Oregon
Kate Brown, Governor

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Sept. 26, 2022

Proposed Changes to Workers' Compensation Rules

Caption: Apportionment of permanent partial disability; effects on denied conditions, irreversible findings, and presbycusis

The Workers' Compensation Division proposes to amend:

- OAR 436-035, Disability Rating Standards

When is the hearing? Oct. 17, 2022, 10 a.m.

Where is the hearing? Labor & Industries Building
350 Winter Street NE, Room F (basement)
Salem, Oregon 97301
Or
By video or telephone conference – ZoomGov:

https://www.zoomgov.com/j/1612539250?pwd=Ui96L0tJenBFU1l1bk1TbnhWc3VXdz09

Meeting ID: 161 253 9250 | Passcode: 644824 |
Telephone: 1-833-568-8864 US Toll-free

How can I make a comment? Attend the hearing (in person or virtually) and speak, send written comments, or do both. Send written comments by:
Email – WCD.Policy@dcbs.oregon.gov, Attention: rules coordinator
Or
Attn: Rules Coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480 (for mail delivery)
Salem, OR 97309-0405
Or
Fax – 503-947-7514

The closing date for written comments is Oct. 21, 2022.

Questions? Contact Fred Bruyns, 971-286-0316.

Proposed rules and public testimony are available on the Workers' Compensation Division's website: **http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx**. Or, call 971-286-0316 to get paper copies.

Auxiliary aids for persons with disabilities are available upon advance request.

Summary of proposed changes to OAR 436-035, Disability Rating Standards:

- Rule 0007 is amended to provide that apportionment for a denied condition is no longer allowed unless the denied condition is a combined condition denied for a major contributing cause ("ceases" denial) or a combined condition denied in its entirety.
- Rule 0012 is amended to provide that a worker's residual functional capacity cannot be adjusted due to a denied condition unless the denied condition is a denial of combined condition for either major contributing cause ("ceases denial") or in its entirety.
- Rule 0013 is amended to:
  - Allow for apportionment of irreversible findings of impairment or surgical value(s) if the loss is caused in part by a superimposed condition, or a pre-existing condition that is part of a combined condition denial or a combined condition denied in its entirety; and
  - Revise the example from one that included a superimposed condition (pregnancy), explaining how to apportion a low back strain that has combined with pre-existing lumbar degenerative disc disease, and for which a major contributing cause denial of the combined condition has been issued.
- Rule 0014 is amended to remove section (2), "Combined conditions," and section (3), "Permanent partial disability awarded after a denial of the combined condition," because these provisions are addressed in OAR 436-035-0007; the rule title is revised to remove "and Combined Conditions."
- Rule 0230 is amended to remove gender-specific pronouns.
- Rule 0250 is amended to eliminate reductions in hearing loss awards due to presbycusis (age-related hearing loss).
- Rule 0380 is amended to remove gender-specific pronouns.
- Rule 0385 is amended to remove gender-specific pronouns.
- Rule 0390 is amended to remove gender-specific pronouns.

The agency requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

Need for the rule(s): The Oregon Supreme Court, in *Johnson v. SAIF*, 369 Or 577 (2022), determined that when a worker's compensable injury is a material cause of a worker's impairment, the worker is entitled to the full value of the total impairment, including the portion of the impairment attributed to certain denied conditions. Temporary rules were adopted in June 2022 to bring the Disability Rating Standards, OAR 436-035, into alignment with the court's decision. In order to maintain alignment with the court's decision, permanent rules should replace the temporary rules by the time or before they expire on Dec. 3, 2022.

Documents relied upon and where they are available: Rulemaking advisory committee records; the Oregon Supreme Court's decision in *Johnson v. SAIF*, 369 Or 577 (2022). These documents are available for public inspection upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Please contact Fred Bruyns, rules coordinator, 971-286-0316, WCD.Policy@dcbs.oregon.gov.

Fiscal and economic impact: The agency projects the proposed rule amendments, if adopted, will not affect the agency's cost to carry out its responsibilities under ORS chapter 656 and OAR chapter 436. Possible impacts on stakeholders are included under "Statement of Cost of Compliance" below.

Statement of cost of compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
a. The agency estimates that proposed rule changes will not increase or decrease costs to state agencies for compliance with the rules.

b. The agency estimates that proposed rule changes will not increase or decrease costs to units of local government for compliance with the rules, with the exception of self-insured cities and counties, which are addressed under part c. below.

c. The agency estimates that proposed rule changes will affect some costs to the public for compliance with the rules. The rules (prior to temporary rulemaking) provided for apportionment of permanent impairment and reduction of a work disability award when an outright denied condition (not a major contributing cause denied condition) and the accepted condition or sequela contributed to the impairment. This is inconsistent with *Johnson v. SAIF*, 369 Or 577 (2022), which requires a statutory exception allowing apportionment of impairment or reduction in work disability only in certain circumstances when the compensable injury materially contributes to the impairment. The court's decision and related proposed rule amendments will likely increase costs to insurers and self-insured employers, with a corresponding increase in benefits to workers injured on the job. The proposed end of reductions to hearing loss awards due to presbycusis (age-related hearing loss) will increase awards for some workers, at a corresponding cost to insurers and self-insured employers. The proposed allowance for apportionment of irreversible findings (by removing the exclusion) will decrease awards for some workers and provide a corresponding reduction in costs to insurers and self-insured employers. The agency estimates that the cost impacts of the proposed amendments will be minor, but it does not have sufficient data to project specific costs or savings. The agency invites public input regarding costs and benefits and about any effects on small businesses.

2. Cost of compliance effect on small business (ORS 183.336):
a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: The businesses affected by the proposed rule amendments are primarily insurers and self-insured employers, which are typically not small businesses as defined in ORS 183.310.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: The agency estimates that adoption of the proposed amendments will not affect costs to small businesses for reporting, recordkeeping, other administrative activities, or professional services required for compliance.

c. Equipment, supplies, labor and increased administration required for compliance: The agency estimates that adoption of the proposed amendments will not affect costs to small businesses for equipment, supplies, labor, or increased administration required for compliance.

How were small businesses involved in the development of this rule? The agency sent rule advisory committee invitations to more than 4,500 stakeholders, including representatives of small businesses. One representative of a business advocacy association representing both small and large businesses attended the advisory committee meeting.

Statement identifying how adoption of the rule will affect racial equity in this state: The proposed rule amendments will provide increased payments to some workers whose benefits would have been apportioned (reduced) before the *Johnson v. SAIF*, 369 Or 577 (2022) decision. Other workers may see a small reduction in payments due to the allowance for apportionment of "irreversible findings" of impairment. Elimination of age-related hearing loss as a factor for reducing hearing loss awards will benefit some older workers; there may be some differences in age-related hearing loss (presbycusis) according to race and ethnic group, but it is not known if this is true for workers who experience occupational hearing loss in Oregon. The Workers' Compensation Division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, increased or decreased workers' compensation benefits may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Administrative Rule Advisory Committee consulted?: Yes. **If not, why?**

Authorized Signer	Sally Coen Printed name	Sept. 26, 2022 Date

Mailing distribution: US Mail – WCD - S, U, AT, CE, EG, NM, CI | agency email lists

Oregon Administrative Rules
Chapter 436, Division 035
Disability Rating Standards

Proposed, to be effective by/before Dec. 4, 2022

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HISTORY LINES: These rules include only the most recent "History" lines. The history line shows when the rule was last revised (or "Filed" or "Adopted" if the rule has never been revised) and its effective date. To obtain a comprehensive history for OAR chapter 436, please call the Workers' Compensation Division, 503-947-7627, or visit the division's Web site: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 035

NOTE: Revisions are marked: new text | ~~deleted text~~.

436-035-0007 General Principles

(1) Eligibility for impairment.

(a) Eligibility, generally. A worker is eligible for an award for impairment if:

(A) The worker suffers permanent loss of use or function of a body part or system;

(B) The loss is established by a preponderance of medical evidence based upon objective findings of impairment; and

(C) The loss is due to the compensable injury.

(b) Apportionment. A worker's award for impairment is limited to the amount of impairment caused by the compensable injury subject to the following:

(A) If the loss of use or function of a body part or system is entirely caused by the compensable injury, the worker is eligible for the full award provided for the loss under the rating standards in this division of rules.

(B) If the loss of use or function of a body part or system is partly caused by the compensable injury, the following provisions apply:

(i) The worker is eligible for an award for impairment for:

(I) The portion of the loss due to the compensable injury;

(II) The portion of the loss caused by a condition that does not qualify as a pre-existing condition but that existed before the initial injury in an initial injury or omitted condition claim, before the onset of the accepted new medical condition in a new condition claim, or before the onset of the accepted worsened condition in an aggravation claim; and

(III) The portion of the loss caused by a condition that qualifies as a pre-existing condition, but is not part of a denial of a combined condition.

(ii) The worker is not eligible for an award for impairment for the portion of the loss caused by:

~~**(I)** A denied condition;~~

(I~~I~~) A superimposed condition; ~~or~~

(II~~I~~) A pre-existing condition, as defined by OAR 436-035-0005(11) and ORS 656.005(24), if the pre-existing condition was accepted as part of a combined condition and there is a subsequent denial of the combined condition, unless the pre-existing condition is otherwise compensable under

ORS 656.225; or.

(III) A combined condition denied in its entirety.

(C) If the loss of use or function of a body part or system is not caused in any part by the compensable injury, the loss is not due to the compensable injury and the worker is not eligible for an award for impairment.

(2) Eligibility for work disability. An award for impairment is modified by the factors of age, education, and adaptability if the worker is eligible for an award for work disability. A worker is eligible for an award for work disability if:

(a) The worker is eligible for an award for impairment;

(b) An attending physician or authorized nurse practitioner has not released the worker to the job held at the time of injury;

(c) The worker has not returned to the job held at the time of injury; and

(d) The worker is unable to return to the job held at the time of injury because the worker has a permanent work restriction that is caused in any part by the compensable injury.

(3) When a new or omitted medical condition has been accepted since the last arrangement of compensation, the extent of permanent disability must be redetermined.

(a) Redetermination includes the rating of the new impairment attributed to the accepted new or omitted medical condition and the reevaluation of the worker's social-vocational factors. The following applies to claims with a date of injury on or after Jan. 1, 2005:

(A) When there is a previous work disability award and there is no change in the worker's restrictions but impairment values increase, work disability must be awarded based on the additional impairment.

(B) When there is not a previous work disability award but the accepted new or omitted medical condition creates restrictions that do not allow the worker to return to regular work, the work disability must be awarded based on any previous and current impairment values.

(b) When performing a redetermination of the extent of permanent disability under this section, the amount of impairment caused by a condition other than the accepted new or omitted condition is not re-evaluated and is given the same impairment value as established at the last arrangement of compensation.

(4) When a worker has a prior award of permanent disability under Oregon workers' compensation law, disability is determined under OAR 436-035-0015 (offset) for purposes of determining disability only as it pertains to multiple Oregon workers' compensation claims.

(5) Establishing impairment.

(a) Impairment is established based on objective findings of the attending physician under ORS 656.245(2)(b)(C) and OAR 436-010-0280.

