

Workers' Compensation FOCUS

New law means more benefits for some Oregon injured workers

by Kris Webster

The 2001 Legislature sought to remedy the problem of workers with multiple jobs who lost income when they were injured and unable to work at one or more of their jobs. Before January 1, the workers' compensation system considered only the wages of the job-at-injury when determining the compensation to be paid to the injured worker.

Senate Bill 485 established supplemental disability benefit for all applicable injuries occurring on or after January 1, 2002. The Legislature revised ORS 656.210 to incorporate the new benefit. As a result of Senate Bill 485, injured workers with multiple jobs could now have the wages from all subject employment considered in the compensation rate calculation, providing a more equitable replacement of lost wages.

New law continued on Page 16

Tom Mattis moves to Division of Finance and Corporate Securities

by Kara Null

Workers' Compensation Division deputy administrator Tom Mattis has accepted a position the Division of Finance and Corporate Securities (DFCS). He began his new role as acting deputy administrator of DFCS March 4. Tom will be working side by side with newly appointed DFCS administrator Floyd Lanter, who will be coming to the DFCS May 1, 2002.



Mattis moves to DFCS continued on Page 18

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The ABCs of WCD

Terms and abbreviations in this issue

Board's own motion

"Board's own motion" and "own motion" are terms applied to claims reopened under ORS 656.278 after aggravation rights under ORS 656.273 have expired. During the legislative session of 2001, Senate Bill (SB) 485 revised ORS 656.278 and expanded the meaning of own motion claim reopenings. As of January 1, 2002, insurers that voluntarily reopen eligible claims will qualify for reimbursement of their costs from the Workers' Benefit Fund (WBF). Formerly, WBF reimbursement was not allowed unless the claim was ordered to be reopened by the Workers' Compensation Board. SB 485 also relaxed the eligibility criteria for a reopening due to a worsening of a compensable injury and incorporated reopenings for new or omitted conditions into ORS 656.278 (if aggravation rights have expired). Permanent disability is now payable in some cases. An own motion reopening is not considered an aggravation, and the worker is not eligible for vocational assistance. OAR 438-012 provides detailed processing instructions for own motion claims.

Preferred Worker

Subject Oregon worker who, because of permanent disability resulting from a compensable injury or



occupational disease, is unable to return to his or her previous (regular) employment and meets the Preferred Worker Program eligibility criteria for assistance. OAR 436-110, ORS. 656.027

Preferred Worker Program (PWP)

State re-employment assistance program that encourages the re-employment of Oregon workers whose on-the-job injuries have resulted in permanent disabilities.

Reemployment Assistance Program (RAP)

A program that encourages employers to hire workers who have incurred compensable disabling injuries that result in permanent disability that may be a substantial obstacle to employment. Assistance includes wage subsidy, worksite modification, and increased-cost protection. Formerly called the Reemployment Assistance Reserve, it is part of the Workers' Benefit Fund. ORS 656.622 ■

Key telephone numbers and Web address

WCD general information: (503) 947-7810

TTY: (503) 947-7993

Workers' Compensation Infoline: (800) 452-0288

Fraud Complaint: (800) 452-0288

Ombudsman for Injured Workers: (503) 378-3351

TTY (503) 947-7189, (800) 927-1271

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Administrator's notebook

On-line assistance for employers and Preferred Workers

by John L. Shilts

As the Workers' Compensation Division strives to improve processes and services, we are adding a new on-line program to help employers use the Preferred Worker Program and help Preferred Workers find employment. We call it the Job Match Program.

For the past several years, employers have been enjoying the benefits of hiring Preferred Workers. Not only do they get dedicated employees, but also benefit from the following incentives:

- **Premium exemption:** An employer doesn't pay workers' compensation insurance premiums or premium assessments on a Preferred Worker for up to three years from the date the worker starts work.
- **Claim cost reimbursement:** This protects the employer from the costs of a new workers' compensation claim if the Preferred Worker files during the premium-exemption period.
- **Wage subsidy:** The employer receives 50 percent wage reimbursement for the Preferred Worker for six months.
- **Obtained employment purchases:** These are items the worker is required to purchase for a job.
- **Worksite modification:** Modifications can include tools, equipment, and worksite redesign needed to overcome injury-caused limitations so the worker can do the job. Modifications are limited to a maximum of \$25,000.

Until the new Job Match Program, WCD had few ways of connecting Preferred Workers with employers. This on-line program helps bridge that gap.

It works like this: Employers who want to hire a Preferred Worker can go to WCD's Web site and fill out the form describing the job and whom to contact. They just push the "submit" button and their information is added to the new Job Match Web site by our staff. The information will stay on-line for four weeks. Employers may call to have the information removed sooner or kept on longer.

Preferred Workers can then use the Web site to view available jobs and contact the employer when they find listings for which they are qualified.

For more information on the Job Match Program, contact Barbara Smith, Reemployment Assistance Unit manager, (503) 947-7568. ■

Eligible employers must maintain Oregon workers' compensation insurance and comply with Oregon workers' compensation law.

Eligible workers must have permanent disability as a result of a disabling compensable injury or disease sustained on the job in Oregon, and must be prohibited from returning to their regular employment by their physician.

All program benefits are subject to division review and approval.



