

EXHIBIT "A"

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

DIVISION 035
DISABILITY RATING STANDARDS

APPLICABILITY OF RULES

436-035-0003 (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 June 7, 1995. Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary prior to June 7, 1995, but on or after July 1, 1990, Administrative Order 93-056 shall apply to the rating of permanent disability. Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary prior to July 1, 1990, Administrative Order 6-1988 shall apply to the rating of permanent disability.

(2) Except for provisions in 1995 Or. Law, Chapter 332, for workers 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 436-035-0007(23)(b)(B), 436-035-0270(4) and 436-035-0310(6) and (8) apply to all claims closed on or after March 13, 1992, for workers medically stationary on or after June 1, 1990, where the rating for permanent disability is not final by operation of law.

Stat. Auth.: ORS 656.726

Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.273, 656.726, Section 66

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 12-14-93 as WCD Admin. Order 93-056, eff. 12-14-93
Amended 1-29-96 as WCD Admin. Order 96-051, eff. 2-17-96
Amended 8-19-96 as WCD Admin. Order 96-068, eff. 8-19-96 (Temp)

GENERAL PRINCIPLES

436-035-0007 (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 compensable injury or disease including the compensable condition, a consequential condition and direct medical sequelae. Unrelated or noncompensable impairment findings shall be excluded and shall not be valued under these rules. Permanent total disability shall be determined pursuant to OAR 436-030-0055.

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

ORDER NO.

(2) Where a worker has a superimposed condition, only disability due to the compensable condition shall be rated as long as the compensable condition is medically stationary and remains the major contributing cause of the superimposed condition. Then, apportionment is appropriate. Disability shall be determined as follows:

(a) The physician shall describe the current total overall findings of impairment. The physician shall describe the percentage of those findings that are due to the compensable condition. Only the portion of those impairment findings that are due to the compensable condition shall receive a value.

Example: Compensable 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 compensable 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 the hip, shoulder, spine, pelvis or abdomen, where a worker's adaptability factor (residual functional capacity) is affected by the compensable condition, the physician shall describe any loss of residual functional capacity due only to the compensable condition and only that portion shall receive a value.

(c) For unscheduled conditions other than those noted in subsection (2)(b) of this rule, adaptability shall be determined pursuant to OAR 436-035-0310(8) and (9) based on the physician's description of the percentage of impairment due only to the compensable condition.

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

ARM

Arm angulation
Radial head resection
Shortening

EYE

Enucleation
Lens implant
Lensectomy

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

Example: Compensable 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 compensable 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.

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

ORDER NO.

(e) Where a worker has a prior award of permanent disability under Oregon workers' compensation law, disability shall be determined pursuant to OAR 436-035-0007(5) (offset), rather than section (2) of this rule, for purposes of determining disability only as it pertains to multiple Oregon workers' compensation claims.

(3) Where a worker has a preexisting condition, the following applies:

(a) For purposes of these rules only, a prior Oregon workers' compensation claim is not considered a preexisting condition.

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

(c) Where a worker's compensable condition combines with a preexisting condition, 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 condition remains the major contributing cause of the combined condition, i.e., a major contributing cause denial has not been issued pursuant to ORS 656.262(7)(b). Apportionment of disability is not appropriate.

Example: (No apportionment):

Compensable condition (remains major contributing cause): Herniated disk
L5-S1/diskectomy.

Preexisting 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 condition is no longer the major contributing cause of the combined or superimposed condition, and a major contributing cause denial has been issued, the following applies:

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

(b) When the worker's compensable condition is medically stationary, even though the worker's overall condition is not, and findings of impairment from the compensable condition do not overlap with findings of impairment from the combined or superimposed conditions, impairment shall be determined pursuant to the method in section (1) of this rule.