(b) On reconsideration, when a medical arbiter is used, impairment is established based on objective findings of the medical arbiter, except where a preponderance of the medical

evidence demonstrates that different findings by the attending physician are more accurate and should be used.

(c) A determination that loss of use or function of a body part or system is due to the compensable injury is a finding regarding the worker's impairment.

(d) A determination that loss of use or function of a body part or system is due to the compensable injury must be established by the attending physician or medical arbiter.

(6) Objective 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.

(7) If there is no measurable impairment under these rules, no award of permanent partial disability is allowed.

(8) Pain is considered in the impairment values in these rules to the extent that it results in valid measurable impairment. For example: The medical provider determines that giveaway weakness is due to pain attributable to the compensable injury. If there is no measurable impairment, no award of permanent disability is allowed for pain. To the extent that pain results in disability greater than that evidenced by the measurable impairment, including the disability due to expected waxing and waning of the worker's compensable injury, this loss of earning capacity is considered and valued under OAR 436-035-0012 and is included in the adaptability factor.

(9) Methods used by the examiner for making findings of impairment are the methods described in these rules and further outlined in Bulletin 239**,** and are reported by the physician in the form and format required by these rules.

(10) Range of motion is measured using the goniometer**,** except when measuring spinal range of motion; then an inclinometer must be used. Reproducibility of abnormal motion is used to validate optimum effort.

(a) For obtaining goniometer measurements, center the goniometer on the joint with the base in the neutral position. Have the worker actively move the joint as far as possible in each motion with the arm of the goniometer following the motion. Measure the angle that subtends the arc of motion. To determine ankylosis, measure the deviation from the neutral position.

(b) There are three acceptable methods for measuring spinal range of motion: the simultaneous application of two inclinometers, the single fluid-filled inclinometer, and an electronic device capable of calculating compound joint motion. The examiner must take at least three consecutive measurements of mobility, which must fall within 10% or 5 degrees (whichever is greater) of each other to be considered consistent. The measurements must be repeated up to six times to obtain consecutive measurements that meet these criteria. Inconsistent measurements may be considered invalid and that portion of the examination disqualified. If acute spasm is noted, the worker should be re-examined after the spasm resolves.

(11) Validity is established for findings of impairment under the criteria noted in these rules and further outlined in Bulletin 239, unless the validity criteria for a particular finding is not addressed, or is determined by physician opinion to be medically inappropriate for a particular worker. Upon examination, findings of impairment that are determined to be ratable under these rules are rated unless the physician determines the findings are invalid. When findings are determined invalid, the findings receive a value of zero. If the validity criteria are not met but the physician determines the findings are valid, the physician must provide a written rationale, based on sound medical principles, explaining why the findings are valid. For purposes of this rule, the straight leg raising validity test (SLR) is not the sole criterion used to invalidate lumbar range of motion findings.

(12) Except for contralateral comparison determinations under OAR 436-035-0011(3), loss of opposition determination under OAR 436-035-0040, averaging muscle values under OAR 436-035-0011(8), and impairment determined under ORS 656.726(4)(f), 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 is used for rating.

(13) Values found in these rules consider the loss of use, function, or earning capacity directly associated with the compensable injury. 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, function, or 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, function, or earning capacity. Accordingly, not all medical conditions or diagnoses receive a value under these rules.

(14) Waxing and waning of signs or symptoms related to a worker's compensable injury are 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 compensable injury. Waxing and waning means there is not an actual worsening of the condition under ORS 656.273.

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.245, 656.267, 656.268, 656.273, 656.726
Hist: Amended 2/7/20 as Admin. Order 20-051, eff. 3/1/20
Amended 6/7/22 as Admin. Order 22-052, eff. 6/7/22 (temp)
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0012 Social-Vocational Factors (Age/Education/Adaptability) and the Calculation of Work Disability

(1) Social-vocational factors.

(a) If a worker is eligible for an award for work disability, the factors of age, education, and adaptability are determined under this rule and used to calculate the worker's social-vocational factor. The social-vocational factor is determined according to the steps

described in section (15) of this rule and is used in the calculation of permanent disability benefits.

(b) When the date of injury is prior to Jan. 1, 2005, the worker must have ratable unscheduled impairment under OAR 436-035-0019 or OAR 436-035-0330 through 436-035-0450.

(2) The age factor is based on the worker's age at the date of issuance and has a value of 0 or +1.

(a) Workers age 40 and above receive a value of + 1.

(b) Workers less than 40 years old receive a value of 0.

(3) The education factor is based on the worker's formal education and specific vocational preparation (SVP) time at the date of issuance. These two values are determined by sections (4) and (5) of this rule, and are added to give a value from 0 to +5.

(4) A value of a worker's formal education is given as follows:

(a) Workers who have earned or acquired a high school diploma or general equivalency diploma (GED) are given a neutral value of 0. For purposes of this section, a GED is a certificate issued by any certifying authority or its equivalent.

(b) Workers who have not earned or acquired a high school diploma or a GED certificate are given a value of +1.

(5) A value for a worker's specific vocational preparation (SVP) time is given based on the jobs successfully performed by the worker in the five years prior to the date of issuance. The SVP value is determined by identifying these jobs and locating their SVP in the *Dictionary of Occupational Titles* (DOT) or a specific job analysis. The job with the highest SVP the worker has met is used to assign a value according to the following table:

SVP	Value	Training time
1	4	Short demonstration
2	4	Short demonstration up to 30 days
3	3	30+ days - 3 months
4	3	3+ months - 6 months
5	2	6+ months - 1 year
6	2	1+ year - 2 years
7	1	2+ years - 4 years
8	1	4+ years - 10 years
9	1	10+ years

A copy of the *Dictionary of Occupational Titles* referenced in this rule is available for review during regular business hours at the Workers' Compensation Division, 350 Winter Street NE, Salem OR 97301, 503-947-7810.

(a) For the purposes of this rule, SVP is defined as the amount of time required by a typical worker to acquire the knowledge, skills, and abilities needed to perform a specific job.

(b) When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT descriptions, one of the following may be substituted for the DOT descriptions if it more accurately describes the job:

(A) A specific job analysis as described under OAR 436-120-0410, which includes the SVP time requirement; or

(B) A job description that the parties agree is an accurate representation of the physical requirements, as well as the tasks and duties, of the worker's regular job-at-injury.

(c) A worker is presumed to have met the SVP training time after completing employment with one or more employers in that job classification for the time period specified in the table.

(d) A worker meets the SVP for a job after successfully completing an authorized training program, on-the-job training, vocational training, or apprentice training for that job classification. College training organized around a specific vocational objective is considered specific vocational training.

(e) For those workers who have not met the specific vocational preparation training time for any job, a value of +4 is granted.

(6) The values obtained in sections (4) and (5) of this rule are added to arrive at a final value for the education factor.

(7) The adaptability factor is an evaluation of the extent to which the compensable injury has permanently restricted the worker's ability to perform work activities. The adaptability factor is determined by performing a comparison of the worker's base functional capacity to the worker's residual functional capacity, under sections (8) through (14) of this rule, and is given a value from +1 to +7.

(8) For purposes of determining adaptability, the following definitions apply:

(a) "Base functional capacity" (BFC) is established under section (9) of this rule and means an individual's demonstrated ability to perform work-related activities before the date of injury or disease.

(b) "Residual functional capacity" (RFC) is established under section (10) of this rule and means an individual's remaining ability to perform work-related activities at the time the worker is medically stationary.

(c) "Sedentary restricted" means the worker only has the ability to carry or lift dockets, 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 restrictions.

(d) "Sedentary (S)" means the worker has the ability to occasionally lift or carry dockets, 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 from:

(A) Sitting, standing, or walking less than two hours at a time; or

(B) Working the same number of hours as were worked at the time of injury, including any regularly worked overtime hours; or

(C) Frequently performing at least one of the following activities: stooping, bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, pushing, or pulling; or

(D) Frequently performing at least one of the following activities involving the hand: fine manipulation, squeezing, or grasping.

(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.

(9) Base Functional Capacity. Base functional capacity (BFC) is established by using the following classifications: sedentary (S), light (L), medium (M), heavy (H), and very heavy (VH) as defined in section (8) of this rule. The strength classifications are found in the *Dictionary of Occupational Titles* (DOT). Apply the subsection in this section that most accurately describes the worker's base functional capacity.

(a) The highest strength category of the jobs successfully performed by the worker in the five years prior to the date of injury.

(A) A combination of DOT codes when they describe the worker's job more accurately.

(B) A specific job analysis, which includes the strength requirements, may be substituted for the DOT descriptions if it most accurately describes the job. If a job analysis determines that the strength requirements are in between strength categories then use the higher strength category.

(C) A job description that the parties agree is an accurate representation of the physical requirements, as well as the tasks and duties, of the worker's regular job-at-injury. If the job description determines that the strength requirements are in between strength categories then use the higher strength category.

(b) A second-level physical capacity evaluation as defined in OAR 436-010-0005 and 436-009-0060(2) performed prior to the date of the work injury.

(c) For those workers who do not meet the requirements under section (5) of this rule, and who have not had a second-level physical capacity evaluation performed prior to the work injury or disease, their prior strength is based on the worker's job at the time of injury.

(d) When 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 is the highest of:

(A) The job at injury; or

(B) A second-level physical capacities evaluation as defined in OAR 436-010-0005 and 436-009-0060(2) performed after the injury or condition which was not an accepted Oregon workers' compensation claim but before the current work related injury.

(10) Residual Functional Capacity. Residual functional capacity (RFC) is established by using the following classifications: 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 (8) of this rule.

(a) Medical findings. Residual functional capacity is evidenced by the attending physician's release unless a preponderance of medical opinion describes a different RFC.

(b) Other medical opinions. For the purposes of subsection (a) of this section, the other medical opinion must include at least a second-level physical capacity evaluation (PCE) or work capacity evaluation (WCE) as defined in OAR 436-010-0005 and 436-009-

0060(2) or a medical evaluation that addresses the worker's capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, stooping, bending, kneeling, crouching, crawling, and reaching. If multiple levels of lifting and carrying are measured, an overall analysis of the worker's lifting and carrying abilities should be provided in order to allow an accurate determination of these abilities. When the worker fails to cooperate or complete a residual functional capacity (RFC) evaluation, the evaluation must be rescheduled or the evaluator must estimate the worker's RFC as if the worker had cooperated and used maximal effort.

(c) Work capacity diminished in part by a superimposed condition, a pre-existing condition that is part of a combined condition denial, or a combined condition denied in its entirety~~, or denied condition~~. Residual functional capacity is a measure of the extent to which the worker's capacity to perform work is diminished by the compensable injury. If the worker's capacity to perform work is diminished in part by a superimposed condition, ~~or denied condition, or~~ a pre-existing condition that is part of a combined condition denial, or a combined condition denied in its entirety, the worker's residual functional capacity must be adjusted based on an estimate of what the worker's capacity to perform work would be if it had not been diminished by the superimposed condition, the pre-existing condition that is part of a combined condition denial, or the combined condition denied in its entirety~~, pre-existing, or denied condition~~.

(d) When the worker is not medically stationary. Except for a claim closed under ORS 656.268(1)(c), if a worker is not medically stationary, residual functional capacity is determined based on an estimate of what the worker's capacity to perform work would be if measured at the time the worker is likely to become medically stationary.