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Disability Rating Standards

Guidelines for rating PPD of fingers

by Roger Brack, Shirley Cloud, Rondi Sahlberg, and Jim Van Ness

This is one in a series of articles that addresses the evaluation and rating of specific accepted conditions for permanent partial disability (PPD) under Oregon's workers' compensation. Articles since summer 2000 have covered impairment rating of the knee, wrist, ankle, and loss of opposition.

This article addresses the rating of permanent partial disability involving multiple fingers using an attending physician's closing examination report. The steps taken to analyze and rate the partial disability will be outlined and then referenced utilizing *Oregon Administrative Rules, Division 35, and the AMA Guides to the Evaluation of Permanent Impairment* (Third Edition Revised).

Claim history: The worker experienced a crush injury to the middle and ring fingers of the right hand. There was disruption of the flexor and extensor tendons of both digits. The tendons were surgically repaired and the worker subsequently underwent physical therapy.

Closing examination: See OAR 436-035-007(2)(a)(7)(8). The attending physician reported the following findings for the accepted condition of crushed middle and ring fingers of the right hand:

Active range of motion per joint

Middle finger

- distal interphalangeal (DIP) joint 0-50, (0 deg. extension/50 deg. flexion)
- proximal interphalangeal (PIP) joint +5-60, (5 deg. hyperextension/60 deg. flexion)
- metacarpo-phalangeal (MCP) joint 12-50, (12 deg. extension/50 deg. flexion)

Ring finger

- DIP joint 0-60 (0 deg. ext./60 deg. flex.)
- PIP joint -30-90 (30 deg. lag./90 deg. flex.)
- MCP joint +15-90 (15 deg. hyperext./90 deg. flex.)

Other findings

- Rotational deformity present in the middle finger.
- Less than normal sensation (2-point discrimination 7-10 mm) from the DIP joint distally of the entire middle finger.
- Protective sensation (2-point discrimination 11-15mm) from the PIP joint to the tip, radial side only, of the ring finger.
- The attending physician indicated a prior history of injury to the left hand middle and ring fingers.
- Strength was measured as 4/5 of the extensor and flexor muscles of the middle and ring fingers.

Principles of evaluation: See the *AMA's Guides to the Evaluation of Permanent Impairment and OAR 436-035-0007(7)*. The range of motion should be reported based on the fact that the neutral position equals zero degrees. All joint motions are measured from zero degrees. Flexion and extension are measured in active unassisted motion.

The term "extension" is used for motions opposite flexion to the zero starting position. If extension exceeds the zero starting position, it is referred to as "hyperextension" and is expressed with the (+) symbol. (See diagram). Incomplete extension that can only be done from a flexed position to the zero starting position is defined as extension lag and is expressed with the (-) symbol.

Determining range-of-motion values

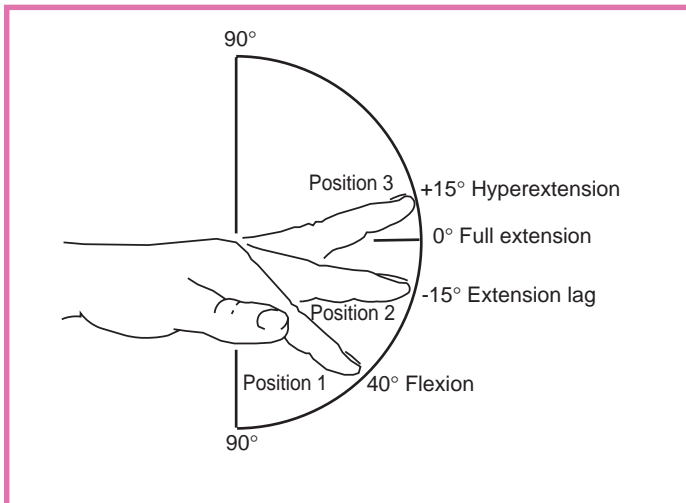
Step 1: Contralateral comparison

See OAR 436-035-0007(23)(b). A contralateral comparison would not be performed, because the attending physician's report indicated a prior history of injury to the middle and ring fingers of the left hand.

Disability Rating Standards *continued* Page 5

Step 2: Determine range of motion (ROM)

See OAR 436-035-0007(22)(a) and OAR 436-035-0060(1)(2)(4)(5)(7)(8). After determining range of motion in a single joint, the impairment values for that joint are added.



	Middle finger		Ring finger	
	Degrees = %		Degrees = %	
DIP				
ext.	0	0.0%	0	0.0%
flex.	50	+13.0%	60	+6.0%
		13.0%		6.0%
PIP				
ext.	+5	* 0.0%	-30	11.0%
flex.	60	+24.0%	90	+6.0%
		24.0%		17.0%
MCP				
ext.	-12	3.4%	+15	*0.0%
flex.	50	+24.0%	90	+0.0%
		(27.4%)		0.0%
		27.0%**		

*OAR 436-035-0007(26) and -0010(1)(2):
Hyperextension does not receive a value as the worker's impairment finding for the hyperextension does not meet the minimum threshold established in the standards.

**OAR 436-035-0007(15)(a):
Specific impairment findings are awarded in whole-number increments. For decimal portions of a number, 0.5 and above is rounded up, below 0.5 is rounded down.

