

## EXHIBIT "A"

### CHAPTER 436 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES WORKERS' COMPENSATION DIVISION DIVISION 035

#### DISABILITY RATING STANDARDS

##### Temporary Rule Promulgation For Individual Claims

**436-035-0500** (1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases pursuant to ORS 656.726(3)(f)(C) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not adequately addressed in the disability standards.

(2) Temporary rules promulgated pursuant to ORS 656.726(3)(f)(C) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter in accordance with ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(2).

**B82-5920** This worker's altered temperature perception in the C6 nerve root distribution affecting the thumb and index web space is not addressed in the standards. The loss of ability to perceive temperature in this area would affect such activities as grasping and therefore is considered as the hand. The Director finds the loss of function similar to the loss of function when the two-point discriminatory nerve fibers have been damaged in the palm and assigns a value of 7% for the altered temperature perception in the hand. See OAR 436-035-0110(1). This impairment is combined with any other impairment ratable under the current rules. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. B82-5920.

**B83-1332** This worker's accepted post-traumatic headache condition has reached a level of severity which results in disruption of activities of daily living, work restrictions, and ongoing medical treatment, including prescription medication. The Director assigns an impairment value of 10% for this head injury. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. B83-1332.

**D87-5966** This worker sustained an injury to the left ankle which resulted in the inability to reach neutral or zero ankle position. This ultimately results in a reduction of plantar flexion. The standards do not provide a value for the worker's plantar flexion measured from -5 degrees to 20 degrees equaling 15 degrees of plantar flexion. In this case, a comparison with the uninjured right ankle is necessary to determine the appropriate impairment value. See OAR 436-035-0007(23) and 436-035-0190(8). The comparison results in a range of motion of 20 degrees. The Director, therefore, assigns an impairment value of 7% for plantar flexion of the left ankle. See OAR 436-035-0190(8). This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D87-5966.

**D90-9018** This worker sustained a 15 centimeter laceration extending from the temporal scalp to just proximal to the left oral commissure and a chip fracture of the left zygomatic bone. Subsequently, the worker developed marked hypersensitivity of the scar on the left side in the trigeminal nerve distribution. The rules do not provide an impairment value for loss of use or function due to

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

---

hypersensitivity in the trigeminal nerve distribution. The Director finds the loss of use or function due to hypersensitivity similar to the loss of sensation on one side in the trigeminal nerve distribution and assigns an impairment value of 10%. See OAR 436-035-0390(4)(a). This impairment value is combined with any other ratable impairment under the standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D90-9018.

D91-3299 This worker sustained a fracture of the left thumb. The thumb healed with a dorsal angulation deformity. The standards do not provide an impairment value for this deformity in a thumb. The Director finds the loss of use or function due to the dorsal deformity is similar to the loss experienced with digit bony deformity in lateral or rotational deviation and assigns an impairment value of 10% for the left thumb. See OAR 436-035-0050(7). This impairment value is combined with any other ratable impairment under the standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D91-3299.

E89-7114 This worker sustained fractures to the toes of the right foot with inability to reach neutral or zero toe position. The standards do not provide a value for the worker's dorsiflexion measured from -5 degrees to 25 degrees equaling 20 degrees of dorsiflexion. See OAR 436-035-0160(5). The Director therefore assigns an impairment value of 14% for dorsiflexion of the right lesser toes (2nd, 3rd, 4th, and 5th). This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. E89-7114.

F45-1513 This claim was remanded for a temporary rule to address left shoulder weakness due to periarticular fibrosis which was not covered by the standards in effect at the time of claim closure. The Director assigns an impairment value of 13% for the left shoulder weakness. This value shall be combined with any other applicable impairment values ratable under the standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. F45-1513.

H86-4536 This worker sustained a crush injury to his left leg which resulted in the inability to reach neutral or zero ankle position. This ultimately resulted in a reduction in plantar flexion. The standards do not provide a value for the worker's plantar flexion measured from -4 degrees to 46 degrees equaling 42 degrees of plantar flexion. See OAR 436-035-0190(6). However, the value for 42 degrees of plantar flexion does not meet the minimum threshold to receive a value pursuant to OAR 436-035-0190(8) and 436-035-0007(26). The Director finds that while the loss of dorsiflexion of -4 degrees is not covered in the standards, the value for the resulting decrease in plantar flexion of 42 degrees does not meet the minimum threshold to receive a value. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. H86-4536.