(e) When the worker is not medically stationary and work capacity is diminished in part by a superimposed condition, a pre-existing condition that is part of a combined condition denial, or a combined condition denied in its entirety ~~by a superimposed, pre-existing, or denied condition~~. Except for a claim closed under ORS 656.268(1)(c), if a worker is not medically stationary and the worker's capacity to perform work is diminished in part by a superimposed condition, ~~or denied condition, or~~ a pre-existing condition that is part of a combined condition denial, or a combined condition denied in its entirety, residual functional capacity is determined based on an estimate of what the worker's capacity to perform work would be if measured at the time the worker is likely to become medically stationary and if the worker's capacity to perform work had not been diminished by the superimposed condition, the pre-existing condition that is part of a combined condition denial, or the combined condition denied in its entirety~~, pre-existing, or denied condition~~.

(f) Lifting capacity. For the purposes of the determination of residual functional capacity, the worker's lifting capacity is based on the whole person, not an individual body part.

(g) Injuries before Jan. 1, 2005. If the date of injury is before Jan. 1, 2005, residual functional capacity is determined under this section and is further adjusted based on an estimate of what the worker's capacity to perform work would be if it had only been diminished by a compensable injury to the hip, shoulder, head, neck, or torso.

(11) 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)										
Base functional capacity (BFC) (physical demand)		RS	S	S/L	L	M/L	M	M/H	H	V/H
	S	2	1	1	1	1	1	1	1	1
	L	4	3	2	1	1	1	1	1	1
	M	6	5	4	3	2	1	1	1	1
	H	7	6	6	5	4	3	2	1	1
	V/H	7	7	6	5	4	3	2	1	1

(12) For those workers who have an RFC between two categories and who also have restrictions, the next lower classification is used. (For example, if a worker's RFC is S/L and the worker has restrictions, use S).

(13) When the date of injury is on or after Jan. 1, 2005, determine adaptability by finding the adaptability value for the worker's extent of total impairment on the adaptability scale below; compare this value with the residual functional capacity scale in section (11) of this rule and use the higher of the two values for adaptability.

Adaptability Scale:

Total impairment	**Adaptability value**
1-9%	1
10-19%	2
20-29%	3
30-39%	4
40-49%	5
50-59%	6
60% and over	7

(14) When the date of injury is before Jan. 1, 2005, for those workers who have ratable unscheduled impairment found in rules OAR 436-035-0019 or OAR 436-035-0330 through 436-035-0450, determine adaptability by applying the extent of total unscheduled impairment to the adaptability scale in section (13) of this rule and the residual functional capacity scale in section (11) of this rule and use the higher of the two values for adaptability.

(15) To determine the social-vocational factor value, which represents the total calculation of age, education, and adaptability, complete the following steps.

(a) Determine the appropriate value for the age factor using section (2) of this rule.

(b) Determine the appropriate value for the education factor using sections (4) and (5) of this rule.

(c) Add age and education values together.

(d) Determine the appropriate value for the adaptability factor using sections (7) through (14) of this rule.

(e) Multiply the result from step (c) by the value from step (d) for the social-vocational factor value.

(16) Prorating or interpolating between social-vocational values is not allowed. All values must be expressed as whole numbers.

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726
Hist: Amended 2/7/20 as Admin. Order 20-051, eff. 3/1/20
Amended 6/7/22 as Admin. Order 22-052, eff. 6/7/22 (temp)
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0013 Findings of Impairment

(1) Findings of impairment, generally. Findings of impairment are objective medical findings that measure the extent to which a worker has suffered permanent loss of use or function of a body part or system.

(2) Findings of impairment when the worker is medically stationary. If the worker is medically stationary, findings of impairment are determined by performing the following steps:

(a) In initial injury claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted condition or a direct medical sequela of an accepted condition.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted condition;

(ii) Any direct medical sequela of an accepted condition;

(iii) Any condition that existed before the initial injury incident but does not qualify as a pre-existing condition;

(iv) Any pre-existing condition that is not otherwise compensable;

(v) Any denied condition; and

(vi) Any superimposed condition.

Example: **Accepted condition: Low back strain combined with pre-existing lumbar degenerative disc disease**

~~Superimposed condition: pregnancy (mid-term)~~

Denied condition: major contributing cause denial of the combined condition ~~lumbar disc herniation~~

In the closing examination, the attending physician describes range of motion findings and states that 10% of the range of motion loss is due to the accepted condition~~,~~ and 90~~50~~% of the loss is due to lumbar degenerative disc disease ~~a lumbar disc herniation, and 40% of the loss is due to the pregnancy~~. The worker is eligible for an impairment award for the 10% of the range of motion loss that is due to the low back strain. Under these rules, the range of motion loss is valued at 10%. 10% x .10 equals 1% impairment.

(b) In new or omitted condition claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted new or omitted condition;

(ii) Any direct medical sequela of an accepted new or omitted condition;

(iii) In a new condition claim, any condition that existed before the onset of the accepted new medical condition but does not qualify as a pre-existing condition;

(iv) In an omitted condition claim, any condition that existed before the initial injury incident but does not qualify as a pre-existing condition;

(v) Any pre-existing condition that is not otherwise compensable;

(vi) Any denied condition; and

(vii) Any superimposed condition.

(c) In aggravation claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted worsened condition or a direct medical sequela of an accepted worsened condition.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted worsened condition;

(ii) Any direct medical sequela of an accepted worsened condition;

(iii) Any condition that existed before the onset of the accepted worsened condition but does not qualify as a pre-existing condition;

(iv) Any pre-existing condition that is not otherwise compensable;

(v) Any denied condition; and

(vi) Any superimposed condition.

(d) In occupational disease claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted occupational disease or a direct medical sequela of an accepted occupational disease.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted occupational disease;

(ii) Any direct medical sequela of an accepted occupational disease;

(iii) Any pre-existing condition that is not otherwise compensable;

(iv) Any denied condition; and

(v) Any superimposed condition.

(3) Findings of impairment when the worker is not medically stationary. Except for a claim closed under ORS 656.268(1)(c), if the worker is not medically stationary, findings of impairment are determined by performing the following steps:

(a) In initial injury claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted condition or a direct medical sequela of an accepted condition at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted condition;

(ii) Any direct medical sequela of an accepted condition;

(iii) Any condition that existed before the initial injury incident but does not qualify as a pre-existing condition;

(iv) Any pre-existing condition that is not otherwise compensable;

(v) Any denied condition; and

(vi) Any superimposed condition.

(b) In new or omitted condition claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted new or omitted condition;

(ii) Any direct medical sequela of an accepted new or omitted condition;

(iii) In a new condition claim, any condition that existed before the onset of the accepted new medical condition but does not qualify as a pre-existing condition;

(iv) In an omitted condition claim, any condition that existed before the initial injury incident but does not qualify as a pre-existing condition;

(v) Any pre-existing condition that is not otherwise compensable;

(vi) Any denied condition; and

(vii) Any superimposed condition.

(c) In aggravation claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted worsened condition or a direct medical sequela of an accepted worsened condition at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted worsened condition;

(ii) Any direct medical sequela of an accepted worsened condition;

(iii) Any condition that existed before the onset of the accepted worsened condition but does not qualify as a pre-existing condition;

(iv) Any pre-existing condition that is not otherwise compensable;

(v) Any denied condition; and

(vi) Any superimposed condition.

(d) In occupational disease claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted occupational disease or a direct medical sequela of an accepted occupational disease at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted occupational disease;

(ii) Any direct medical sequela of an accepted occupational disease;

(iii) Any pre-existing condition that is not otherwise compensable;

(iv) Any denied condition; and

(v) Any superimposed condition.

(4) Age and education. The social-vocational factors of age and education (including SVP) are not apportioned, but are determined as of the date of issuance.

(5) Irreversible findings of impairment or surgical value. Workers with an irreversible finding of impairment or surgical value due to the compensable injury receive the full value awarded in these rules for the irreversible finding or surgical value, except in cases where the irreversible finding or surgical value is caused in part by a superimposed condition, a pre-existing condition that is part of a combined condition denial, or a combined condition denied in its entirety. A worker is not eligible for an award for the portion of loss for an irreversible finding or surgical value caused in part by a superimposed condition, a pre-existing condition that is part of a combined condition denial, or a combined condition denied in its entirety.

Example: **Accepted conditions: 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 attending physician describes range of motion findings and states that 60% of the range of motion loss is due to the accepted conditions and 40% of the range of motion loss is due to the pregnancy. Under these rules, the range of motion loss is valued at 10%. 10% x .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 injury.

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726
Hist: Amended 9/7/17 as Admin. Order 17-057, eff. 10/8/17
Amended 6/7/22 as Admin. Order 22-052, eff. 6/7/22 (temp)
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0014 Worsened Pre-existing Conditions ~~and Combined Conditions~~

~~**(1) Worsened pre-existing conditions.**~~ If a worsened pre-existing condition is compensable under ORS 656.225, a worker is eligible for an award for permanent disability caused by the worsened pre-existing condition.

Example: (No apportionment)

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

Pre-existing condition: arthritis (spine).

Closing exam ROM = 10% (under these rules).

Surgery (lumbar diskectomy) = 9%.

Combine: 10% and 9% which equals 18% low back impairment due to this compensable injury.

The worker is released to regular work. (Social-vocational factoring equals zero.)

~~**(2) Combined conditions.**~~

~~If a worker has an accepted combined condition, the worker is eligible for an award for permanent disability caused by the combined condition unless there is a subsequent denial of the combined condition.~~

~~**(3) Permanent partial disability awarded after a denial of the combined condition.** If a claim is closed under ORS 656.268(1)(b), because the compensable injury is no longer the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition, the likely permanent disability that would have been due to the current accepted condition must be estimated. The current accepted condition is the component of the otherwise denied combined condition that remains related to the compensable injury.~~

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.225, 656.268, 656.726
Hist: Amended 2/7/20 as Admin. Order 20-051, eff. 3/1/20
Amended 6/7/22 as Admin. Order 22-052, eff. 6/7/22 (temp)
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0230 Other Lower Extremity Findings

(1) Loss of sensation or hypersensitivity in the leg is not considered disabling except for the plantar surface of the foot and toes, including the great toe, where it is rated as follows:

(a)	Toe (in any toe)	Foot
partial loss of sensation or hypersensitivity	5%	5%
total loss of sensation or hypersensitivity	10%	10%

(b) Partial is part of the toe or foot. Total means the entire toe or foot.

(c) Loss of sensation or hypersensitivity in the toes in addition to loss of sensation or hypersensitivity in the foot is rated for the foot only. No additional value is allowed for loss of sensation or hypersensitivity in the toes.

(d) When there are hypersensitivity and sensation loss, both conditions are rated.

(2) The following ratings are for length discrepancies of the injured leg. However, loss of length due to flexion/extension deformities is excluded. The rating is the same whether the length change is a result of an injury to the foot or to the upper leg:

Discrepancy in inches	**Leg**
1/4 to 1/2 inch	5%
More than 1/2 inch up to and including 1 inch	10%
More than 1 inch up to and including 1-1/2 inches	15%
More than 1-1/2 inches	20%

(3) Valid instability in the ankle or knee substantiated by clinical findings is valued based on the ligament demonstrating the laxity, as described in the table below. The instability value is given even if the ligament itself has not been injured.

