility.

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(b) The percent of the worker's impairment shall be determined by the grade of strength reported by the physician. This percent value shall then be multiplied by the appropriate percent value allowed for the affected body part as found in these rules. (c) The value for loss of strength strictly due to nerve damage includes a value for any loss of motion. Decreased range of motion due to other causes is rated separately.

(17) The movement in a joint is measured in active degrees of motion. Impairment findings describing lost ranges of motion shall be converted, for evaluation purposes, to retained ranges of motion by subtracting the measured loss from the normal of full ranges established in these rules. Motion impairment in an ankylosed joint is determined using the value for ankylosis in that plane or arc of motion in lieu of any value for degrees of retained motion in that plane or arc.

(18) The range of motion or laxity in the injured joint shall be compared to the contralateral joint except when the contralateral joint has a history of injury or disease. In such a case, the injured joint impairment shall be valued proportionately to the full motion of the contralateral joint, unless the contralateral joint motion exceeds the normals established under these rules. (For example, an injured knee flexes to 80°, the contralateral knee flexes to 140°, a proportion is established to determine the expected degrees of flexion since 140° has been established as normal for this worker. $80/140 = X/150$. X = expected retained ROM compared to the established norm of 150° upon which impairment flexion of the knee is determined under these rules. X, in this case, equals 86°. 86° of retained flexion of the knees is calculated under these rules, after rounding, to 23% impairment.) If the motion of the injured joint exceeds the values for ranges of motion established under these rules, the values established under these rules shall be used to establish impairment. When the contralateral joint does have a history of injury or disease, the injured joint shall be valued based upon the ranges of motion established under these rules.

(19) If the worker dies due to causes unrelated to the accepted conditions of the claim before becoming medically stationary, only those findings of impairment that are of a non-speculative nature such as values for surgical procedures and amputations shall be determined. Other impairment findings are of a speculative nature will not be determined. For unscheduled conditions or injuries, the worker's adaptability value shall be +1; other disability factors shall be determined as they existed on the date of death.

(20) ORS 656.214 provides the maximum values to be given **for permanent partial disability awarded pursuant to ORS 656.268.** [A value of \$305 per degree shall be allowed only for scheduled injuries and \$100 per degree for unscheduled injuries sustained on or after May 7, 1990 through December 31, 1991. The value established in ORS 656.214, Section 2, Chapter 745, Oregon Laws 1991 shall apply for injuries sustained on or after January 1, 1992.] **For injuries sustained prior to January 1, 1992, the values established in ORS 656.214, Section 17, chapter 332, Oregon Laws 1995 shall apply to any initial or additional permanent partial disability awarded on or after June 7, 1995. The values do not apply to any portion of a permanent partial disability award that is final by operation of law.**

(21) For injuries prior to January 1, 1992, Notices of Closure issued on or after June 7, 1995, that have not been timely appealed or are not otherwise final by operation of law, shall be amended to reflect the correct value per degree as stated in section (20).

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(22) For injuries prior to January 1, 1992, notwithstanding the time limitation in OAR 436-30-030(13), the Department shall amend orders issued on or after June 7, 1995, that have not been timely appealed or are not otherwise final by operation of law, to reflect the correct value per degree as stated in section (20).

Stat Auth: ORS 656.726, ORS 183.355 and ORS 183.335

Stat Implemented: 1995 OR. Laws, Chapter 332, Sections 17, 18 and 20, ORS 656.214

Hist: Filed 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;
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