Determining other impairment

Step 3: Loss of sensation

See OAR 436-035-0110(c). Less than normal sensation from the DIP joint distally of the entire middle finger has a rating of 13 percent. Protective sensation of the ring finger PIP joint, radial side only, has a rating of 20 percent.

Rotational deformity: See OAR 436-035-0060(10). Rotational deformity for the middle finger receives a value of 10 percent.

Strength: See OAR 436-035-0110(8)(a). Loss of strength in a finger receives a value of zero.

Step 4: Combine impairment values

See OAR 436-035-0070(18)(a)(22)(a)(b) and the Combining Values Chart in the *AMA Guides to the Evaluation of Permanent Impairment*: The fourth step in determining impairment values is taking the total range of motion values for each joint and combining those values to obtain an overall loss of range of motion value for each digit. Then combine these values with any other impairment values for that digit (e.g. rotational deformity, loss of sensation, etc.). The impairment findings are then combined in descending order of value.

Middle finger (MF)

DIP (range of motion)	13%
PIP (range of motion)	24%
MCP (range of motion)	27%
Combine 27/24/13 =	52%
Sensation loss	13%
Rotational Deformity	10%
Combine 52/13/10 =	62%

Ring finger (RF)

DIP (range of motion)	6%
PIP (range of motion)	17%
MCP (range of motion)	0%
Combine 17/6/0 =	22%
Sensation loss	20%
Combine 22/20 =	38%

Step 5: Determining monetary award

See OAR 436-035-0070(1)(2)(5)(6). The impairment values for each of the fingers shall be converted to a value for the hand, if the worker will receive a greater monetary award for the conversion. It is important to note that at least two digits must have impairment other than loss of opposition to qualify for this conversion.

The total impairment award for both digits would be determined by converting the percentage values to degree values. See ORS 656.214. Then multiply the degree value for each digit by the appropriate dollar value. Finally, add the products together for the total dollar amount.

	Degrees	\$/Degree	Finger award
MF	13.64 x	511.29 =	\$6,974.00
RF	3.80 x	511.29 =	<u>\$1,942.90</u>
		Total =	\$8,916.90

When converting the digit impairment values to a hand value, the applicable hand impairment is determined by rating the total impairment value in each digit, then converting the digit value to a hand value, and then adding the converted values.

Finger value	Hand value
(MF) 62%=	10%
(RF) 38%=	+ <u>3%</u>
Total	13%

The hand value (13%) is then converted to degrees and multiplied by the dollar value established in ORS 656.214.

Degrees	\$/Degree	Hand Award
19.5 x	\$511.29 =	\$9,970.16

Conclusion: Based on the results of the calculations, it is necessary by statute to use the hand value for the award, because it is the larger of the two awards.

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Who's Who in WCD



Troy Paxton, publications specialist



by Michael Rowe

As the publications clerk for the Workers Compensation Division, Troy Paxton has the opportunity to touch the lives of many of our clients: medical providers, insurers, employers, and workers. In fact, Troy's main focus is meeting the needs of our customers by helping them get information, especially in the printed format. Because of Troy's 12 years of experience with the division, he is well-equipped to answer many questions and, if he cannot, he will direct you to the best resource.

Troy came to the Workers Compensation Division after working for the Salem Public Library. He holds a bachelor's degree in history from the University of Oregon ('86). March marked three years for Troy in the role of publications clerk, a role that was preceded by file clerk, receptionist, and employer-index line clerk. Troy receives requests for publications by phone, mail, e-mail, fax, and in-person. All are welcomed and encouraged by Troy, who wants clients take advantage of information published for their use.

The majority of workers' compensation publications available to the public, including forms, brochures, rules, and laws pass into clients hands through Troy's hands. Most are available at no cost. Only copies of the law book, administrative rules, and bundled bulletins require clients to pay a nominal fee. Two commonly requested publications are the 827 form (*Physicians and Workers Report of Injury*) for

medical providers and the 1188 brochure (*What Happens if I'm Hurt on the Job?*) for insurers and employers. Except publications undergoing revision, items are shipped within 24 hours of being ordered.

One of the best additions to WCD's publications services is the subscription service created last September, which provides client subscribers with up-to-date releases on rules and bulletins without requiring them to request each as they become available. Troy was a contributor in getting this service established. He encourages interested parties to contact him to sign up for this valuable resource.

On a personal note, Troy is an avid military history buff who enjoys reading and collecting books, war patches, canteens, and helmets. He also enjoys cooking and is perfecting his chili recipe, which he says is much better than what he used to eat out of cans. Troy Paxton can be reached by telephone, (503) 947-7627, or by e-mail, troy.c.paxton@state.or.us. ■

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Return to Work

Ethical Crossroads

Should a vocational counselor also be an investigator?

by Andre Allen

When I was working as a vocational rehabilitation counselor in the mid 1980s, there was one insurer who told me I should meet with workers at their homes so that I could determine whether they really needed the direct worker purchases they requested. For example, if there were two vehicles on the property, the worker probably would not need car repairs, because a second car or truck was available to look for work. Also, I was instructed by the insurer to meet with a worker in the kitchen, and at some point I was supposed to excuse myself to go to the bathroom. However, once I was out of sight, I was to slip into the worker's bedroom and peek in the closet to see if the worker really needed clothes or shoes for job interviews or new employment. I never did what the insurer asked because it just did not feel right (and I was afraid of getting caught!). However, this experience caused me ask myself, "Is it ever ethical for a vocational rehabilitation counselor accept the role of 'investigator?'"