	Mild		Moderate		Severe	
Ligament	Ankle	Leg	Ankle	Leg	Ankle	Leg
Collateral (medial)	6%	10%	11%	15%	17%	20%
Collateral (lateral)	9%	10%	18%	15%	28%	20%
Anterior cruciate		5%		10%		15%
Posterior cruciate		5%		10%		15%

(a) For ankle joint instability to be rated as severe there must be a complete disruption of two or more ligaments. Following are examples of ankle ligaments that may contribute to joint instability:

(A) The lateral collateral ligaments including the anterior talofibular, calcaneofibular, talocalcaneal, posterior talocalcaneal, and the posterior talofibular.

(B) The medial collateral ligaments, or deltoid ligament, including the tibionavicular, calcaneotibial, anterior talotibial, and the posterior talotibial.

(b) For knee joint instability the severity of joint opening is mild at a grade 1 or 1+ (1-5mm), moderate at a grade 2 or 2+ (6-10mm), and severe at a grade 3 or 3+ (>10mm).

(c) Ankle joint instability with additional anterior or posterior instability receives an additional 10%.

(d) When there is a prosthetic knee replacement, instability of the knee is not rated unless the severity of the instability is equivalent to Grade 2 or greater.

(e) Rotary instability in the knee is included in the impairment value(s) of this section.

(f) Multiple instability values in a single joint are combined.

(4) When injury in the ankle or knee/leg results in angulation or malalignment, impairment values are determined under the following:

(a) Varus deformity greater than 15° of the knee/leg is rated at 10% of the leg and of the ankle is rated at 10% of the foot.

(b) Valgus deformity greater than 20° of the knee/leg is rated at 10% of the leg and of the ankle is rated at 10% of the foot.

(c) Tibial shaft fracture resulting in angulation or malalignment (rotational deformity) affects the function of the entire leg and is rated as follows:

Severity	Leg impairment
Mild: 10°– 14°	17%
Moderate: 15°– 19°	26%
Severe: 20°+	26% plus 1% for each additional degree, to 43% maximum

(d) Injury resulting in a rocker bottom deformity of the foot is valued at 14%.

(5) The following values are for surgery of the toes, foot, or leg:

(a) In the great toe:

	Toe impairment
interphalangeal joint arthroplasty or resection	20%
metatarsophalangeal joint arthroplasty or resection	30%

(b) In the second through fifth toes:

	Toe impairment
distal interphalangeal joint arthroplasty or resection	15%
proximal interphalangeal joint arthroplasty or resection	25%
metatarsophalangeal joint arthroplasty or resection	25%

(c) Foot surgery	**Foot/ankle impairment**
Resection of any part of a metatarsal	10%
Ankylosed tarsometatarsal joint	10%
Prosthetic ankle replacement	25%

(d) Leg surgery	**Leg impairment**
Less than complete loss of one meniscus(no additional value is allowed for multiple partial resections of a single meniscus)	5%

Complete loss of one meniscus	10%
Complete loss of one meniscus with less than complete loss of the other	15%
Complete loss of both menisci	25%
Each 1/4 of patella removed	5%
Prosthetic femoral head replacement	15%
Total or partial prosthetic knee replacement (no additional value is allowed for multiple, partial or total, replacements).	20%

(e) When rating a prosthetic knee replacement, a separate value for meniscectomy(s) or patellectomy for the same knee is not granted.

(f) A meniscectomy is rated as a complete loss unless the record indicates that more than the rim of the meniscus remains.

(6) Dermatological conditions including burns which are limited to the leg, foot, or toes are rated based on the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g., a Class 1 dermatological condition of the foot is 3% of the foot, or a Class 1 dermatological condition of the leg is 3% of the leg. Contact dermatitis is determined under this section unless it is caused by an allergic systemic reaction which is also determined under OAR 436-035-0450. Contact dermatitis for a body part other than the upper or lower extremities is rated under OAR 436-035-0440. Impairments may or may not show signs or symptoms of skin disorder upon examination but are rated according to the following classes:

(a) Class 1: 3% for the leg, foot, or toe if treatment results in no more than minimal limitations in the performance of the activities of daily living (ADL), although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the leg, foot, or toe if intermittent treatments and prescribed examinations are required, and the worker has some limitations in the performance of ADL.

(c) Class 3: 38% for the leg, foot, or toe if regularly prescribed examinations and continuous treatments are required, and the worker has many limitations in the performance of ADL.

(d) Class 4: 68% for the leg, foot, or toe if continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of ADL.

(e) Class 5: 90% for the leg, foot, or toe if continuous prescribed treatment is required. The treatment necessitates having the worker stay home or permanently admitting the worker to a care facility, and the worker has severe limitations in the performance of ADL.

(f) Full thickness skin loss of the heel is valued at 10% of the foot, even when the area is successfully covered with an appropriate skin graft.

(7) The following ratings are for vascular dysfunction of the leg. The impairment values are determined according to the following classifications:

(a) Class 1: 3% when any of the following exist:

(A) Loss of pulses in the foot.

(B) Minimal loss of subcutaneous tissue.

(C) Calcification of the arteries (as revealed by x-ray).

(D) Transient edema.

(b) Class 2: 15% when any of the following exist:

(A) Limping due to intermittent claudication that occurs when walking at least 100 yards.

(B) Vascular damage, as evidenced by a healed painless stump of a single amputated toe, with evidence of chronic vascular dysfunction or a healed ulcer.

(C) Persistent moderate edema which is only partially controlled by support hose.

(c) Class 3: 35% when any of the following exist:

(A) Limping due to intermittent claudication when walking as little as 25 yards and no more than 100 yards.

(B) Vascular damage, as evidenced by healed amputation stumps of two or more toes on one foot, with evidence of chronic vascular dysfunction or persistent superficial ulcers on one leg.

(C) Obvious severe edema which is only partially controlled by support hose.

(d) Class 4: 63% when any of the following exist:

(A) Limping due to intermittent claudication after walking less than 25 yards.

(B) Intermittent pain in the legs due to intermittent claudication when at rest.

(C) Vascular damage, as evidenced by amputation at or above the ankle on one leg, or amputation of two or more toes on both feet, with evidence of chronic vascular dysfunction or widespread or deep ulcers on one leg.

(D) Obvious severe edema which cannot be controlled with support hose.

(e) Class 5: 88% when either of the following exists:

(A) Constant severe pain due to claudication at rest.

(B) Vascular damage, as evidenced by amputations at or above the ankles of both legs, or amputation of all toes on both feet, with evidence of persistent vascular dysfunction or of persistent, widespread, or deep ulcerations on both legs.

(f) If partial amputation of the lower extremity occurs as a result of vascular dysfunction, the impairment values are rated separately. The amputation value is then combined with the impairment value for the vascular dysfunction.

(8) Injuries to unilateral spinal nerve roots with resultant loss of strength in the leg or foot are rated based on the specific nerve root supplying (innervating) the weakened muscle(s), as described in the following table and modified under OAR 436-035-0011(7).

(a)

Spinal nerve root	Leg impairment
L-2	20%
L-3	20%
L-4	34%
L-5	37%
S-1	20%

(b) Loss of strength in bilateral extremities results in each extremity being rated separately.

(9) When a spinal nerve root or lumbosacral plexus are not injured, valid loss of strength in the leg or foot is valued as if the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength was impaired, as described in the following table and as modified under OAR 436-035-0011(7).

	Foot impairment
Common peroneal	39%
deep (above mid-shin)	28%
deep (below mid-shin)	6%
Superficial	11%
Tibial nerve	
posterior tibial (mid-calf & knee)	28%
below mid-calf	17%
lateral plantar branch	6%
medial plantar branch	6%
Peripheral nerve	**Leg impairment**
Femoral (Below the iliacus nerve)	30%
Nerves to obturator internus & piriformis	10%
Nerves to quadratus femoris muscle/nerve to superior gemellus muscle/obturator	10%
Superior gluteal	20%
Inferior gluteal	25%
Sciatic (above hamstring innervation)	75%
Sciatic (hamstring loss only)	40%
Tibial nerve (medial popliteal or internal popliteal above knee)	35%

Example 1: A worker suffers a knee injury requiring surgery. Upon recovery, the attending physician reports 4/5 strength of the quadriceps femoris. The quadriceps femoris is

innervated by the femoral nerve which has a 30% impairment value. 4/5 strength, under OAR 436-035-0011(7), is 20%. Final impairment is determined by multiplying 30% by 20% for a final value of 6% impairment of the leg.

Example 2: A worker suffers a laceration of the deep branch of the common peroneal nerve above mid-shin. Upon recovery, the attending physician reports 3/5 strength of the calf. The deep common peroneal above mid-shin has a 28% impairment value. Under OAR 436-035-0011(7), 3/5 strength is 50%. Impairment is determined by multiplying 28% by 50% for a final value of 14% impairment of the foot.

(a) Loss of strength due to an injury in a single toe receives a value of zero, unless the strength loss is due to a compensable condition that is proximal to the digit.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

(10) For motor loss to any part of a leg which is due to brain or spinal cord damage, impairment is valued as follows:

(a) Class 1: 23% when the worker can rise to a standing position and can walk but has difficulty with elevations, grades, steps, and distances.

(b) Class 2: 48% when the worker can rise to a standing position and can walk with difficulty but is limited to level surfaces. There is variability as to the distance the worker can walk.

(c) Class 3: 76% when the worker can rise to a standing position and can maintain it with difficulty but cannot walk without assistance.

(d) Class 4: 100% when the worker cannot stand without a prosthesis, the help of others, or mechanical support.

(e) When a value is granted under this section, additional impairment values in the same extremity are not allowed for strength loss, chronic condition, reduced range of motion, or limited ability to walk/stand for two hours or less because they have been included in the impairment values shown in this section.

(f) For bilateral extremity loss, each extremity is rated separately.

(11) If there is a diagnosis of Grade IV chondromalacia, extensive arthritis or extensive degenerative joint disease and one or more of the following are present: secondary strength loss; chronic effusion; varus or valgus deformity less than that specified in section (4) of this rule, then one or more of the following rating values apply:

(a) 5% of the foot for the ankle joint; or

(b) 5% of the leg for the knee joint.

(12) For a diagnosis of degenerative joint disease, chondromalacia, or arthritis which does not meet the criteria noted in section (11) of this rule, the impairment is determined under the chronic condition rule (OAR 436-035-0019) if the criteria in that rule is met.

(13) Other impairment values, e.g., weakness, chronic condition, reduced range of motion, etc., are combined with the value granted in section (11) of this rule.

(14) When the worker cannot be on ~~his or her~~their feet for more than two hours in an 8-hour period, the award is 15% of the leg.

Stat. Auth.: ORS 656.726; **Stats. Impltd.:** ORS 656.005, 656.214, 656.268, 656.726
Hist: Amended 5/5/10 as WCD Admin. Order 10-051, eff. 6/1/10
Amended 11/21/12 as WCD Admin. Order 12-061, eff. 1/1/13
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx

See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0250 Hearing Loss

(1) The following information is provided by the attending physician or reviewed and commented on by the attending physician, under OAR 436-035-0007(5) and (6), to value work-related hearing loss:

(a) A written record, history, examination, diagnosis, opinion, interpretation and a statement noting if further material improvement would reasonably be expected from medical treatment or the passage of time by a medical provider with specialty training or experience in evaluating hearing loss.