(c) When the worker's compensable condition is not medically stationary and, upon examination, the findings of impairment related to the compensable condition would not overlap the findings of impairment related to the combined or superimposed condition, the following applies:

(A) Impairment shall be established based on an examination in which the physician first describes the current findings regarding impairment due to the worker's compensable condition. Then the physician shall estimate the future likely percentage of those findings that would be present at the anticipated time the worker's

condition would become medically stationary. The value of the current findings shall be adjusted according to the estimated percentage and only the portion of those current findings that are anticipated at the time of medically stationary status shall receive a value.

(B) When the compensable condition is the shoulder, hip, spine, pelvis or abdomen, the physician shall estimate the worker's future likely residual functional capacity, pursuant to OAR 436-035-0310(3)(c) through (o), that would be due only to the compensable condition at the anticipated time the condition would become medically stationary. Only the portion due to the compensable condition at the time of medically stationary status shall receive a value.

(C) For an unscheduled compensable condition, other than those noted in paragraph (4)(c)(B) of this rule, adaptability shall be determined pursuant to OAR 436-035-0310(8) and (9) based on the physician's estimated percentage of impairment.

(d) When the worker's compensable condition is not medically stationary and, upon examination, the findings of impairment related to the compensable condition would overlap the findings of impairment related to the combined or superimposed condition, the following applies:

(A) Impairment shall be established based on an examination in which the physician describes current overall findings regarding impairment considering the worker's overall condition. The physician shall then estimate the future likely percentage of those findings that would be present at the anticipated time the worker's condition would become medically stationary. Next, the physician shall estimate the percentage of those findings that would be due only to the compensable condition. The current overall value of the findings of impairment shall be adjusted according to the estimated percentages and only the portion of those impairment findings that are anticipated at the time of medically stationary status and are due to the compensable condition shall receive a value.

Example: Accepted condition: Chronic lumbar strain.

Preexisting 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 the overall range of motion findings for the lumbar spine considering compensable and noncompensable conditions. Pursuant to these rules, the overall 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 compensable condition as 60% (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.) $\times 0.6$ (due to the compensable injury) = 3% likely impairment due to the compensable condition at the time of medically stationary status.

(B) To estimate an adaptability factor when the unscheduled compensable condition is to the shoulder, hip, spine, pelvis or abdomen, the physician shall estimate the worker's future likely residual functional capacity pursuant to OAR 436-035-0310 (3)(c) through (o), that would be due only to the compensable condition at the

anticipated time of medically stationary status. Only the portion due to the compensable condition at the time of medically stationary status shall receive a value.

(C) For an unscheduled condition, other than those noted in paragraph (4)(d)(B) of this rule, adaptability shall be determined pursuant to OAR 436-035-0310(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 paragraph (4)(d)(A) of this rule. A corresponding adaptability factor of 4 is determined in accordance with OAR 436-035-0310(8).

(e) Workers with an irreversible finding of impairment pursuant to subsection (2)(d) of this rule, due to the compensable condition, shall be rated in accordance with subsection (2)(d) of this rule and combined with other applicable impairment findings.

Example: Compensable Condition: Herniated disk with discectomy L5-S1
Preexisting/noncompensable condition: Degenerative lumbar disk disease and chronic lumbar strain.
A major contributing cause denial has been issued for the preexisting 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 compensable condition is 60%.
 $10\% \times .50 = 5\%$ likely range of motion due at anticipated time of medically stationary status. $5\% \times .6 = 3\%$ likely range of motion loss due to the compensable injury. Irreversible finding value: discectomy 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 for scheduled disability and pursuant to ORS 656.214 for unscheduled disability. For purposes of these rules only, a prior Oregon workers' compensation claim is not considered a preexisting condition.

(a) Before actually offsetting the prior award, a determination shall be made as to whether or not there is a preponderance of medical evidence or opinion establishing that disability from the prior injury or disease was still present on the date of the injury or disease of the claim being determined.

(A) If disability from the prior injury or disease was still present, an offset shall be applied consistent with subsections (b) and/or (c) of this section.

(B) If disability from the prior injury or disease was not still present, an offset shall not be applied.