None of the professional organizations for vocational rehabilitation counselors address the investigation issue directly; however, the Commission on Rehabilitation Counselor Certification (CRCC) Code of Professional Ethics states that rehabilitation counselors should not "misrepresent their role to clients," should "avoid exploiting the trust and dependency of [clients]," and should "avoid dual relationships [e.g., counselor-investigator]." Those standards suggest that CRCC would not consider it ethical for a rehabilitation counselor to have an investigative "hidden agenda," such as finding out if a worker has a pair of new boots in the closet, while conducting an initial interview.

CRCC, the National Association of Rehabilitation Professionals in the Private Sector (NARPPS), and the Oregon Association of Rehabilitation Professionals

(OARP) all have strict standards with regard to confidentiality. For example, the CRCC code states: "Rehabilitation counselors shall respect the confidentiality of information obtained from clients in the course of their work." By this standard, even if I had observed that a worker had a pair of late-model luxury cars parked in the driveway and a closet full of work clothes, it would not have been ethical for me to share this information with the insurer without first discussing the matter with the worker.

From time to time, every counselor encounters a "something-is-wrong-with-this-picture situation." Examples:

- A worker is never home until after 4:30 p.m.
- A worker says she will be gone for two weeks during the summer because she has to visit a sick relative.
- When you meet with an injured mechanic you notice his hands and fingernails are always dirty.
- You see a client driving a pickup truck with a business logo painted on the door.

In the above examples, one might be tempted to check around and find out if the client has a job "on the side" or was on vacation when she was supposed to be looking for work. When situations like this come up, here are some guidelines you may find useful:

- "When in doubt, check it out." If you suspect a worker has misrepresented a matter "material to providing vocational assistance," talk to the worker about your concerns right away. Let the worker know what information you will share with the insurer.

Ethical Crossroads *continued on Page 20*

Preferred Worker Program Q & A's

by Jerry Rutherford

Q. A worker finishes a transitional job with the claim still open and the employer wants to offer the job to the worker permanently. Because the worker doesn't have a Preferred Worker card yet, should the employer and worker wait to contact the Preferred Worker Program until a card is issued or the claim closes?

A. The employer and worker shouldn't wait to call and request PWP assistance. Under the current rules, if a worker doesn't have a Preferred Worker card, he or she must call within 90 days of the hire date for the new job. In the situation you describe, WCD would consider the hire date to be after the transitional job ended and the job became a permanent new job.

Q. Must a worker have an award of permanent partial disability to be eligible for the Preferred Worker Program?

A. If the insurer closes the claim with a notice of closure, the worker is *only* eligible for the PWP *if* PPD is awarded. Likewise, if an Order on Reconsideration has been issued and the worker *no longer* has an award of PPD, the worker is not eligible.

However, if no notice of closure is issued (when the claim closes with a Claims Disposition Agreement, for instance), and no order has been issued indicating the presence or absence of PPD, the Reemployment Assistance Unit will determine whether there is permanent disability based on the presence or absence of permanent limitations and restrictions that prevent the worker from returning to regular work. If there are permanent restrictions, the worker will be found eligible if they preclude return to regular work.

Remember, those limitations and restrictions must be the result of an accepted condition. Thus Disputed Claim Settlements that effectively deny certain conditions will preclude eligibility if all permanent limitations and restrictions arise from the denied conditions.

Q. An injured worker has permanent work restrictions. The employer is offering a new permanent position with earnings that are within 80 percent of the wage he was making when he was injured. If the employee refuses the job based on the wage, will he or she still receive a preferred worker card?

A. The employee will not be denied PWP eligibility for refusing this job, and will be eligible if the claim is accepted and disabling, if he or she has permanent disability resulting from the accepted condition, and he or she can't return to regular work.

Under prior versions of Division 110 rules, the worker would not have been eligible for the PWP if he or she refused an offer of employment from the employer-at-injury. The rule was dropped because it was almost never used, because WCD was rarely informed about a refusal to return to work with the employer-at-injury.

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Employer-at-Injury Program (EAIP) Update

by Jeff Griffin

Q. In OAR 436-105-0005(9), the definition of “reimbursable wages,” includes “bonus pay when provided as part of a written contract as a means to increase a worker’s wages.” What are some examples?

A. The best examples of reimbursable bonus pay are production and attendance bonuses described in collective bargaining agreements and in company policies.

If there is an individual written bonus contract that applies to a transitional work job, a copy of the individual written contract should be kept with the wage documentation.

Q. Division 110 rules require a description of the early-return-to-work job as documentation for the EAIP. Division 105 rules don’t include that requirement. Is it no longer a requirement?

A. The requirement of a description of the transitional job was inadvertently left out of the Division 105 rules, so in that sense, it is no longer a requirement. However, the employer and insurer will still need to show upon audit that the transitional job is within the worker’s injury-caused restrictions, and we think a description of the transitional job, along with a copy of the worker’s specific restrictions, is the best way (perhaps the *only* way) to show it. Therefore WCD recommends that a description of the job be included in EAIP documentation.