(b) The complete audiometric testing.

(2) A worker is eligible for an award for impairment for any loss of normal hearing that results from the compensable injury. Any hearing loss that existed before the compensable injury and that does not result from a compensable pre-existing condition must be offset against hearing loss in the claim if the hearing loss that existed before the compensable injury is adequately documented by a baseline audiogram that was obtained within 180 days of assignment to a high noise environment.

(a) The offset will be done at the monaural percentage of impairment level.

(b) Determine the monaural percentage of impairment for the baseline audiogram under section (4) of this rule.

(c) Subtract the baseline audiogram impairment from the current audiogram impairment to obtain the impairment value.

(3) Hearing loss is based on audiograms which must report on air conduction frequencies at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz.

(a) Audiograms should be based on American National Standards Institute S3.6 (1989) standards.

(b) Test results will be accepted only if they come from a test conducted at least 14 consecutive hours after the worker has been removed from significant exposure to noise.

(4) Impairment of hearing is calculated from the number of decibels by which the worker's hearing exceeds 150 decibels (hearing impairment threshold). Compensation for monaural hearing loss is calculated as follows:

(a) Add the audiogram findings at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz. Decibel readings in excess of 100 will be entered into the computations as 100 dB.

~~**(b)** Hearing loss caused by presbycusis is based on the worker's age at the time of the audiogram, except that, in an injury claim, an impairment award for hearing loss caused by presbycusis is reduced only if the presbycusis qualifies as a pre-existing condition.~~

~~To determine the reduction to be applied for hearing loss caused by presbycusis, consult the Presbycusis Correction Values Table below. (These values represent the total decibels of hearing loss in the six standard frequencies which normally results from aging.) Find the figure for presbycusis hearing loss. Take this presbycusis figure and subtract the hearing impairment threshold of 150 decibels. Subtract any positive value from the sum of the audiogram entries. This value represents the total decibels of hearing loss in the six standard frequencies which normally results from aging that exceed the hearing impairment threshold. (If there is no positive value there is no hearing impairment attributable to presbycusis above the hearing impairment threshold.)~~

AGE	MEN	WOMEN	AGE	MEN	WOMEN
20 or younger	0	0	53	74	51
21	1	0	54	78	54
22	1	1	55	82	57
23	2	1	56	87	61
24	2	2	57	91	64
25	3	2	58	96	67
26	4	3	59	101	71
27	5	3	60	106	74
28	6	4	61	111	78
29	7	5	62	116	81
30	9	6	63	122	85
31	10	7	64	127	89
32	12	8	65	133	93
33	14	9	66	138	97
34	15	11	67	144	101
35	17	12	68	150	105
36	19	14	69	156	109
37	22	15	70	162	114
38	24	17	71	169	118
39	26	19	72	175	122
40	29	20	73	182	127
41	32	22	74	188	132
42	35	24	75	195	136
43	38	26	76	202	141
44	41	28	77	209	146
45	44	31	78	216	151
46	47	33	79	223	156
47	50	35	80	231	161
48	54	38	81	238	167
49	58	40	82	246	172
50	61	43	83	254	177
51	65	46	84	261	183
52	69	49	85 or older	269	189

~~(c)~~**(b)** Consult the Monaural Hearing Loss Table below, using the ~~figure found in~~sum of the audiogram findings from subsection ~~(b)~~(a) of this section. This table will give you the percent of monaural hearing loss to be compensated.

db	%LOSS	db	%LOSS	db	%LOSS	db	%LOSS
150.00	0.00	201.00	12.75	252.00	25.50	303.00	38.25
151.00	0.25	202.00	13.00	253.00	25.75	304.00	38.50
152.00	0.50	203.00	13.25	254.00	26.00	305.00	38.75
153.00	0.75	204.00	13.50	255.00	26.25	306.00	39.00
154.00	1.00	205.00	13.75	256.00	26.50	307.00	39.25
155.00	1.25	206.00	14.00	257.00	26.75	308.00	39.50
156.00	1.50	207.00	14.25	258.00	27.00	309.00	39.75
157.00	1.75	208.00	14.50	259.00	27.25	310.00	40.00
158.00	2.00	209.00	14.75	260.00	27.50	311.00	40.25
159.00	2.25	210.00	15.00	261.00	27.75	312.00	40.50
160.00	2.50	211.00	15.25	262.00	28.00	313.00	40.75
161.00	2.75	212.00	15.50	263.00	28.25	314.00	41.00
162.00	3.00	213.00	15.75	264.00	28.50	315.00	41.25
163.00	3.25	214.00	16.00	265.00	28.75	316.00	41.50
164.00	3.50	215.00	16.25	266.00	29.00	317.00	41.75
165.00	3.75	216.00	16.50	267.00	29.25	318.00	42.00
166.00	4.00	217.00	16.75	268.00	29.50	319.00	42.25
167.00	4.25	218.00	17.00	269.00	29.75	320.00	42.50
168.00	4.50	219.00	17.25	270.00	30.00	321.00	42.75
169.00	4.75	220.00	17.50	271.00	30.25	322.00	43.00
170.00	5.00	221.00	17.75	272.00	30.50	323.00	43.25
171.00	5.25	222.00	18.00	273.00	30.75	324.00	43.50
172.00	5.50	223.00	18.25	274.00	31.00	325.00	43.75
173.00	5.75	224.00	18.50	275.00	31.25	326.00	44.00
174.00	6.00	225.00	18.75	276.00	31.50	327.00	44.25
175.00	6.25	226.00	19.00	277.00	31.75	328.00	44.50
176.00	6.50	227.00	19.25	278.00	32.00	329.00	44.75
177.00	6.75	228.00	19.50	279.00	32.25	330.00	45.00
178.00	7.00	229.00	19.75	280.00	32.50	331.00	45.25
179.00	7.25	230.00	20.00	281.00	32.75	332.00	45.50
180.00	7.50	231.00	20.25	282.00	33.00	333.00	45.75
181.00	7.75	232.00	20.50	283.00	33.25	334.00	46.00
182.00	8.00	233.00	20.75	284.00	33.50	335.00	46.25
183.00	8.25	234.00	21.00	285.00	33.75	336.00	46.50
184.00	8.50	235.00	21.25	286.00	34.00	337.00	46.75
185.00	8.75	236.00	21.50	287.00	34.25	338.00	47.00
186.00	9.00	237.00	21.75	288.00	34.50	339.00	47.25
187.00	9.25	238.00	22.00	289.00	34.75	340.00	47.50
188.00	9.50	239.00	22.25	290.00	35.00	341.00	47.75
189.00	9.75	240.00	22.50	291.00	35.25	342.00	48.00
190.00	10.00	241.00	22.75	292.00	35.50	343.00	48.25
191.00	10.25	242.00	23.00	293.00	35.75	344.00	48.50
192.00	10.50	243.00	23.25	294.00	36.00	345.00	48.75
193.00	10.75	244.00	23.50	295.00	36.25	346.00	49.00
194.00	11.00	245.00	23.75	296.00	36.50	347.00	49.25
195.00	11.25	246.00	24.00	297.00	36.75	348.00	49.50
196.00	11.50	247.00	24.25	298.00	37.00	349.00	49.75
197.00	11.75	248.00	24.50	299.00	37.25	350.00	50.00
198.00	12.00	249.00	24.75	300.00	37.50	351.00	50.25
199.00	12.25	250.00	25.00	301.00	37.75	352.00	50.50
200.00	12.50	251.00	25.25	302.00	38.00	353.00	50.75

db	%LOSS	db	%LOSS	db	%LOSS	db	%LOSS
354.00	51.00	404.00	63.50	454.00	76.00	504.00	88.50
355.00	51.25	405.00	63.75	455.00	76.25	505.00	88.75
356.00	51.50	406.00	64.00	456.00	76.50	506.00	89.00
357.00	51.75	407.00	64.25	457.00	76.75	507.00	89.25
358.00	52.00	408.00	64.50	458.00	77.00	508.00	89.50
359.00	52.25	409.00	64.75	459.00	77.25	509.00	89.75
360.00	52.50	410.00	65.00	460.00	77.50	510.00	90.00
361.00	52.75	411.00	65.25	461.00	77.75	511.00	90.25
362.00	53.00	412.00	65.50	462.00	78.00	512.00	90.50
363.00	53.25	413.00	65.75	463.00	78.25	513.00	90.75
364.00	53.50	414.00	66.00	464.00	78.50	514.00	91.00
365.00	53.75	415.00	66.25	465.00	78.75	515.00	91.25
366.00	54.00	416.00	66.50	466.00	79.00	516.00	91.50
367.00	54.25	417.00	66.75	467.00	79.25	517.00	91.75
368.00	54.50	418.00	67.00	468.00	79.50	518.00	92.00
369.00	54.75	419.00	67.25	469.00	79.75	519.00	92.25
370.00	55.00	420.00	67.50	470.00	80.00	520.00	92.50
371.00	55.25	421.00	67.75	471.00	80.25	521.00	92.75
372.00	55.50	422.00	68.00	472.00	80.50	522.00	93.00
373.00	55.75	423.00	68.25	473.00	80.75	523.00	93.25
374.00	56.00	424.00	68.50	474.00	81.00	524.00	93.50
375.00	56.25	425.00	68.75	475.00	81.25	525.00	93.75
376.00	56.50	426.00	69.00	476.00	81.50	526.00	94.00
377.00	56.75	427.00	69.25	477.00	81.75	527.00	94.25
378.00	57.00	428.00	69.50	478.00	82.00	528.00	94.50
379.00	57.25	429.00	69.75	479.00	82.25	529.00	94.75
380.00	57.50	430.00	70.00	480.00	82.50	530.00	95.00
381.00	57.75	431.00	70.25	481.00	82.75	531.00	95.25
382.00	58.00	432.00	70.50	482.00	83.00	532.00	95.50
383.00	58.25	433.00	70.75	483.00	83.25	533.00	95.75
384.00	58.50	434.00	71.00	484.00	83.50	534.00	96.00
385.00	58.75	435.00	71.25	485.00	83.75	535.00	96.25
386.00	59.00	436.00	71.50	486.00	84.00	536.00	96.50
387.00	59.25	437.00	71.75	487.00	84.25	537.00	96.75
388.00	59.50	438.00	72.00	488.00	84.50	538.00	97.00
389.00	59.75	439.00	72.25	489.00	84.75	539.00	97.25
390.00	60.00	440.00	72.50	490.00	85.00	540.00	97.50
391.00	60.25	441.00	72.75	491.00	85.25	541.00	97.75
392.00	60.50	442.00	73.00	492.00	85.50	542.00	98.00
393.00	60.75	443.00	73.25	493.00	85.75	543.00	98.25
394.00	61.00	444.00	73.50	494.00	86.00	544.00	98.50
395.00	61.25	445.00	73.75	495.00	86.25	545.00	98.75
396.00	61.50	446.00	74.00	496.00	86.50	546.00	99.00
397.00	61.75	447.00	74.25	497.00	86.75	547.00	99.25
398.00	62.00	448.00	74.50	498.00	87.00	548.00	99.50
399.00	62.25	449.00	74.75	499.00	87.25	549.00	99.75
400.00	62.50	450.00	75.00	500.00	87.50	550.00	100.00
401.00	62.75	451.00	75.25	501.00	87.75		
402.00	63.00	452.00	75.50	502.00	88.00		
403.00	63.25	453.00	75.75	503.00	88.25		

~~(d)~~(c) No value is allowed for db totals of 150 or less. The value for db totals of 550 or more is 100%.