H91-8266 This worker sustained an amputation of the right middle finger through the tip of the distal phalanx. Subsequently, the worker developed hypersensitivity of 1/2 the distal phalanx of the right middle finger involving both the ulnar and radial side. The rules do not provide an impairment value for the loss of use or function due to hypersensitivity. The Director finds the loss of use or function due to hypersensitivity similar to the loss of sensation ("protective") for 1/2 the distal phalanx of the right middle finger and assigns an impairment value of 12%. See OAR 436-035-0110(1)(c). This impairment value is combined with any other ratable impairment under the standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. H91-8266.

I86-3678 This worker has a shortening of the 4th metacarpal as a result of an accepted right hand fracture. The Director finds the impairment due to a shortening of the metacarpal as a result of a fracture is similar in loss of use or function to a partial resection of the metacarpal. The Director adopts a value of 10% of the right hand for shortening of the right 4th metacarpal. This value shall be combined with

any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. I86-3678.

I86-6219 This claim was remanded for consideration of temporary rules to address loss of the lateral femoral cutaneous nerve in the thigh and sexual dysfunction as direct medical sequelae of the accepted conditions. The Director finds the worker's loss of the lateral femoral cutaneous nerve in his thigh is addressed in the standards under OAR 436-035-0230(1). The sexual dysfunction is not addressed by the standards. The Director adopts a value of 5% for the sexual dysfunction. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. I86-6219.

**A88-7382 This worker sustained an injury to her right foot resulting in a Lisfranc dislocation fracture. The worker was unable to dorsiflex her 2nd, 3rd, and 4th toes to a neutral position at the metatarsophalangeal (MTP) joints. This ultimately results in a reduction in dorsiflexion of the 2nd, 3rd, and 4th MTP joints. The standards do not provide a value for the worker's impairment. The retained dorsiflexion in the 2nd MTP joint is 25 degrees, 3rd MTP joint is 35 degrees, and 4th MTP joint is 40 degrees. The Director assigns an impairment value of 10.5% for the 2nd MTP, 3.5% for the 3rd MTP, and 0.0% for the 4th MTP. See OAR 436-035-0160(5). Each toe value is added to the value for decreased motion in plantar flexion in each MTP joint, and then combined with any other applicable impairment values to the right toes. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A88-7382.**

**A89-0780 As a result of the multiple surgeries to the worker's right breast due to exploration for foreign bodies (slivers) and the removal of slivers, the worker no longer has the ability to deliver milk from this breast. The standards do not provide a value for this loss of use or function of the breasts. In this case, the impairment value for the inability to deliver milk from the right breast is 2.5%, rounded to 3% pursuant to OAR 436-035-0007(15). This impairment value is combined with any other ratable impairment under the standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A89-0780.**

**A91-0674 This worker's accepted head contusion resulting in neuritic head pain in the left temple has reached a level of severity which results in disruption of activities of daily living, work restrictions, and ongoing medical treatment, including prescription medication. The Director assigns an impairment value of 10% for this head impairment. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A91-0674.**

**C91-0512 This worker has a shortening of the shaft of the right 4th metacarpal as a result of an accepted 4th metacarpal fracture. The Director finds the impairment due to shortening of the metacarpal as a result of fracture is similar in loss of use or function to a partial amputation of the metacarpal. The Director adopts a value of 10% of the right hand for shortening of the right 4th metacarpal. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. C91-0512.**

**D81-0814 This worker had a fracture of the left sacroiliac joint which was fused, but in a displaced position. This impairment is not addressed by the standards. The Director adopts a value of 10% for the healed displaced fracture of the left sacroiliac joint post fusion. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D81-0814.**

**D87-3420 This worker sustained a fracture of the left proximal tibia complicated by anterior and lateral compartment syndrome and damage to the left popliteal artery. The worker lacked 5 degrees of extension (dorsiflexion) in the left ankle. Ultimately, this results in a reduction of**