Q. The definition of “Employer-at-Injury” does not include the employer at the time of reopening in an *own motion* opening. Can these openings of a claim give rise to eligibility to use the EAIP under either Division 110 or Division 105 rules?

A. Even though *own motion* openings are not explicitly listed in the definition of employer-at-injury, they have not been excluded from the EAIP under either version of the rules. The worker-eligibility criteria include “... an accepted Oregon compensable injury or occupational disease ... and that the worker has not returned to regular work under the most recent claim opening ...” *own motion* claims can qualify under the eligibility rules.

Q. If a worker has an accepted claim and does transitional work, but the EAIP reimbursement request is not submitted until after a backup denial, will the employer/insurer be reimbursed?

A. No. The claim must be an accepted claim to qualify for EAIP reimbursement. If the reimbursement request is submitted while the claim is accepted, however, the EAIP will be reimbursed. This is a good argument for not waiting until the “last minute” to submit a reimbursement request.

Q. We need help interpreting OAR 436-105-0500(5)(f). If the worker’s physician says he or she should return to the physician’s office in three weeks, does that qualify as an appointment?

A. In effect, yes. When the worker asks for an appointment in three weeks, an appointment may not be available for three weeks and two days. If the worker made a timely appointment, but the physician could not attend because he or she was called to an emergency, there would not likely be a record of the missed appointment in the medical documentation. Therefore, WCD will assume there *was* a medical appointment made to coincide with the attending physician’s order. If in fact no record of a

Worksite modification

Laser lightens ladder work

by Bob Williams

Worker Disability:

A 48-year-old landscape laborer developed a disc bulge following a lifting accident and underwent lumbar discectomy and lumbar fusion. He is restricted to lifting or carrying 30 pounds occasionally, squatting or kneeling rarely, and climbing occasionally.

Work Setting:

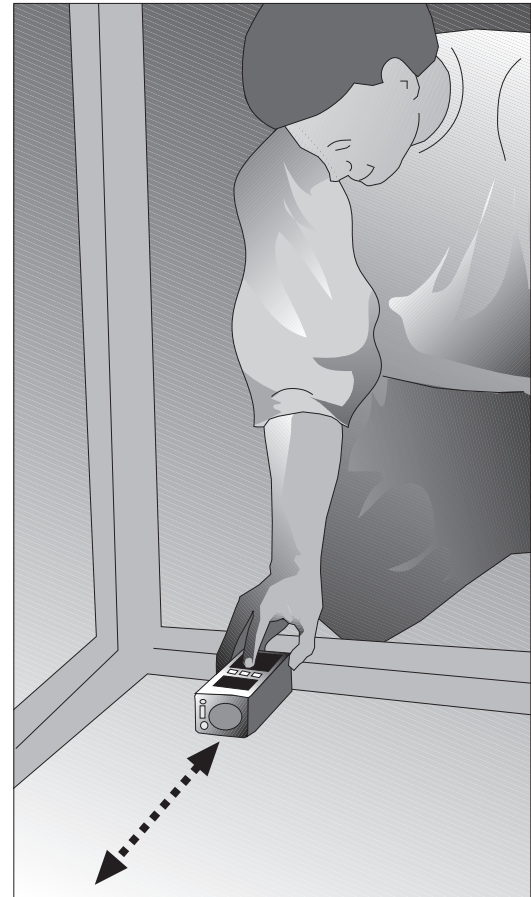
The worker retrained for construction estimating and was hired by a specialized construction firm to bid building repair projects. The job required driving to job sites, unloading a 28-foot extension ladder, carrying the ladder to the building and either climbing down into foundation excavations or up to second-floor roof eaves to take foundation and building measurements.

Obstacle:

To measure foundations and walls, the job required lifting 50-pound aluminum extension ladders from the top of a service van and carrying the ladders for long distances over rough ground to the job site.

Modification:

The Preferred Worker Program researched measuring devices and then purchased a hand-held laser range finder that allowed the worker to stand on the ground and take all measurements of wall heights and foundation perimeters. All ladder lifting and carrying was eliminated. As the worker shines the laser dot on the tops and bottom of walls, a calculator function uses the Pythagorean theorem to determine wall heights. Instead of using ladders and tape measures, distant objects are measured by the worker



holding the laser range finder against one wall and shining it on the object to be measured. Digital read-out of distance is instant and precise, and the laser device is lightweight. ■

Cost:

A laser range-finder kit is \$1,005.

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Retraining winners

by Warren Patterson

What's up, Doc?

Jane had worked as a notching machine operator, grader, and window assembler for a major Oregon window manufacturing company for more than 15 years when she was diagnosed with carpal tunnel syndrome in her left wrist. Her wage at the time of her injury was \$10.85 per hour. She couldn't return to her employer-at-injury because of medical limitations and restrictions.

Jane was eligible for vocational assistance but didn't know what new career direction to take. She had worked for one employer in production for most of her adult life. She had attended Eastern Oregon University in the early '80s to major in music but didn't graduate.

Jane and her vocational counselor met and designed a medical assistant training plan that included a medical assistant certificate program at Central Oregon Community College and cooperative work experience at several doctor's offices and clinics.