(5) Binaural hearing loss is calculated as follows:

(a) Find the percent of monaural hearing loss for each ear by using the method listed in ~~(4) (a) - (c)~~ section (4) ~~above~~of this rule.

(b) Multiply the percent of loss in the better ear by seven.

(c) Add to that result the percent of loss in the other ear.

(d) Divide this sum by eight. This is the percent of binaural hearing loss to be compensated.

(e) This method is expressed by the formula: $\frac{7(A) + B}{8}$

"A" is the percent of hearing loss in the better ear.

"B" is the percent of hearing loss in the other ear.

(6) Use the method (monaural or binaural) which results in the greater impairment.

(7) Tinnitus and other auditory losses may be determined as losses under OAR 436-035-0390.

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726
Hist: Amended 10/26/04 as WCD Admin. Order 04-063, eff 1/1/05
Amended 1/29/15 as Admin. Order 15-053, eff. 3/1/15
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0380 Cardiovascular System

(1) Impairments of the cardiovascular system are determined based on objective findings that result in the following conditions: valvular heart disease, coronary heart disease, hypertensive cardiovascular disease, cardiomyopathies, pericardial disease, or cardiac arrhythmias. Each of these conditions will be described and quantified. In most circumstances, the physician should observe the patient during exercise testing.

(2) Valvular Heart Disease: Impairment resulting from work related valvular heart disease is rated according to the following classes:

Class 1
(5% Impairment)

The worker has evidence by physical examination or laboratory studies of valvular heart disease, but no symptoms in the performance of ordinary daily activities or even upon moderately heavy exertion; and

The worker does not require continuous treatment, although prophylactic antibiotics may be recommended at the time of a surgical procedure to reduce the risk of bacterial endocarditis; and

The worker remains free of signs of congestive heart failure; and

There are no signs of ventricular hypertrophy or dilation, and the severity of the stenosis or regurgitation is estimated to be mild; or

In the worker who has recovered from valvular heart surgery, all of the above criteria are met.

Class 2
(20% Impairment)

The worker has evidence by physical examination or laboratory studies of valvular heart disease, and there are no symptoms in the performance of ordinary daily activities, but symptoms develop on moderately heavy physical exertion; or

The worker requires moderate dietary adjustment or drugs to prevent symptoms or to remain free of the signs of congestive heart failure or other consequences of valvular heart disease, such as syncope, chest pain and emboli; or

The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation, and the severity of the stenosis or regurgitation is estimated to be moderate, and surgical correction is not feasible or advisable; or

The worker has recovered from valvular heart surgery and meets the above criteria.

Class 3
(40% Impairment)

The worker has signs of valvular heart disease and has slight to moderate symptomatic discomfort during the performance of ordinary daily activities; and

Dietary therapy or drugs do not completely control symptoms or prevent congestive heart failure; and

The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation, the severity of the stenosis or regurgitation is estimated to be moderate or severe, and surgical correction is not feasible; or

The worker has recovered from heart valve surgery but continues to have symptoms and signs of congestive heart failure including cardiomegaly.

Class 4
(78% Impairment)

The worker has signs by physical examination of valvular heart disease, and symptoms at rest or in the performance of less than ordinary daily activities; and

Dietary therapy and drugs cannot control symptoms or prevent signs of congestive heart failure; and

The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation; and the severity of the stenosis or regurgitation is estimated to be moderate or severe, and surgical correction is not feasible; or

The worker has recovered from valvular heart surgery but continues to have symptoms or signs of congestive heart failure.

(3) Coronary Heart Disease: Impairment resulting from work related coronary heart disease is rated according to the following classes:

Class 1
(5% Impairment)

This class of impairment should be reserved for the worker with an equivocal history of angina pectoris on whom coronary angiography is performed, or for a worker on whom coronary angiography is performed for other reasons and in whom is found less than 50% reduction in the cross sectional area of a coronary artery.

Class 2
(20% Impairment)

The worker has history of a myocardial infarction or angina pectoris that is documented by appropriate laboratory studies, but at the time of evaluation the worker has no symptoms while performing ordinary daily activities or even moderately heavy physical exertion; and

The worker may require moderate dietary adjustment or medication to prevent angina or to remain free of signs and symptoms of congestive heart failure; and

The worker is able to walk on the treadmill or bicycle ergometer and obtain a heart rate of 90% of ~~his or her~~their predicted maximum heart rate without developing significant ST segment shift, ventricular tachycardia, or hypotension; or

The worker has recovered from coronary artery surgery or angioplasty, remains asymptomatic during ordinary daily activities, and is able to exercise as outlined above. If the worker is taking a beta adrenergic blocking agent, ~~he or she~~the worker should be able to walk on the treadmill to a level estimated to cause an energy expenditure of at least 10 METS* as a substitute for the heart rate target.

*METS is a term that represents the multiples of resting metabolic energy used for any given activity. One MET is 3.5ml/(kg x min).

Class 3
(40% Impairment)

The worker has a history of myocardial infarction that is documented by appropriate laboratory studies, or angina pectoris that is documented by changes on a resting or exercise ECG or radioisotope study that are suggestive of ischemia; or

The worker has either a fixed or dynamic focal obstruction of at least 50% of a coronary artery, demonstrated by angiography; and

The worker requires moderate dietary adjustment or drugs to prevent frequent angina or to remain free of symptoms and signs of congestive heart failure, but may develop angina pectoris or symptoms of congestive heart failure after moderately heavy physical exertion; or

The worker has recovered from coronary artery surgery or angioplasty, continues to require treatment, and has the symptoms described above.

Class 4
(78% Impairment)

The worker has history of a myocardial infarction that is documented by appropriate laboratory studies or angina pectoris that has been documented by changes of a resting ECG or radioisotope study that are highly suggestive of myocardial ischemia; or

The worker has either fixed or dynamic focal obstruction of at least 50% of one or more coronary arteries, demonstrated by angiography; and

Moderate dietary adjustments or drugs are required to prevent angina or to remain free of symptoms and signs of congestive heart failure, but the worker continues to develop symptoms of angina pectoris or congestive heart failure during ordinary daily activities; or

There are signs or laboratory evidence of cardiac enlargement and abnormal ventricular function; or

The worker has recovered from coronary artery bypass surgery or angioplasty and continues to require treatment and have symptoms as described above.

(4) Hypertensive Cardiovascular Disease: Impairment resulting from work related hypertensive cardiovascular disease is rated according to the following classes:

Class 1
(5% Impairment)

The worker has no symptoms and the diastolic pressures are repeatedly in excess of 90 mm Hg; and

The worker is taking antihypertensive medications but has none of the following abnormalities: **(1)** abnormal urinalysis or renal function tests; **(2)** history of hypertensive cerebrovascular disease; **(3)** evidence of left ventricular hypertrophy; **(4)** hypertensive vascular abnormalities of the optic fundus, except minimal narrowing of arterioles.

Class 2
(20% Impairment)

The worker has no symptoms and the diastolic pressures are repeatedly in excess of 90 mm Hg; and

The worker is taking antihypertensive medication and has any of the following abnormalities: **(1)** proteinuria and abnormalities of the urinary sediment, but no impairment of renal function as measured by blood urea nitrogen **(BUN)** and serum creatinine determinations; **(2)** history of hypertensive cerebrovascular damage; **(3)** definite hypertensive changes in the retinal arterioles, including crossing defects or old exudates.

Class 3
(40% Impairment)

The worker has no symptoms and the diastolic pressure readings are consistently in excess of 90 mm Hg; and

The worker is taking antihypertensive medication and has any of the following abnormalities: **(1)** diastolic pressure readings usually in excess of 120 mm Hg; **(2)** proteinuria or abnormalities in the urinary sediment, with evidence of impaired renal function as measured by elevated BUN and serum creatinine, or by creatinine clearance below 50%; **(3)** hypertensive cerebrovascular damage with permanent neurological residual; **(4)** left ventricular hypertrophy based on findings of physical examination, ECG, or chest radiograph, but no symptoms, signs or evidence by chest radiograph of congestive heart failure; or **(5)** retinopathy, with definite hypertensive changes in the arterioles, such as

"copper" or "silver wiring," or A-V crossing changes, with or without hemorrhages and exudates.

Class 4
(78% Impairment)

The worker has a diastolic pressure consistently in excess of 90 mm Hg; and

The worker is taking antihypertensive medication and has any two of the following abnormalities; **(1)** diastolic pressure readings usually in excess of 120 mm Hg; **(2)** proteinuria and abnormalities in the urinary sediment, with impaired renal function and evidence of nitrogen retention as measured by elevated BUN and serum creatinine or by creatinine clearance below 50%; **(3)** hypertensive cerebrovascular damage with permanent neurological deficits; **(4)** left ventricular hypertrophy; **(5)** retinopathy as manifested by hypertensive changes in the arterioles, retina, or optic nerve; **(6)** history of congestive heart failure; or

The worker has left ventricular hypertrophy with the persistence of congestive heart failure despite digitalis and diuretics.

(5) Cardiomyopathy: Impairment resulting from work related cardiomyopathies is rated according to the following classes:

Class 1
(5% Impairment)

The worker is asymptomatic and there is evidence of impaired left ventricular function from physical examination or laboratory studies; and

There is no evidence of congestive heart failure or cardiomegaly from physical examination or laboratory studies.

Class 2
(20% Impairment)

The worker is asymptomatic and there is evidence of impaired left ventricular function from physical examination or laboratory studies; and

Moderate dietary adjustment or drug therapy is necessary for the worker to be free of symptoms and signs of congestive heart failure; or

The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the above criteria.

Class 3
(40% Impairment)

The worker develops symptoms of congestive heart failure on greater than ordinary daily activities and there is evidence of abnormal ventricular function from physical examination or laboratory studies; and

Moderate dietary restriction or the use of drugs is necessary to minimize the worker's symptoms, or to prevent the appearance of signs of congestive heart failure or evidence of it by laboratory study; OR

The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the criteria described above.

Class 4
(78% Impairment)

The worker is symptomatic during ordinary daily activities despite the appropriate use of dietary adjustment and drugs, and there is evidence of abnormal ventricular function from physical examination or laboratory studies; or

There are persistent signs of congestive heart failure despite the use of dietary adjustment and drugs; or

The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the above criteria.

(6) Pericardial Disease: Impairment resulting from work related pericardial disease is rated according to the following classes:

Class 1
(5% Impairment)

The worker has no symptoms in the performance of ordinary daily activities or moderately heavy physical exertion, but does have evidence from either physical examination or laboratory studies of pericardial heart disease; and

Continuous treatment is not required, and there are no signs of cardiac enlargement, or of congestion of lungs or other organs; or

In the worker who has had surgical removal of the pericardium, there are no adverse consequences of the surgical removal and the worker meets the criteria above.