(b) 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 or disease but which has already been produced by an earlier injury or disease and had been compensated by a prior award. Only like body parts are to be offset, e.g., left leg to left leg, etc. A more distal body part award may be offset against a more proximal body part award (or vice versa) if there is a combined effect of impairment, e.g., a right forearm award may be offset against a right arm award. Only that portion of such loss which was not present prior to the current injury or disease 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 (the overall impairment to a given body part).

(D) The prior disability award as compared to the current disability award.

(E) The award cannot exceed the amount due to the current injury prior to offset consideration.

(c) For unscheduled disability, 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 or disease but which had already been produced by an earlier injury or disease and had been compensated by a prior award. When considering impairment, awards for like body parts, systems or medical conditions are to be offset, e.g., low back to low back, psychological to psychological, etc. Social-vocational factors may be offset for different unscheduled body parts, systems or conditions. Only that portion of lost earning capacity not present prior to the current injury or disease shall be awarded. The following factors shall be considered when determining the extent of the current disability award:

(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 from a prior injury or disease which were still present at the time of the current injury or disease. After considering and comparing the claims, any ratable permanent partial disability in the current claim for loss of earning capacity caused by the current injury or disease, (which would not have been present at the time of the current injury or disease) shall be granted.

(6) Except as otherwise required by these rules, methods used by the examiner for making findings of impairment shall be the methods described in the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev. 1990**, and shall be reported by the physician in the form and format required by these rules.

(7) Range of motion shall be measured using the goniometer as described in the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Edition (Revised), 1990**, except that the goniometric method for measuring spinal range of motion may be used until September 30, 1991, while the utilization of an inclinometer to measure spinal range of motion is mandatory on or after October 1, 1991.

(8) When a claim has been reopened pursuant to ORS 656.273, the worker's compensable condition at the time of claim closure or reconsideration is compared with the worker's compensable condition as it existed at the time of the last award or arrangement of compensation for the compensable condition as it existed at the time of the last closure or reconsideration, whichever occurred most recently, to determine if there is an actual worsening of the worker's compensable condition.

(a) For purposes of this section, actual worsening shall be established by physician opinion substantiated by objective clinical findings, demonstrating a worsened medical condition at the time of the current claim closure compared with the worker's medical condition at the last award or arrangement of compensation for the compensable condition as it existed at the last claim closure or reconsideration, whichever occurred most recently.

(b) When an actual worsening of the worker's compensable condition occurs, the extent of permanent disability shall be redetermined. When an actual worsening of the worker's compensable condition does not occur, the extent of permanent disability shall not be redetermined, but shall remain unchanged.

(c) If a claim has multiple compensable conditions which are either newly accepted since the last arrangement of compensation and/or which have actually 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 actually worsened shall continue to be the same impairment values that were established at the last arrangement of compensation.

(9) When a worker ceases to be enrolled and actively engaged in training pursuant to ORS 656.268(9) and there is no accepted aggravation in the current open period, the worker is entitled to have the amount of unscheduled permanent disability for a compensable condition reevaluated under these rules. The reevaluation may increase, decrease or affirm the worker's unscheduled permanent disability award.

(10) When a worker ceases to be enrolled and actively engaged in training pursuant to ORS 656.268(9) and there is an accepted aggravation in the same open period, actual worsening shall be considered pursuant to these rules. If there is no actual worsening, the prior award may be reduced or affirmed.

(11) Except as provided by ORS 656.325 and 656.268(9), 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.

(12) Impairment findings made by a consulting physician or other medical providers (e.g. occupational or physical therapists) at the time of closure may be used to determine impairment if the worker's attending physician concurs with the findings as prescribed in OAR 436-010-0080. If an attending physician's findings or comments are unavailable or incomplete, impairment may be established by the preponderance of medical evidence.