Jane excelled in her formal and practicum training, earning a 3.94 cumulative GPA, and she received offers of employment from her practicum sites.

As a medical assistant earning \$12.80 per hour, Jane is getting used to saying, "What's up, Doc?"

Submitted by Denis Broderick, Verk Consultants.

The cooperation of the vocational professionals in these cases resulted in these success stories. Please send rehabilitation stories to Warren Patterson c/o RRU, Workers' Compensation Division, 350 Winter St. NE, Rm. 27, Salem, OR 97301-3879, or send e-mail to warren.patterson@state.or.us ■

**Names have been changed to protect the privacy of the workers.*

The scent of change . . .

Jim was a 34-year-old operator of a production machine that packaged pheromone traps for insects when he was injured. Jim had worked for Concep in Bend for nine years before the repetitive motions of producing 3,000 pheromone traps per shift caused his disabling injury. Jim was unable to return to regular work as a result of this injury and re-employment was not available in permanent modified work. Jim's past work history included 15 years as a construction laborer, machine operator, and furniture assembler.

Jim was determined eligible for vocational assistance and referred to a vocational counselor for services. Jim and his counselor selected the Drafting Technology Certificate Program at Central Oregon Community College for training.

Jim studied drafting technology with an emphasis on architectural design and completed it in five terms. He earned a scholarship from COCC to pursue an associate degree, with a cumulative GPA of over 3.55.

Jim was hired by Systematics, while doing his cooperative work experience there. Systematics allowed Jim to continue school part time on his scholarship until he earns his degree. He has the option to work from home or from the office as he transfers mechanical drawings to the latest version of AutoCAD. Jim was earning \$10.25 an hour when he was injured and is earning \$11 an hour in his new position.

Submitted by Lynn Baxter, SAIF Corporation, and Denis Broderick, Verk Consultants.

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Extraterritorial / Reciprocity update

by Reg Gregory



There are times when an Oregon employer sends an Oregon worker to another state on temporary assignment. A worker who is subject to Oregon laws on such an assignment is protected by Oregon's workers' compensation extraterritorial provisions. Nearly every state has extraterritorial provisions for workers' compensation. However, not all states will recognize such provisions from another state. At this time, I am aware of 22 states that do not reciprocate coverage with Oregon. Coverage across borders becomes a significant issue to resolve.

Another issue that often arises is figuring out if a worker is temporarily in or out of Oregon. Prior to October 1997, Oregon's law was quite clear for determining if a worker was temporarily on assignment in Oregon. Temporary status was based on an employer's work at a single location in Oregon being 30 days or less ... affectionately known as the 30-day rule. The 30-day rule was eliminated in 1997. Consequently, Oregon withdrew 13 formal written extraterritorial/reciprocity agreements with other jurisdictions at that time. Our statute, however, remains compatible with many jurisdictions, and reciprocity is alive. Oregon does not have reciprocity with those states that do not recognize Oregon's extraterritorial provisions.

To assist with determination of "a temporary status," Oregon Administrative Rule 436-050-0055 provides nine criteria used pursuant to Oregon law ORS 656.126. The most revealing of those are the first three, but all are intended to weigh and balance the status of the situation. Two criteria were added in the July 1, 2001, Division 050 rule update: (h) the extent to which the employer's contract in the state is of a temporary duration, established by a beginning date and expected ending date of the employer's contract, and (i) other information relevant to the determination.

Pursuant to ORS 656.126, Oregon can enter into agreements with other jurisdictions and fully intends to do so when such agreements make sense. A formal written agreement with the State of Washington was reached in 1998, the first — and so far only — written extraterritorial agreement since 1997. Because of law changes in both states, the 1998 agreement was replaced with a new agreement effective February 1, 2002. The format was changed to conform with a Washington requirement. Specific public contract language was eliminated because public and private contracts for workers' compensation in Oregon are now treated the same. You can find and print the most recent agreement with Washington from the Workers' Compensation Division external Web site under the "bulletin" links. The Internet address: www.cbs.state.or.us/external/wcd/bulletins/extrater.pdf.

If you have input on extraterritorial issues, contact Reg Gregory, manager, Employer Compliance Unit, (503) 947-7665 or reg.e.gregory@state.or.us. ■

*Reg Gregory is the manager of the Employer Compliance Unit in the Compliance Section.
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What's up on the Web

You've got the power!

by Ramona Barnwell

Now you can search for employer workers' compensation coverage information on WCD's Web site! You can access the employer coverage search at www4.cbs.state.or.us/ex/wcd/cov/.

The employer/insurer database is updated every Monday night. This search tool, which uses information from WCD's employer/insurer database, is available 24 hours a day and should prove helpful for medical providers, worker-leasing companies, temporary services, attorneys, and insurance-company underwriters and agents. The database primarily uses legal names and not "doing-business-as" (dba) names. So, for the best search results, use fewer search fields; use a word or two from the employer's name and city; seldom use the employer's exact street address; and note that sometimes the employer's telephone number alone will provide good results. Keep in mind that results will show **current** coverage only, so don't take the absence of data to mean there is no coverage.