Class 2
(20% Impairment)

The worker has no symptoms in the performance of ordinary daily activities, but does have evidence from either physical examination or laboratory studies of pericardial heart disease; but

Moderate dietary adjustment or drugs are required to keep the worker free from symptoms and signs of congestive heart failure; or

The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation; or

The worker has recovered from surgery to remove the pericardium and meets the criteria above.

Class 3
(40% Impairment)

The worker has symptoms on performance of greater than ordinary daily activities despite dietary or drug therapy, and the worker has evidence from physical examination or laboratory studies, of pericardial heart disease; and

Physical signs are present, or there is laboratory evidence of cardiac chamber enlargement or there is evidence of significant pericardial thickening and calcification; or

The worker has recovered from surgery to remove the pericardium but continues to have the symptoms, signs and laboratory evidence described above.

Class 4
(78% Impairment)

The worker has symptoms on performance of ordinary daily activities in spite of using appropriate dietary restrictions or drugs, and the worker has evidence from physical examination or laboratory studies, of pericardial heart disease; and

The worker has signs or laboratory evidence of congestion of the lungs or other organs; or

The worker has recovered from surgery to remove the pericardium and continues to have symptoms, signs, and laboratory evidence described above.

(7) Arrythmias: Impairment resulting from work related cardiac arrhythmias* is rated according to the following classes:

Class 1
(5% Impairment)

The worker is asymptomatic during ordinary activities and a cardiac arrhythmia is documented by ECG; and

There is no documentation of three or more consecutive ectopic beats or periods of asystole greater than 1.5 seconds, and both the atrial and ventricular rates are maintained between 50 and 100 beats per minute; and

There is no evidence of organic heart disease.

* If an arrhythmia is a result of organic heart disease, the arrhythmia should be rated separately and combined with the impairment rating for the organic heart disease.

Class 2
(20% Impairment)

The worker is asymptomatic during ordinary daily activities and a cardiac arrhythmia* is documented by ECG; and

Moderate dietary adjustment, or the use of drugs, or an artificial pacemaker, is required to prevent symptoms related to the cardiac arrhythmia; or

The arrhythmia persists and there is organic heart disease.

Class 3
(40% Impairment)

The worker has symptoms despite the use of dietary therapy or drugs or of an artificial pacemaker and a cardiac arrhythmia* is documented with ECG; but

The worker is able to lead an active life and the symptoms due to the arrhythmia are limited to infrequent palpitations and episodes of light-headedness, or other symptoms of temporarily inadequate cardiac output.

Class 4
(78% Impairment)

The worker has symptoms due to documented cardiac arrhythmia* that are constant and interfere with ordinary daily activities; or

The worker has frequent symptoms of inadequate cardiac output documented by ECG to be due to frequent episodes of cardiac arrhythmia; or

The worker continues to have episodes of syncope that are either due to, or have a high probability of being related to, the arrhythmia. To fit into this category of impairment, the symptoms must be present despite the use of dietary therapy, drugs, or artificial pacemakers.

(8) For heart transplants an impairment value of 50% is given. This value is combined with any other findings of impairment of the heart.

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726
Hist: Amended 12/5/05 as WCD Admin. Order 05-074, eff. 1/1/06
Amended 11/21/12 as WCD Admin. Order 12-061, eff. 1/1/13
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0385 Respiratory System

(1) For the purpose of this rule, the following definitions apply:

(a) FVC is forced vital capacity.

(b) FEV1 is forced expiratory volume in the first second.

(c) Dco refers to diffusing capacity of carbon monoxide.

(d) VO2 Max is measured exercise capacity.

(2) Lung impairment is rated according to the following classes:

(a) Class 1: 0% for FVC greater than or equal to 80% of predicted, and FEV1 greater than or equal to 80% of predicted, and FEV1/FVC greater than or equal to 70%, and Dco greater than or equal to 80% of predicted; or VO2 Max greater than 25 ml/(kg x min).

(b) Class 2: 18% for FVC between 60% and 79% of predicted, or FEV1 between 60% and 79% of predicted, or FEV1/FVC between 60% and 69%, or Dco between 60% and 79% of predicted, or VO2 Max greater than or equal to 20 ml/(kg x min) and less than or equal to 25 ml/(kg x min).

(c) Class 3: 38% for FVC between 51% and 59% of predicted, or FEV1 between 41% and 59% of predicted, or FEV1/FVC between 41% and 59%, or Dco between 41% and 59% of predicted, or VO2 Max greater than or equal to 15 ml/(kg x min) and less than 20 ml/(kg x min).

(d) Class 4: 75% for FVC less than or equal to 50% of predicted, or FEV1 less than or equal to 40% of predicted, or FEV1/FVC less than or equal to 40%, or Dco less than or equal to 40% of predicted, or VO2 Max less than 15 ml/(kg x min).

(3) Lung cancer - All persons with lung cancers as a result of a compensable industrial injury or occupational disease are to be considered Class 4 impaired at the time of diagnosis. At a re-evaluation, one year after the diagnosis is established, if the person is found to be free of all evidence of tumor, then ~~he or she~~the person should be rated under the physiologic parameters in OAR 436-035-0385(2). If there is evidence of tumor, the person is determined to have Class 4 impairment.

(4) Asthma - Reversible obstructive airway disease is rated under the classes of respiratory impairment described in section (2) of this rule. The impairment is based on the best of three successive tests performed at least one week apart at a time when the patient is receiving optimal medical therapy. In addition, a worker may also have impairment determined under OAR 436-035-0450.

(5) Allergic respiratory responses - For workers who have developed an allergic respiratory response to physical, chemical, or biological agents refer to OAR 436-035-0450. Methacholine inhalation testing is permitted at the discretion of the physician. Where methacholine inhalation testing leaves the worker at risk, level of impairment may be based on review of the medical record.

(6) Impairment from air passage defects is determined according to the following classes:

Class 1
(5% Impairment)

Dyspnea does not occur at rest.

Dyspnea is not produced by walking or climbing stairs freely, performance of other usual activities of daily living, stress, prolonged exertion, hurrying, hill climbing, or recreation requiring intensive effort or similar activity.

Examination reveals one or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to 4th ring), lower trachea, bronchi, or complete obstruction of the nose (bilateral), or nasopharynx.

Class 2
(20% Impairment)

Dyspnea does not occur at rest.

Dyspnea is not produced by walking freely on the level, climbing at least one flight of ordinary stairs, or the performance of other usual activities of daily living.

Dyspnea is produced by stress, prolonged exertion, hurrying, hill-climbing, recreation except sedentary forms, or similar activity.

Examination reveals one or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to 4th ring), lower trachea, bronchi; or complete obstruction of the nose (bilateral), or nasopharynx.

Class 3
(40% Impairment)

Dyspnea does not occur at rest.

Dyspnea is produced by walking more than one or two blocks on the level or climbing one flight of ordinary stairs even with periods of rest; performance of other usual activities of daily living, stress, hurrying, hill-climbing, recreation or similar activity.

Examination reveals one or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to 4th ring), lower trachea, or bronchi.

Class 4
(78% Impairment)

Dyspnea occurs at rest, although worker is not necessarily bedridden.

Dyspnea is aggravated by the performance of any of the usual activities of daily living beyond personal cleansing, dressing, grooming or its equivalent.

Examination reveals one or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to 4th ring), lower trachea, or bronchi.

(7) Residual impairment from a lobectomy is valued based on the physiological parameters found under section (2) of this rule.

(8) For injuries that result in impaired ability to speak, the following classes are used to rate the worker's ability to speak in relation to: audibility (ability to speak loudly enough to be heard); intelligibility (ability to articulate well enough to be understood); and functional efficiency (ability to produce a serviceably fast rate of speech and to sustain it over a useful period of time).

(a) Class 1: 4% when speech can be produced with sufficient intensity and articular quality to meet most of the needs of everyday speech communication; some hesitation or slowness of speech may exist; certain phonetic units may be difficult or impossible to produce; listeners may require the speaker to repeat.

(b) Class 2: 9% when speech can be produced with sufficient intensity and articular quality to meet many of the needs of everyday speech communication; speech may be discontinuous, hesitant or slow; can be understood by a stranger but may have many inaccuracies; may have difficulty being heard in loud places.

(c) Class 3: 18% when speech can be produced with sufficient intensity and articular quality to meet some of the needs of everyday speech communication; often consecutive speech can only be sustained for brief periods; can converse with family and friends but may not be understood by strangers; may often be asked to repeat; has difficulty being heard in loud places; voice tires rapidly and tends to become inaudible after a few seconds.

(d) Class 4: 26% when speech can be produced with sufficient intensity and articular quality to meet few of the needs of everyday speech communication; consecutive speech limited to single words or short phrases; speech is labored and impractically slow; can produce some phonetic units but may use approximations that are unintelligible or out of context; may be able to whisper audibly but has no voice.

(e) Class 5: 33% for complete inability to meet the needs of everyday speech communication.

(9) Workers with successful permanent tracheostomy or stoma should be rated at 25% impairment of the respiratory system.

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726
Hist: Amended 11/21/12 as WCD Admin. Order 12-061, eff. 1/1/13
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-035-0390 Cranial Nerves/Brain

(1) Impairment of the first cranial nerve (olfactory) resulting in either complete inability to detect odors or alteration of the sense of smell is 3% impairment.

(2) Ratings given for impairment of the second cranial nerve (optic) are rated based on their effects on vision under OAR 436-035-0260.

(3) Ratings given for impairment in the third cranial nerve (oculomotor), fourth cranial nerve (trochlear), and sixth cranial nerve (abducens) are rated based on their effects on ocular motility under OAR 436-035-0260.

(4) Ratings given for impairment of the fifth cranial nerve (trigeminal) are as follows:

(a) For loss or alteration of sensation in the trigeminal distribution on one side: 10%; on both sides: 35%.

(b) The rating given for loss of motor function for each trigeminal Nerve is 5%.

(c) The rating given for loss of motor function of both trigeminal Nerves is determined under OAR 436-035-0385 and 436-035-0420.

(5) Ratings given for impairment of the sixth cranial nerve (abducens) are described in section **(3)** of this rule.

(6) Ratings given for impairment of the seventh cranial nerve (facial) are as follows:

(a) No rating is given for loss of sensation from impairment of one or both facial nerves.

(b) If impairment of one or both facial nerves results in loss or alteration of the sense of taste, the rating is 3%.

(c) Motor loss on one side of the face due to impairment of the facial nerve is rated at 15% for a complete loss, or 5% for a partial loss.

(d) Motor loss on both sides of the face due to impairment of the facial nerve is rated at 45% for a complete loss, or 20% for a partial loss.

(7) Ratings given for impairment of the eighth cranial nerve (auditory) are determined according to their effects on hearing under OAR 436-035-0250. Other ratings for loss of function most commonly associated with this nerve include the following:

(a) For permanent disturbances resulting in disequilibrium which limits activities the impairment is rated under the following:

(A) Class 1: 8% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living (ADL) are performed without assistance.