(13) Impairment is established by the attending physician in accordance with ORS 656.245(2)(b)(B) and OAR 436-010-0080 except where a preponderance of medical opinion establishes a different level of impairment pursuant to ORS 656.726(3)(f)(B). On reconsideration, where a medical arbiter is used, impairment is established by the medical arbiter, except where a preponderance of medical opinion establishes a different level of impairment. Where a preponderance establishes a different level of impairment, the impairment is established by the preponderance of evidence.

(14) When rating disability, specific impairment findings, e.g., weakness, reduced range of motion, etc., are awarded in whole number increments. This may require rounding non-whole number percentages for given impairment findings before combining with any other applicable impairment value. The exception is for hearing and vision. Hearing and vision values are awarded in increments of hundredths.

(a) Except for subsection (b) of this section, before combining, the sum of the impairment values is rounded to the nearest whole number. For the decimal portion of the number, point 5 and above is rounded up, below point 5 is rounded down.

Example: Range of Motion of the Wrist		Impairment
dorsiflexion 36°	=	3.80%
flexion 63°	=	1.40%
radial deviation 16°	=	0.80%
deviation 7°	=	4.30%
Add range of motion findings in a single joint. (Sum of impairment values)		10.30%
Round to Nearest Whole Number		10%

(b) The sum of impairment values greater than zero and less than 0.5 will be granted a value of 1%.

Example: Range of Motion of the Wrist		Impairment
dorsiflexion 60°	=	0.00%
flexion 69°	=	0.20%
radial deviation 19°	=	0.20%
ulnar deviation 30°	=	0.00%
Add range of motion findings in a single joint.		0.40%
Since the value is greater than zero and less than 0.5%, the award is 1% of wrist.		

(15) When a joint is ankylosed in more than one direction or plane, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. This value shall be granted in lieu of all other range of motion or ankylosis values for that joint.

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

ORDER NO.

(16) If there are impairment findings in two or more body parts in an extremity, the total impairment findings in the distal body part shall be converted to a value in the most proximal body part pursuant to the applicable conversion chart in these rules. This conversion shall be done prior to combining impairment values for the most proximal body part.

Example: Wrist	Range of motion
	extension: 50° = 2%
	flexion: 40° = 5%
	Add 7%
Elbow	Range of motion
	flexion: 110° = 10% arm
Convert (wrist) to arm per OAR 436-035-0090(1):	7% wrist = 6% arm
Combine 10% with 6% =	15% arm

(17) Except as otherwise noted in these rules, impairment values to a given body part, area or system are combined according to the method outlined on pages 254-256 by the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990**, as follows:

(a) 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 436-035-0007(14)). 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: $.12 + .03(1.0 - .12) = .12 + .03(.88) = .12 + .0264 = .1464 = 14.6 = 15$.

Example:	Impairment of the Wrist/Hand	Impairment
	loss of range of motion	= 6% of the wrist/hand
	weakness of wrist	= 9% of the wrist/hand
	carpal bone surgery	= 5% of the wrist/hand
Combine 9 and 6 = 14; then combine 14 and 5 =	18% total impairment wrist/hand	

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

ORDER NO.

(b) For unscheduled values, combining impairment values for a given body part, area or system must be done before combining with other unscheduled values.

Example: Low Back	Impairment
range of motion	10%
surgery	9%
fractured vertebrae	7%
Combine 10 and 9 = 18;	
Then combine 18 and 7 = 24% low back (combined value)	
Neck:	
range of motion	5%
surgery	8%
Combine 8 and 5 =	13% neck (combined value)
Overall unscheduled impairment:	
Combined 24% (low back) with 13% (neck) = 34% impairment	

(18) To determine impairment due to loss of strength, the 0 to 5 international grading system and 0 to 5 method as noted in the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. Revised, 1990** shall be used. The grade of strength shall be reported by the physician and assigned a percentage value from the table in subsection (a) of this section. The impairment value of the involved nerve shall be multiplied by this value. Grades identified as "++" or "--" shall be considered either a "+" or "-", respectively.