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

---

plantar flexion. The standards do not provide a value for the worker's measured plantar flexion from -5 degrees to 54 degrees equaling 49 degrees of plantar flexion. See OAR 436-035-0190(6). However, the value for 49 degrees of plantar flexion does not meet the minimum threshold to receive a value pursuant to OAR 436-035-0190(8) and 436-035-0007(26). The Director finds that while the loss of 5 degrees of extension is not covered in the standards, the value for the resulting decrease in plantar flexion of 49 degrees does not meet the minimum threshold and assigns an impairment value of 0%. The worker experiences some hypersensitivity on the plantar surface of the left foot which is not addressed by the standards. The Director assigns an impairment value of 5% for loss of use or function of the left foot due to the hypersensitivity. This value shall be combined with any other applicable impairment values for the left foot. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. D87-3420.

E90-7599 This worker sustained an injection type injury to the right index finger when a latex paint gun fired into the pad of the finger. Subsequently, the worker developed marked hypersensitivity in the pad of the finger resulting in a significant loss of use or function of the finger. The Director finds the loss of use or function due to marked hypersensitivity similar to the loss of sensation ("total loss") of 1/2 the distal phalanx of the right index finger and assigns an impairment value of 15%. See OAR 436-035-0110(1). This impairment value is combined with any other ratable impairment under the standards. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. E90-7599.

F87-8389 This worker developed a prolapsed uterus following heavy lifting on the job. The worker underwent a hysterectomy. The loss of function for the uterus would be the inability to carry the products of fertilization. The Director assigns an impairment value of zero percent as this worker was no longer within the generally accepted child bearing years. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. F87-8389.

G76-8267 This worker sustained a left thumb amputation at the level of the metacarpophalangeal joint; the thumb was not reattached. The worker underwent a lengthening of the first metacarpal and a deepening of the first web space to create a thumb-like appendage. The standards do not provide impairment values for loss of opposition of the fingers of the left hand to the new thumb-like appendage. See OAR 436-035-0040(4). The Director finds the worker's loss of opposition for the digits similar to an amputation and reattachment of the digit (thumb) at the level of the mid-shaft of the proximal phalanx of the thumb. The Director assigns a loss of opposition value of 40% for the left index finger, 40% for the left middle finger, 20% for the left ring finger, and 10% for the left little finger. See OAR 436-035-0040(1)(2)(4). These values shall be combined with any other applicable impairment values for each finger, and then converted to left hand values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G76-8267.

G81-2920 This worker developed right shoulder and elbow conditions as a result of repetitive work activities. As a result of the accepted conditions and reparative surgery, the worker is unable to adduct her right shoulder to the neutral position. The standards address zero degrees of adduction. See OAR 436-035-0330(7). However, there is a resulting loss of abduction not addressed in the standards. A value for the worker's abduction measured from -10 degrees to 95 degrees equaling 85 degrees of abduction yields a 2.5% impairment value. See OAR 436-035-0330(5). The Director adopts the value of 2.5% for loss of abduction. This value shall be added to any other shoulder range of motion values and then combined with any other applicable

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

**impairment findings. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G81-2920.**

**G89-0989 This worker has permanent anterior interosseous entrapment neuropathy affecting the flexor pollicis longus muscle resulting in loss of function. The anterior interosseous nerve is located in the mid-forearm as it branches off the median nerve. The Director assigns the loss of function of the anterior interosseous nerve a value of 5% of the forearm. This impairment shall be combined with any other impairment ratable under the current rules. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G89-0989.**

**I87-8203 Following severe penetration of the left hand with rotten wood, the worker experiences cold intolerance at temperatures less than 70 degrees Fahrenheit. The Director assigns a value of 88% for the left hand cold intolerance. The worker has a torsional type deformity resulting in a loss of function in the left index finger with grasping. The Director adopts an impairment value of 10% for the left index finger deformity. These values shall be combined with any other applicable impairment values for the left hand and left index finger, respectively. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. I87-8203.**