(B) Class 2: 23% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living can be performed without assistance, and the worker is unable to operate a motor vehicle.

(C) Class 3: 48% when signs of disequilibrium are present with supporting objective findings and the usual ADL cannot be performed without assistance.

(D) Class 4: 80% when signs of disequilibrium are present with supporting objective findings and the usual ADL cannot be performed without assistance, and confinement to the home or other facility is necessary.

(b) Tinnitus which by a preponderance of medical opinion requires job modification is valued at 5%. No additional impairment value is allowed for "bilateral" tinnitus.

(8) Ratings given for impairment of the ninth cranial nerve (glossopharyngeal), tenth cranial nerve (vagus), and eleventh cranial nerve (cranial accessory) are as follows:

(a) Impairment of swallowing due to damage to the ninth, tenth, or eleventh cranial nerve is determined under OAR 436-035-0420.

(b) Speech impairment due to damage to the ninth, tenth, or eleventh cranial nerve is rated under the classifications in OAR 436-035-0385(8).

(9) Ratings given for impairment of the twelfth cranial nerve (hypoglossal) are as follows:

(a) No rating is allowed for loss on one side.

(b) Bilateral loss is rated as in section (8) of this rule.

(10) Impairment for injuries to the brain or head is determined based upon a preponderance of medical opinion which applies or describes the following criteria.

(a) The existence and severity of the claimed residuals and impairments must be objectively determined by observation or examination or a preponderance of evidence, and must be within the range reasonably considered to be possible, given the nature of the original injury, based upon a preponderance of medical opinion.

(b) Emotional disturbances which are reactive to other residuals, but which are not directly related to the brain or head injury, such as frustration or depressed mood about memory deficits or work limitations, are not included under these criteria and must be addressed separately.

(c) The distinctions between classes are intended to reflect, at their most fundamental level, the impact of the residuals on two domains: impairment of ADL, and impairment of employment capacity.

(d) Where the residuals from the accepted condition and any direct medical sequelae place the worker between one or more classes, the worker is entitled to be placed in the highest class that describes the worker's impairment. There is no averaging of impairment values when a worker falls between classes.

(e) As used in these rules, episodic neurologic disorder refers to and includes any of the following:

(A) Any type of seizure disorder;

(B) Vestibular disorder, including disturbances of balance or sensorimotor integration;

(C) Neuro-ophthalmologic or oculomotor visual disorder, such as diplopia;

(D) Headaches.

CLASS 1
(10% Impairment)

Cognition: The worker functions at the equivalent of Rancho Los Amigos Scale-Revised level of 9 or 10; (e.g., the worker is alert and oriented; behavior is appropriate and the worker is able to recall and integrate past and recent events). The worker is independent in ADL. If there are cognitive or memory deficits, they are no more than minimal or "nuisance" level, and do not materially impair ADL, or the type of work the worker may perform.

Language: If there is a language deficit, it is no more than minimal (e.g., language comprehension or production might be less than normal, but it is adequate for daily living).

Emotions/behavior: If there are emotional disturbances or personality changes, they are minimal and occur only transiently during stressful situations and events.

Sleep/alertness: If there are episodic sleep disturbances, fatigue, or lethargy, they are minimal (e.g., any sleeping irregularity, fatigue, or lethargy does not interfere with daily living).

Episodic neurologic disorder: If there is an episodic neurologic disorder, it is completely controlled and does not interfere with daily living.

The fundamental intent of this class is as follows: (1) ADL: The worker has "nuisance" level residual effects of head injury, which may slightly impact the manner in which ADL are performed, or the subjective ease of performance, but the worker remains fully independent in all ADL; (2) Work capacity: The "nuisance" level residuals may impact the manner in which the worker performs work tasks, or the subjective ease of performance, but the worker is not materially limited in the types of work which can be performed, as compared with pre-injury abilities.

CLASS 2
(30% Impairment)

Cognition: The worker functions at the equivalent Rancho Los Amigos Scale-Revised level of 8 (e.g., the worker is alert and oriented; behavior is appropriate and the worker is able to recall and integrate past and recent events). The worker can perform all ADL independently, but due to mild cognitive or memory deficits, may need to use compensatory strategies or devices such as multiple written reminders, alarms, or digital devices; or may sometimes require more time than normal to complete ADL; or may use occasional reminders, prompts, or minor assistance by others as a compensatory strategy, but is not dependent on others. For example, a spouse may be asked to double-check financial transactions for errors, but the worker can manage all transactions independently if necessary, and is not fundamentally dependent on the spouse for this activity. The cognitive or memory deficits limit the worker's ability to perform some types of jobs, for example, mild attention deficits may preclude work in a busy, multi-taking environment, but the worker is still employable.

Language: Language deficit is mild (e.g., language comprehension or production might occasionally interfere with daily living or limit the worker's ability to perform some types of jobs, but the worker is still employable).

Emotion/behavior: Emotional or behavioral disturbances or personality changes are mild. While they may be disproportionate to the stress or situation, they do not significantly impair the worker's ability to relate to others, or to live with others. They may limit the worker's ability to perform some types of jobs, for example, irritability may preclude jobs with high public contact; but the worker is still employable.

Sleep/alertness: Episodic sleep disturbances, fatigue, or lethargy are mild (e.g., any sleeping irregularity, fatigue, or lethargy only occasionally interferes with daily living). Sleep disturbance, or mild or episodic fatigue or lethargy, may limit the worker's ability to perform some types of jobs, for example, shift work or commercial driving; but the worker is still employable.

Episodic neurologic disorder: Any episodic neurologic disorder is not completely controlled, and results in limits in ADL performance or types of work that may be performed, but the worker is still independent in ADL and is employable. For example, headaches may intermittently interfere with daily living; diplopia which worsens with fatigue may cause the worker to have driving restrictions; vestibular symptoms may limit the worker's ability to operate industrial machinery or cause the worker to avoid heights.

The fundamental intent of this class is as follows: (1) ADL: The worker is independent in all ADL, but may require significant adaptations or modifications in normal patterns or means of ADL in order to achieve ADL-independence; (2) Work capacity: The residuals result in some type of limitation on the worker's employment capacity, restricting the range of employment options that were previously available to the worker, but the worker remains employable in most jobs for which ~~s/he~~the worker was qualified prior to injury.

CLASS 3
(50% Impairment)

Cognition: The worker functions at the equivalent of Rancho Los Amigos Scale-Revised level of 7 (e.g., the worker is alert and oriented, behavior is appropriate but the worker has mild to moderate impaired judgment or mild to moderate, functionally significant cognitive or memory deficits). The judgment, cognitive, or memory deficits result in impairment sufficient that the worker regularly requires assistance or supervision in order to perform some ADL. The deficits restrict the worker to a limited range of jobs, at a level significantly below the worker's pre-injury employment capacity.

Language: Language deficit is mild to moderate (e.g., language comprehension or production deficits frequently interfere with ADL or restrict the worker to a limited range of jobs, at a level significantly below the worker's pre-injury employment capacity).

Emotions/behavior: Emotional or behavioral disturbances or personality changes are moderate, disproportionate to the stress or situation, are present at all times and significantly impair the worker's ability to relate to others or to live with others. The disturbances restrict the worker to a limited range of jobs, at a level significantly below the worker's pre-injury employment capacity.

Sleep/alertness: Episodic sleep disturbances, fatigue, or lethargy are moderate. They frequently interfere with daily living, or restrict the worker to a limited range of jobs, at a level significantly below the worker's pre-injury employment capacity.

Episodic neurologic disorder: If there is an episodic neurologic disorder, it is not completely controlled. It markedly interferes with daily living. The worker cannot operate industrial machinery, and is restricted to a limited range of jobs, at a level significantly below the worker's pre-injury employment capacity.

The fundamental intent of this class is as follows: (1) ADL: The worker is not completely independent in all ADL, and requires some type of supervision, assistance, or guidance from another person at some times for some aspects of ADL; (2) Work capacity: The residuals result in major limitations on the worker's employment capacity with major restrictions or limitations on the worker's range of employment options.

CLASS 4
(75% Impairment)

Cognition: The worker functions at the equivalent of Rancho Los Amigos Scale-Revised level of 6 (e.g., the worker has impaired judgment or significant memory deficit, such that the worker needs assistance and supervision to perform most ADL and can work only in a sheltered setting).

Language: Language deficit is moderate (e.g., language comprehension is often impaired or language production is often inappropriate or unintelligible).

Emotions/behavior: Emotional or behavioral disturbances or personality changes are moderate to severe, disproportionate to the stress or situation, are present at all times, require the worker to be supervised, or seriously limit the worker's ability to live with others. The worker can work, if at all, only in a sheltered setting.

Sleep/alertness: Episodic sleep disturbances, fatigue, or lethargy are moderate-severe (e.g., they require supervision for daily living). The worker can work, if at all, only in a sheltered setting.

Episodic neurologic disorder: If there is episodic neurologic disorder, it is of such severity and constancy that activities have to be limited and supervised. The worker needs to live in a supervised setting such as a foster home, care facility, or supervised semi-independent residence.

The fundamental intent of this class is as follows: **(1)** ADL: The worker is basically dependent on others for most aspects of ADL, although the worker may not need direct supervision at all times. **(2)** Work capacity: The worker is incapable of competitive employment and can work, if at all, only in a sheltered setting.

CLASS 5
(85% Impairment)

The worker functions at the equivalent of Rancho Los Amigos Scale-Revised level of 4-5 (e.g., the worker's behavior is inappropriate, the worker is confused, not reliably oriented to time and place; the worker may be agitated and has a severe memory deficit) and the worker requires assistance and supervision to perform all ADL. Total supervision is required. The worker is incapable of any employment.

CLASS 6
(95% Impairment)

The worker functions at the equivalent of Rancho Los Amigos Scale-Revised level of 1-3. The worker is comatose or the worker's responses to stimuli are localized, inconsistent or delayed.

(11) For the purpose of section (10) of this rule, the Rancho Los Amigos-Revised levels are based upon the "Eight States Levels of Cognitive Recovery" developed at the Rancho Los Amigos Hospital and co-authored by Chris Hagen, PhD, Danese Malkumus, M.A., and Patricia Durham, M.S., in 1972. These levels were revised by Danese Malkumus, M.A., and Kathryn Standenip, O.T.R., in 1974, revised by Chris Hagen, PhD, in 1999 to include ten levels, referred to as Rancho-R.

(12) For brain or head injuries that have resulted in the loss of use or function of any upper or lower extremities, a value may be allowed for the affected body part(s). Refer to the appropriate section of these standards for that determination.

(13) Headaches that are not a direct result of a brain or head injury (e.g., cervicogenic, sensory input issues, etc.) are given a value of 10% when they interfere with the activities of daily living, affect the worker's ability to regularly perform work, and require continued prescription medication or therapy. If a value for headaches is granted under section (10) of this rule, the value in this section is not granted because it is included in the impairment value for the episodic neurological disorder.

Stat. Auth.: ORS 656.726
Stats. Impltd.: ORS 656.005, 656.214, 656.268, 656.726
Hist: Amended 11/21/12 as WCD Admin. Order 12-061, eff. 1/1/13
Amended xx/xx/xx as WCD Admin. Order 22-XXX, eff. xx/xx/xx
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.