(a) The grading shall be valued as follows:

Grade	Description	Percent
5/5:	The worker retains range of motion against gravity with full resistance applied.	0%
5-/5		5%
4+/5		10%
4/5:	The worker retains range of motion against gravity with some resistance applied.	20%
4-/5		30%
3+/5		40%
3/5:	The worker retains range of motion against gravity without resistance applied	50%
3-/5		60%
2+/5		70%
2/5:	The worker retains range of motion with gravity, but has to have some assistance.	75%
2-/5		80%
1+/5		85%
1/5:	The worker has evidence of slight muscle contractility; no joint motion.	90%
1-/5		95%
0/5:	The worker has no evidence of muscle contractility	100%

(b) The peripheral nerve or spinal nerve root which supplies (innervates) certain muscles may be identified by referencing current anatomy texts or the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990 or 4th Ed., 1993.**

(19) For muscles supplied (innervated) by the same nerve, the loss of strength shall be determined by averaging the percentages of impairment for each involved muscle to arrive at a single percentage of impairment for the involved nerve.

Example: Forearm

Radial nerve (50%) supplies (innervates):

Muscles	(grade)	(%)	(nerve)	
Supinator	4/5 = 20%	x	.50	= 10%
Extensor carpi radialis	3/5 = 40%	x	.50	= 20%
Extensor carpi ulnaris	4/5 = 30%	x	.50	= 15%
	Add			45%

Average 45% ÷ 3 = 15% impairment to radial nerve

(20) When multiple nerves have impairment findings found pursuant to these rules, these impairment values shall first be combined for an overall loss of strength value before combining with other impairment values.

(21) The movement in a joint is measured in active degrees of motion. Impairment findings describing ranges of motion shall describe the maximum degree of motion for each direction of movement.

(a) Range of motion values for each applicable direction in a single joint are first added, then combined with other impairment findings.

Example: Range of motion of elbow	Arm Impairment
flexion to 120°	8%
extension to 30°	6%
Add	14%
Other Impairment Values	
Weakness	7%
Prosthetic radial head replacement	10%
Combine 14 and 10 = 23	
23 and 7 = 28% total Arm Impairment	

(b) Range of motion values for multiple joints in a single body part (e.g. of a finger) are determined by finding the range of motion values for each joint (e.g. MCP, PIP, DIP) and combining those values for an overall loss of range of motion value. This value is then combined with other impairment values.

(22) The range of motion or laxity (instability) of an injured joint shall be compared to and valued proportionately to the contralateral joint except when the contralateral joint has a history of injury or disease. The strength of an injured extremity, shoulder or hip shall be compared to and valued proportionately to the contralateral body part except when the contralateral body part has a history of injury or disease.

Instability Example:

The injured knee is reported to have severe instability of the anterior cruciate ligament. The standards grant an impairment value of 15% for severe instability of the anterior cruciate ligament.

The contralateral knee is reported to have mild instability of the anterior cruciate ligament. The standards grant an impairment value of 5% for mild instability of the anterior cruciate ligament.

A proportion is established by subtracting the contralateral instability of 5% from the 15% for the injured joint which = 10% impairment for the instability.

Strength Example:

The injured deltoid muscle is reported to have 3/5 strength. The Standards note 3/5 strength = 50%.

The contralateral deltoid muscle is reported to have 4+5 strength. The standards note 4+5 strength = 10%.

A proportion is established by subtracting the contralateral strength of 10% from the 50% for the injured arm which = 40%. This percentage is then used to determine the loss of strength for the injured deltoid.

Range of Motion 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.

One method of determining this proportion is: $80/140 = X/150$.

X = expected retained range of motion compared to the established norm of 150° upon which flexion is determined under these rules. X, in this case, equals 86°.

86° of retained flexion of the knee is calculated under these rules, after rounding, to 23% impairment.

(a) If the motion of the injured or contralateral joint exceeds the values for ranges of motion established under these rules, the values established under these rules shall be used to establish impairment.