**I90-5353 This worker sustained an injury to his left foot resulting in a closed non-displaced fracture of the 2nd and 3rd metatarsophalangeal joint. This ultimately results in a reduction in dorsiflexion of both metatarsophalangeal joints. The standards do not provide a value for the worker's dorsiflexion measured from 25 to 30 degrees equaling 5 degrees of retained dorsiflexion in the 2nd metatarsophalangeal joint or a value for dorsiflexion measured from 21 to 30 degrees equaling 9 degrees of retained dorsiflexion in the 3rd metatarsophalangeal joint. See OAR 436-035-0160(5). The Director therefore assigns an impairment value of 25% of the left 2nd toe for loss of dorsiflexion in the metatarsophalangeal joint and 21.8% of the left 3rd toe for loss of dorsiflexion in the metatarsophalangeal joint. This value shall be added to the value for decreased motion in plantar flexion and then combined with any other applicable impairment values for the left toes. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. I90-5353.**

**I90-9959 The Director adopts a value of 10% for the left index finger as a result of malrotation of the second metacarpal causing a rotational deformity of the index finger producing a loss of use or function when making a fist. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. I90-9959.**

Stat Auth: ORS 656.726(3)

Stat Impltd: ORS 656.268(6); ORS 656.726(3)(f)(C)

Hist: Filed 12/31/92 as Admin. Order 18-1992, eff. 12/31/92 (Temp) (A58-7576) (D60-5352)  
Amended 4/28/93 as WCD Admin. Order 93-051, eff. 4/28/93 (Temp) (A58-2159) (B59-4533) (E61-4228) (I59-2031)  
Filed 6/29/93 as Admin. Order 93-053, eff. 6/29/93  
Amended 9/2/93 as WCD Admin. Order 93-054, eff. 9/2/93 (Temp) (I64-3064)  
Amended 10/22/93 as WCD Admin. Order 93-055, eff. 10/22/93 (Temp) (A61-7196) (F60-7468)  
Amended 5/26/94 as WCD Admin. Order 94-053, eff. 5/26/94 (Temp) (A64-0903) (B33-4465) (B52-7039) (B63-9980) (C64-7847) (D50-0623) (D60-2551) (G45-4281) (I59-4285)  
Amended 7/15/94 as WCD Admin. Order 94-056, eff. 7/15/94 (Temp) (C43-2644) (C50-4886) (D61-6586) (E38-6617) (E51-8953) (G37-3015)  
Amended 8/31/94 as WCD Admin. Order 94-057, eff. 8/31/94 (Temp) (A66-7148) (C66-9882) (F67-9790) (G37-9847) (G66-0945) (G68-2891) (I66-9214) (I67-8572)  
Amended 11/14/94 as WCD Admin. Order 94-061, eff. 11/14/94 (Temp) (A56-6922) (A68-8532) (B67-0517) (B69-2864) (C66-4016) (D69-1873) (D71-7397) (G68-3895)  
Amended 01/26/95 as WCD Admin. Order 95-050, eff. 01/26/95 (Temp) (C51-2235) (C51-9086) (D59-9600) (D69-3198) (E74-0161) (F68-5951) (G55-5440) (G69-3682) (I75-8738)  
Amended 03/02/95 as WCD Admin. Order 95-051, eff. 03/02/95 (Temp) (A69-9328) (I73-9896)  
Amended 04/13/95 as WCD Admin. Order 95-052, eff. 04/13/95 (Temp) (A32-5947) (C54-7329) (F62-2845)  
Amended 05/31/95 as WCD Admin. Order 95-053, eff. 05/31/95 (Temp) (A66-7308) (H69-9099)  
Amended 07/11/95 as WCD Admin. Order 95-055, eff. 07/11/95 (Temp) (A55-1299) (A68-5802) (B75-0788) (C72-7919) (E47-5755) (F72-6107) (G52-8324)

