



February 21, 2020

Fred Bruyns, Rule Coordinator
Workers' Compensation Division
350 Winter Street NE
Salem, OR 97309-0405

RE: SAIF Corporation testimony for proposed changes to OAR 436-060

Dear Fred:

SAIF Corporation (SAIF) has considered WCD's proposed amendments to OAR 436-060. SAIF, as always, appreciates the opportunity to provide input on the proposed rule changes and supports WCD's effort to clarify and improve these rules. SAIF hopes the division will consider the following comments before finalizing the revised rules.

OAR 436-060-0010(1)(a): States that an employer must provide the worker an 801 form immediately after receiving notice or knowledge of a potential compensable injury. The revision conflicts with ORS 656.265(6), which expressly requires an employer to supply injury reporting forms "to injured workers *upon request* of the injured worker or some other person on behalf of the worker." The former version of the rule was consistent with the statute. To ensure consistency with the statute and employer compliance, SAIF suggests that the director restore the original language.

OAR 436-060-0018(6)(a)(C): SAIF suggests that this proposed rule be simplified and align with ORS 656.005(7)(c), which defines a "disabling compensable injury". SAIF suggests that the notice in subsection (6)(a)(C) simply state:

"Notice to worker: Your claim has been reclassified to nondisabling. Generally this means your insurer concluded you are not entitled to temporary disability benefits and there is no reasonable expectation that you will have permanent impairment.

If you think there is a mistake in the classification of your claim as nondisabling, contact the insurer within one year of the date the insurer first accepted your claim and request reclassification.

For assistance, you may call the Workers' Compensation Division at 503-947-7816, or the Ombudsman for Injured Worker4s at 503-378-3351 or 800-9271271 (toll-free).

SAIF removed the instructions to request review when an insurer refuses to reclassify the claim to avoid confusion as the worker must first request reclassification of their

claim. Once reclassification is request and an insurer refuses to reclassify the claim, the refusal notice includes the appeal instructions. OAR 436-060-0018(3)(b)(B). - 0018(7)(a) also refers to 60 days from the date of the notice as the time period to request review. Restating the time for a worker to appeal exists within the rules and providing that information to injured workers is potentially confusing.

OAR 436-060-0025(8): The proposed language refines the process for a worker to dispute the average weekly wage calculation; however, the rule does not require a worker to first contact an insurer regarding a wage dispute prior to requesting a hearing. SAIF recommends that the informal process set forth by rule should be a required step before a worker requests a hearing regarding a wage dispute. One objective of the workers' compensation system is to reduce litigation and eliminate the adversarial nature of the compensation proceedings to the greatest extent practicable. ORS 656.012(2)(b). Giving the parties an opportunity to resolve disputes prior to a formal process meets this statutory objective.

In addition, the director "by rule, may prescribe methods for establishing the worker's weekly wage" for workers who are not regularly employed, have no remuneration, or "whose remuneration is not based solely upon daily or weekly wages". ORS 656.210(2)(e). The director is authorized to "[p]rescribe procedural rules for and conduct hearings, investigations and other proceedings pursuant to" ORS chapter 656 "regarding all matters other than those specifically allocated to the board or the Hearings Division." The director is charged with "the duties of administration, regulation and enforcement of" ORS chapter 656 and "[t]o that end," is authorized to "[m]ake and declare all rules and issue orders which are reasonably required in the performance of the director's duties." Taken together, the director has the authority to require the parties to engage in informal dispute resolution to resolves wage disputes prior to a worker requesting a hearing.

SAIF proposes the following:

(8) If the worker disputes the wage used to calculate the rate of compensation, the worker must, before requesting a hearing, request that the insurer review its records and mathematical calculations, and, if necessary, contact the employer to confirm the correct wages. Within 14 days of its receipt of the claimant's request, the insurer must provide the worker with the results of its review and, if the wage was corrected, provide the worker with the new calculation. If the worker does not then agree with the wage calculated by the insurer, the worker may request a hearing under OAR 436-060-0008.

OAR 436-060-0147(1): The proposed rule states that a worker is entitled to a WRME "if the evidence at the time of the director's order demonstrates" the following criteria. This proposed change is inconsistent with ORS 656.325(1)(e), which entitles a worker to a WRME when the attending physician or nurse practitioner does not concur with the IME report. The proposed change could be interpreted to mean that the worker remains entitled to a WRME even when an attending physician concurs with the IME report after the director's order, which would violate ORS 656.325(1)(e). SAIF proposes the director remove the proposed change.

OAR 436-060-0155(3): The proposed rules reduces the time period for the insurer to respond to WCD explaining a reason for a delay, to provide additional information or documentation to the director from 21 days to 14 days. While 14 days may be sufficient in most situations, for larger or more complex claims where a large volume of

documentation and research is necessary, 14 days may not be sufficient time to respond. SAIF requests WCD reconsider this proposed change.

SAIF again thanks the division for the opportunity to provide feedback on these proposed rules and is happy to answer any questions you might have.

Sincerely,



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