(b) When the contralateral joint has a history of injury or disease, the findings of the injured joint shall be valued based upon the values established under these rules.

(23) If the worker dies due to causes unrelated to the accepted conditions of the claim, the following applies:

(a) When all compensable conditions are medically stationary pursuant to OAR 436-030-0035 at the time of death, the following applies:

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

ORDER NO.

(A) Impairment findings, reported in accordance with OAR 436-010-0080, shall be rated pursuant to these rules.

(B) Impairment findings not reported according to the OAR 436-010-0080 shall be determined by rating only those findings that are irreversible and are addressed by these rules.

(C) For unscheduled disability, age, education and adaptability shall be determined pursuant to OAR 436-035-0270 through 035-0310 if the findings are documented. If findings for determining adaptability are not documented, a value of +1 shall be granted for adaptability.

(b) When all compensable conditions are not medically stationary pursuant to OAR 436-030-0035 at the time of death, the following applies:

(A) Only those impairment findings that are irreversible and are addressed by these rules shall be rated;

(B) For unscheduled disability, age and education factors shall be determined pursuant to OAR 436-035-0270 through 035-0300. **Unless the worker is released to regular work and impairment only is rated pursuant to OAR 436-035-0270(3), a**[A]daptability shall be valued at +1[, unless the worker is released to regular work, in which case the value is zero].

(c) In claims where there is a compensable unscheduled condition that is medically stationary AND a compensable unscheduled condition that is not medically stationary, the adaptability factor for the medically stationary condition shall be determined by applying subsections (a) and (b) of this section, respectively, to the conditions and using the higher of the values for adaptability.

(d) For purposes of this section "irreversible findings" are defined in subsection (2)(d) of this rule.

(24) Except for contralateral comparison determinations pursuant to OAR 436-035-0007(22), loss of opposition determination pursuant to OAR 436-035-0040, averaging muscle values pursuant to OAR 436-035-0007(19), and impairment determined under ORS 656.726(3)(f)(C), only impairment values listed in these rules are to be used in determining impairment. Prorating or interpolating between the listed values is not allowed. For findings that fall between the listed impairment values, the next higher appropriate value shall be used for rating.

(25) Values found in these rules consider the loss of use or function and/or loss of earning capacity directly associated with the compensable condition. When a worker's impairment findings do not meet the threshold (minimum) findings established in these rules, no value is granted.

(a) Not all surgical procedures result in loss of use or function and/or loss of earning capacity. Some surgical procedures improve the use and function of body parts, areas or systems or ultimately may contribute to an increase in earning capacity. Accordingly, not all surgical procedures receive a value under these rules.

(b) Not all medical conditions or diagnoses result in loss of use or function and/or loss of earning capacity. Accordingly, not all medical conditions or diagnoses receive a value under these rules.

(26) Waxing and waning of signs and/or symptoms related to a worker's compensable medical condition is already contemplated in the values provided in these rules. There is no additional value granted for the

varying extent of waxing and waning of the condition. Waxing and waning means there is not an actual worsening of the condition pursuant to ORS 656.273.

(27) Validity shall be established for findings of impairment according to the criterion noted in the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev., 1990**, unless the validity criterion for a particular finding is not addressed in this reference or is not pertinent to these rules. Upon examination, findings of impairment which are determined to be ratable pursuant to these rules shall be rated unless the physician determines the findings are invalid and provides a written opinion, based on sound medical principles, explaining why the findings are invalid. When findings are determined invalid, the findings shall receive a value of zero.

(28) ORS 656.214 provides the degree values to be given for permanent partial disability awarded pursuant to ORS 656.268. For injuries sustained prior to January 1, 1992, the dollar values per degree 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 dollar values per degree do not apply to any portion of a permanent partial disability award that is final by operation of law.

(29) For injuries prior to January 1, 1992, Notices of Closure issued on or after June 7, 1995, that are not final by operation of law, shall be amended to reflect the correct dollar value per degree as stated in 1995 Or. Law, Chapter 332, section (20).