Once you get a search result, carefully check the employer's legal name, location, and address to be sure you have the employer or insurer information



that you're looking for. As some insurer claims processor and administration information continues to elude even WCD, the address for the actual claims processor may not be current. However, insurer information can be relied on.

If you can't find what you need, doubt your search results, need an employer's coverage history (i.e., the date of injury is prior to the current coverage), or do not find a particular employer listed (the result of your search is "no record"), contact the employer, insurer, or call WCD's Employer Index Line, (503) 947-7814. You can also send an e-mail to wcd.employerinfo@state.or.us.

If you have suggestions, comments, or questions about WCD's employer coverage search tool, please contact Reg Gregory, (503) 947-7665, or send e-mail to him at reg.e.gregory@state.or.us. ■

Ramona Barnwell is WCD's Web coordinator in Administration.

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Focus on

by Tasha Petersen

The Contested Cases Unit is a unique unit within the Compliance Section. Although CCU handles issues that come from all over the Workers' Compensation Division, it works most closely with issues arising out of the Employer Compliance Unit. It also works closely with the Department of Justice, the Workers' Compensation Board, third-party administrator Johnston and Culberson, and attorneys.

Any ECU order served on noncomplying employers or nonsubject claimants is appealed to the CCU. The Contested Cases Unit receives an average of six new requests for hearing per month. After receiving those requests, CCU review all available documents and information to determine what issues are being appealed, timeliness, and what possibilities there are for a settlement. After going through this process, the matters are set before a Workers' Compensation Board administrative law judge.

It is the job of the Contested Cases Unit to keep all involved parties informed and up to date throughout the process. CCU prides itself on helping employers and claimants through the process as quickly as possible in a manner that promotes understand-

ing of workers' compensation laws and helps employers comply with those laws.

The Contested Cases Unit also handles requests for hearing on civil penalty orders issued out of the Sanctions Unit. Often, these cases are settled before ever going to hearing. In those instances where the case is not settled, it gets set for hearing before a WCB administrative law judge.

CCU also reviews and approves settlement amounts in disputed claims settlements and claim disposition agreements, and attends mediations to help facilitate settlement.

The Contested Cases Unit handles a spectrum of issues that arise in WCD. It is instrumental in resolving these issues and facilitating strong professional working relationships, not only within WCD, but also with many others outside the division as well. ■

Tasha Petersen is the assistant contested-cases coordinator in the Compliance Section.

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Please visit our Web site

for more information on Oregon's workers' compensation system.

www.oregonwcd.org

New law *continued*

For example, if a police officer working full-time for the city and part-time as a security guard is injured while working the part-time security job, and is prevented by disabling injury from working either job, wages from both jobs could now be considered in determining the compensation rate. Previously, his or her compensation rate would have been based solely on the part-time wage. Wages from his or her full-time job would not have been considered. This worker could sustain far less income loss, as he or she may now be entitled to temporary disability and supplemental disability benefits (assuming criteria of timely submission of verifiable documentation/subject employment has been met).

Senate Bill 485 places the responsibility for notification of additional jobs and wages on the worker and gives the worker 30 days from the insurer's receipt of claim to provide verifiable documentation of additional subject employment. This new law also provides an option for insurers, self-insured employers, and third-party administrators who elect annually to either pay the supplemental disability benefit directly to the worker and be reimbursed by the Workers' Compensation Division or have the Workers' Compensation Division make the payment on their behalf. In either case, the responsibility for the administration of the claim remains with the insurer,

self-insured employer, or third-party administrator. This new benefit is funded by the Workers' Benefit Fund. Those insurers, self-insured employers, and third-party administrators electing to make the payment directly to the worker and then be reimbursed by the Workers' Compensation Division will have a claims-processing administration cost (CPAC) factor applied to each reimbursement request to cover the cost of using their own money until reimbursement is received.

Supplemental disability rules have been incorporated into the Division 60 rules and can be found in three places. Rules regarding election choice are in OAR 436-060-0010(20), process rules are in OAR 436-060-0035, and rules regarding payment and reimbursement in OAR 436-060-500.

The Workers' Compensation Division has published Bulletin 325 to further explain processes and provide the two forms necessary for payment and reimbursement to insurers, self-insured employers, and third-party administrators. ■

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EAIP Update *continued*

visit to the doctor exists within the three-week time frame (the appointment was "missed" for whatever reason), OAR 436-105-0500(5)(f) allows an additional 14 days within which an appointment *must be attended* to extend the possibility of EAIP eligibility.

If the worker never attends another appointment, or if the next appointment is more than 14 days after the three weeks, EAIP eligibility ends after the first three weeks, as required by OAR 436-105-0500(5)(e).

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Outside Oregon

Court affirms decision to deny benefits to worker injured while driving company vehicle

The Florida Court of Appeals recently affirmed the decision by a compensation claims judge to deny benefits to Juan Rodriguez, an employee who was injured in a traffic accident while driving a company vehicle.

Rodriguez worked as a truck driver, delivering dry cement for Tri-State Carriers, Inc. One evening, Rodriguez loaded his cement truck for a delivery the following morning. After realizing that he had locked his car keys in his personal vehicle, Rodriguez drove the loaded cement truck home. His home was approximately 15 miles in the opposite direction from the job site where he was to make the next morning's delivery.