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

---

Amended 10/05/95 as WCD Admin. Order 95-064, eff. 10/05/95 (Temp) (A72-7487) (B67-2012) (B75-5795) (G55-8472) (H77-3065)  
 Amended 11/02/95 as WCD Admin. Order 95-067, eff. 11/02/95 (Temp) (C77-9244) (F74-8492) (G72-5640) (I59-0763)  
 Amended 12/07/95 as WCD Admin. Order 95-072, eff. 12/07/95 (Temp) (A79-2845) (B78-6344) (D67-0149) (D75-7661) (F72-4844) (H75-1172)  
 Amended 02/01/96 as WCD Admin. Order 96-054, eff. 02/01/96 (Temp) (A74-3939) (A79-7277) (C76-4285) (E71-9980) (E74-3188) (F54-7926) (F69-1607) (F70-0225) (F77-9704) (I75-7201)  
 Amended 03/20/96 as WCD Admin. Order 96-058, eff. 03/20/96 (Temp) (A76-0401) (B74-7423) (B76-5803) (E73-6324) (F72-3750) (G41-0094) (G71-9125)  
 Amended 07/03/96 as WCD Admin. Order 96-063, eff. 07/03/96 (Temp) (B72-2366) (C69-5254) (C75-2485) (C75-4352) (D58-5410) (E60-2070) (E67-3492) (E75-7774) (E76-8051) (E78-0741) (F41-3719) (F71-5463) (G79-8212) (H66-7437) (H67-5437) (H74-6802) (I58-7732)  
 Amended 08/07/96 as WCD Admin. Order 96-067, eff. 08/07/96 (Temp) (B81-6992) (E73-5763) (F77-1642) (F78-3857) (F79-7581) (G77-2943) (I77-7807)  
 Amended 10/31/96 as WCD Admin. Order 96-071, eff. 10/31/96 (Temp) (A75-6135) (A81-4630) (B70-9869) (C78-2717) (D75-4912) (D79-9425) (E76-7631) (E80-1282) (F74-8492) (G72-8281) (I61-2741) (I79-2365) (I80-9262)  
 Amended 01/15/97 as WCD Admin. Order 97-050, eff. 01/15/97 (Temp) (A82-2866) (B77-8377) (D81-7448) (I82-0858)  
 Amended 01/08/97 as WCD Admin. Order 96-072, eff. 02/15/97  
 Amended 03/12/97 as WCD Admin. Order 97-052, eff. 03/13/97 (Temp) (C84-3004) (D82-9639) (G83-6389)  
 Amended 05/14/97 as WCD Admin. Order 97-054, eff. 05/14/97 (Temp) (D29-9140)  
 Amended 09/09/97 as WCD Admin. Order 97-060, eff. 09/09/97 (Temp) (B85-1508) (E84-8454) (H78-6911) (I43-6347) (I82-6879)  
 Amended 03/31/98 as WCD Admin. Order 98-054, eff. 03/31/98 (Temp) (A83-5359) (A85-2018) (C81-9952) (E55-9496) (E72-7758) (F61-8155) (F83-7544) (F86-6621) (G32-9876) (G60-2516) (G74-2871) (G81-2430) (G83-2249) (G85-5641) (H81-4914) (I86-3008) (I86-9133)  
 Amended 7/13/98 as WCD Admin. Order 98-056, eff. 7/15/98 (Temp) (A83-5562) (A86-1481) (B86-5204) (E84-8500) (E85-7684) (F79-5346) (G69-1876) (G86-8605) (G87-7426) (G88-7067) (H87-5177) (I82-2391)  
 Amended 10/15/98 as WCD Admin. Order 98-058, eff. 10/15/98 (Temp) (A83-2469) (A83-2921) (A85-8493) (A86-6157) (A86-7591) (A86-7963) (A87-9961) (B89-7196) (D75-3984) (D83-4235) (F87-2368) (I86-0887)  
 Amended 01/11/99 as WCD Admin. Order 99-050, eff. 01/15/99 (Temp) (A81-8005) (A84-0262) (A85-3518) (A86-8939) (B88-3694) (D88-4287) (D89-0679) (F83-8609) (F85-3096) (H91-0152) (I84-4190)  
 Amended 04/13/99 as WCD Admin. Order 99-053, eff. 04/15/99 (Temp) (B82-5920) (B83-1332) (D87-5966) (D90-9018) (D91-3299) (E89-7114) (F45-1513) (H86-4536) (H91-8266) (I86-3678) (I86-6219)  
 Amended 07/15/99 as WCD Admin. Order 99-058, eff. 07/15/99 (Temp) (A88-7382) (A89-0780) (A91-0674) (C91-0512) (D81-0814) (D87-3420) (E90-7599) (F87-8389) (G76-8267) (G81-2920) (G89-0989) (I87-8203) (I90-5353) (I90-9959)

S:\WCD\_RULE\035\_0500\99\_058\35\_0500T.SAM\07/12/99\flr