(30) For injuries prior to January 1, 1992, notwithstanding the time limitation in OAR 436-030-0030(13), the Department shall amend orders issued on or after June 7, 1995, that are not final by operation of law, to reflect the correct dollar value per degree as stated in 1995 Or. Law, Chapter 332, section (20).

Stat. Auth.: ORS 656.726

Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.273, 656.726, Sect. 3

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;
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 9-21-95 as WCD Admin. Order 95-063, eff. 9-21-95. (Temp)
Amended 1-29-96 as WCD Admin. Order 96-051, eff. 2-17-96
Amended 8-19-96 as WCD Admin. Order 96-068, eff. 8-19-96 (Temp)

STANDARDS FOR THE RATING OF UNSCHEDULED PERMANENT DISABILITY

436-035-0270 (1) OAR 436-035-0270 through 436-035-0450 apply to the rating of unscheduled permanent partial disability under the Workers' Compensation Act.

(2) If there is no measurable impairment under these rules, no award of unscheduled permanent partial disability shall be allowed.

[E.D. NOTE: Section (3) is being moved to OAR 436-035-0005(17).]

(3) In unscheduled claims, only impairment shall be rated for those workers who:

(a) Return to regular work; or

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

ORDER NO.

(b) The attending physician releases the worker to regular work and the work is available, but the worker fails or refuses to return to that job; or

(c) The attending physician releases the worker to regular work, but the worker's employment is terminated for cause unrelated to the injury.

(4) The factor for adaptability[, age and education] will be given a [neutral] value of [zero] one when:

(a) A worker's residual functional capacity, as determined pursuant to OAR 436-035-0310(5), is equal to or greater than the worker's base functional capacity as determined pursuant to OAR 436-035-0310(4); or

(b) A worker with rateable impairment found in OAR 436-035-0380 through 436-035-0450 is granted one through [four] nine percent impairment.

Stat. Auth.: ORS 656.726

Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726

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.

Amended 1-29-96 as WCD Admin. Order 96-051, eff. 2-17-96

Amended 8-19-96 as WCD Admin. Order 96-068, eff. 8-19-96 (Temp)

ADAPTABILITY TO PERFORM A GIVEN JOB

436-035-0310 (1) The range of impact for this factor is from [0] +1 to +7.

(2) For those workers who have rateable unscheduled impairment found in rules OAR 436-035-0320 through 436-035-0375, the adaptability value is determined according to sections (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.

(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

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

ORDER NO.

(b) A second-level physical capacity evaluation as defined in OAR 436-010-0040 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 436-035-0300(3), 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 436-010-0040 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.

(5) Residual functional capacity is the greatest capacity evidenced by:

(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 436-010-0040 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.

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

ORDER NO.

(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]1	[0]1	[0]1	[0]1	[0]1	[0]1	[0]1	[0]1
	L	4	3	2	[0]1	[0]1	[0]1	[0]1	[0]1	[0]1
	M	6	5	4	3	2	[0]1	[0]1	[0]1	[0]1
	H	7	6	6	5	4	3	2	[0]1	[0]1
	V/H	7	7	6	5	4	3	2	1	[0]1

(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 OAR 436-035-0380 through 436-035-0450, adaptability is determined by comparing the worker's extent of impairment to the following Adaptability Scale:

Total Impairment	Adaptability Value
[0-4%	0
5]1-9%	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 OAR 436-035-0320 through 436-035-0375 and also unscheduled impairments in rules OAR 436-035-0380 through 436-035-0450 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.

Stat. Auth.: ORS 656.726
 Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726
 Hist: Formerly OAR 436-30-430;
 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 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).
 Amended 11-29-93 as WCD Admin. Order 93-056, eff. 12-14-93.
 Amended 8-19-96 as WCD Admin. Order 96-068, eff. 8-19-96 (Temp).

RAWCD\BENEFITS\BEN_MGMT\DORAM\VAE\POL\436_035T.SAM\08/19/96