On his way to the delivery the following morning, Rodriguez was injured in a traffic accident. However, Rodriguez was still on the road he would have taken in his personal vehicle (the road from his home to Tri-State Carriers, Inc.) if his keys had not been locked inside his car the night before.

Because Rodriguez had not reached the route he would have taken from the employer site to the delivery site when the accident occurred, he was considered to be on a "personal mission." Relying on Florida case law, which holds that "an employee who is on a personal mission is outside the scope and course of employment," a compensation claims judge determined that Rodriguez was not entitled to workers' compensation benefits and the Court of Appeals agreed. ■

Physician recruitment for worker-requested medical exams

by Kathy Thomas

Recruitment of physicians to perform worker-requested medical exams has been underway at the Workers' Compensation Division for the past several months. The worker requested medical exam was mandated by legislators last session so that injured workers may request medical examinations by physicians selected by the director of DCBS under certain conditions.

In order for a physician to be registered to conduct worker-requested medical exams, he or she must be qualified to be an attending physician and be registered with the Board of Medical Examiners in Oregon or be an oral or maxillofacial surgeon licensed with the Board of Dentistry.

WCD has received indications from 184 physicians that they are willing to perform these exams. Most physicians recruited specialize in internal medicine, neurology, orthopedic surgery, ophthalmology, and psychiatry. Not unexpectedly, most of the Physicians

(112) are from Portland, with 8-15 from each of the following areas: Salem, Roseburg, Jackson/Josephine counties and Eugene.

Once a request is received from a worker, the Benefit Consultation Unit of the WCD determines if the worker qualifies for the exam, selects a physician to perform the exam, and notifies the worker, doctor, and the insurer of the selection. It is the worker's responsibility to schedule the exam.

If you have any questions about this new program, please contact the Benefit Consultation Unit, (800) 452-0288 or send e-mail to us at workcomp.questions@state.or.us. ■

Kathy Thomas is the assistant manager of the Benefits & Policy Services Section.

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Mattis moves to DFCS *continued*

Tom has been the deputy administrator of the Workers' Compensation Division since May 1996. Before that, Tom served as the Compliance Section manager, overseeing WCD's auditing, enforcement, compliance, licensing, and special funds administration from 1989 to 1996. From 1979 to 1988, he held a variety of professional and management positions in the division, regulating vocational assistance and mediating vocational-assistance disputes. Before entering state service, Tom worked for four years as a counselor in community-based anti-poverty

programs and Job Corps, a federal job training program for at risk-youth, ages 16-24. He holds a bachelor's degree from Central Washington University, Ellensburg, WA, and a master's degree in counseling from Sonoma State University, Rohnert Park, CA. ■

Kara Null is the communications coordinator in Administration.

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Mark your calendars for the 3rd annual

Workers' Compensation Educational Conference

October 21 & 22, 2002

Portland Marriott Downtown
Portland, OR

Programs designed with you in mind

To receive a registration packet in June 2002, sign up through "Training and Events" on our Web site, www.oregonwcd.org, or contact Tawnya Swanson by e-mail, tawnya.swanson@state.or.us, or phone, (503) 947-7511.

Presented by:

Oregon Workers' Compensation Division and The International Workers' Compensation Foundation

Department offers Employer Coverage workshops

The department is offering four free workshops around the state. The workshops will provide an overview of the workers' compensation system in Oregon and include discussions of exclusive remedy, no-fault insurance, class codes, and experience-modification factors. There will also be discussions on subjectivity issues and alternatives to obtaining a workers' compensation policy, cost savings programs, and areas in which the employer can make a difference in the claims process. Attendees will become familiar with services provided by the insurer and the Workers' Compensation Division.

These workshops are presented by the, Department of Consumer & Business Services, Small Business Ombudsman and the Employer Compliance Unit, Oregon Workers' Compensation Division. Continuing education units are available. Certificates of attendance will be available following the workshops, which are from 8:30 a.m. to 12:30 p.m.

Workshop dates and locations:

Tuesday, June 11 — Portland

State office bldg. #140
800 NE Oregon Street

Tuesday, June 25 — Bend

Old Mill Room
Employment Office
1007 SW Emkay Drive

Thursday, August 1 — Eugene

Lane County Courthouse Room B/C
125 E 8th avenue

Tuesday, August 13 — Medford

Smullin Center
Lower Auditorium
2824 Barnett Road

Registration is required due to limited space. Although the provider and course are registered with the Insurance Division, it does not imply endorsement by the Insurance Division.

To register, contact Tawnya Swanson, (503) 947-7511, or send e-mail to, tawnya.swanson@state.or.us.

Ethical Crossroads *continued*

- Don't go "behind the worker's back." Let the worker know up front that you are obligated to share most information with the insurer. However, it is not the role of the counselor to "double" as an investigator and to look beneath the surface if "something is wrong with the picture." If the insurer wishes to investigate a matter further, a claims examiner or investigator should take over.
- If you have reason to believe a worker is not being truthful with you about a matter that affects the services you are providing, you may need to end the client-counselor relationship.

CRCC wisely advises its members to avoid dual relationships such as "counselor-investigator." The role of investigator requires one to objectify the person being investigated, which is inconsistent with a relationship based in honesty, trust, and good faith, which is necessary to provide effective vocational services.

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