

RULEMAKING ADVISORY COMMITTEE MEETING

April 30, 2018, 1:30 p.m.
First floor training room
16760 SW Upper Boones Ferry Rd, Tigard, Oregon 97224

Vocational Assistance to Injured Workers General Provisions & Establishing the Adjusted Weekly Wage

Committee members attending:

Kirsten Adams	Associated General Contractors
Kevin Anderson	Sather Byerly Holloway LLP
Dave Barenberg	SAIF Corporation
Jenny Bates	SAIF Corporation
Guy Boileau	Louisiana-Pacific Corp.
Robin Burman	Liberty Mutual Insurance
Dennis Cal	Strategic Comp
Betsy Earls	Oregon Business Association
Jennifer Flood	Ombudsman for Injured Workers
Jaye Fraser	SAIF Corporation
Todd Johnson	NCCI
Susan Montgomery	SAIF Corporation
Kathy Nishimoto	Duckwall Pooley
Marcus Pitts	City of Salem
Julie Riddle	The Hartford
Dan Schmelling	SAIF Corporation
Elaine Schooler	SAIF Corporation
Keith Semple	Johnson Johnson Lucas & Middleton PC
Sheri Sundstrom	Hoffman Construction
Kimberly Wood	MLAC Perlo Construction

Department of Consumer and Business Services staff attending:

Julia Hier
Katie Bruns
Matt West
Louis Savage
Theresa Van Winkle
Fred Bruyns

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RULEMAKING ADVISORY COMMITTEE MEETING

April 30, 2018, 1:30 p.m.

OSHA PFO Training Room, 1st Floor

Durham Plaza

16760 Southwest Upper Boones Ferry Road

Tigard, Oregon 97224

WORKERS' COMPENSATION DIVISION RULES

OAR 436-120-0003 and

OAR 436-120-0147

Vocational Assistance to Injured Workers

General Provisions & Establishing the Adjusted Weekly Wage

The proceedings in the above-entitled matter were held in Tigard, Oregon, on the 30th day of April, 2018, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

INDEX OF WITNESSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISCUSSION AMONG PARTIES

PAGE

1 - 76

1 TRANSCRIPT OF PROCEEDINGS

2
3 0:01: Okay. Hello and welcome. Thank you very much for coming. I
4 apologize, I see a couple of folks here without names tents. And we have some
5 blanks over there. So I'm sorry I missed you. And we have some blanks and some
6 markers over there. Or you can just introduce yourselves to the Committee and we'll
7 try to remember your name as we go along.

8 But there are some additional copies of the agenda on the side table,
9 along with the temporary rules. Since we're going to be talking about replacing
10 those temporary rules with permanent ones, so we may want to refer to those in the
11 course of the meeting.

12 Otherwise, I think most of you have been involved in Advisory
13 Committee meetings before. It's informal. It's not like a public hearing. So we just
14 need to get as much information from you folks as we can so that we can try to do
15 the right thing with these rules. And whether that's replacing the rules with
16 something that looks much like the temporary rules or something rather different,
17 that's--we're going to listen to what you have to say about that.

18 As we go along, please let us know if there's any fiscal impacts, and
19 there probably are some economic or fiscal impacts to what we discuss here today,
20 and so that we can estimate what those are. And we rely on folks like you to tell us
21 what they are.

22 If you're on the telephone with us today, please keep in mind that we'll
23 pick up background noises in your office including keyboarding sometimes. And you
24 can selectively use the mute button, but please don't put us on hold because we're
25 liable to get your background music or messages, and there's really no way for us to

1 turn those off unless we mute everyone, and we don't want to do that.

2 And with that in mind, if you're on the phone with us, you don't have
3 the advantage of seeing who might have their hand up, who's waiting to speak. And
4 so I would encourage you to just speak up because we want to fully include you in
5 the meeting.

6 And with that, I've introduced myself. Or maybe I didn't, and I don't
7 know. My name is Fred Bruyns and I coordinate rulemaking for the Division and I
8 have been in touch with you folks.

9 But let's go around and let's start with the folks on the telephone with
10 us, and that will confirm that people can really hear us, and have you introduce
11 yourselves to the Committee, and then we'll go around the table. If you're on the
12 phone with us, please let us know you're here.

13 2:25: Julie Riddle, Hartford.

14 2:27: Okay. Julie Riddle, welcome.

15 2:29: Dennis Cal from Strategic Comp.

16 2:34: Welcome, Dennis. Anyone else?

17 2:39: Robin Burman, Liberty Mutual.

18 2:41: Welcome, Robin.

19 2:44: Hello, there.

20 2:46: And anyone else?

21 2:51: Okay. I'm Julia Hier. I'm a policy analyst with the Division.

22 2:55: Susan Montgomery with SAIF Corporation.

23 2:58: Jenny Bates, SAIF Corporation.

24 3:00: Jaye Fraser, SAIF Corporation.

25 3:02: Dan Schmelling, SAIF Corporation.

1 3:03: Elaine Schooler, SAIF Corporation.
2 3:06: Dave Barenberg, SAIF Corporation.
3 3:08: Kimberly Wood, Perlo Construction and MLAC.
4 3:11: Kevin Anderson. I'm a defense attorney with Sather, Byerly, and
5 Holloway.
6 3:13: Sheri Sundstrom, Hoffman Construction.
7 3:16: Kathy Nishimoto, Duckwall Pooley.
8 3:18: Guy Boileau, MLAC and Louisiana-Pacific.
9 3:24: Katie Bruns, Workers' Compensation Division.
10 3:27: Matt West, Workers' Compensation Division.
11 3:28: Jennifer Flood, Ombudsman for Injured Workers, DCBS.
12 3:32: Lou Savage, Workers' Compensation Division.
13 3:35: Kirsten Adams, Associated General Contractors.
14 3:37: Todd Johnson, NCCI.
15 3:39: Theresa Van Winkle, DCBS Director's Office, MLAC
16 Administrator.
17 3:43: Okay. And welcome to you all. And I think we have someone
18 joining us. Not to put you on the spot, but Betsy Earls is joining us.
19 3:51: Betsy Earls. Thank you,--
20 3:52: Okay.
21 3:52: --Fred. Nice to see you all again.
22 3:55: Okay. So if you have just--if you will, if you'd just turn to the
23 second page of the agenda with me, I'd just like to over the timeline briefly, which we
24 did for folks this morning. It's almost identical to the one we discussed this morning,
25 if you were here. There's just a slightly different date that the temporary rule

1 expires, and that's the only difference.

2 But we filed temporary vocational assistance rules on the 23rd of
3 February, and we basically began the permanent rulemaking process immediately,
4 which would allow us to replace those temporary rules. What we call permanent
5 rules just means that they go through a public hearing process and it's kind of done
6 the right way. It doesn't mean that our rules will never change thereafter, as you all
7 know.

8 But we then requested Advisory Committee members and agenda
9 items on the 5th of March. We're having this meeting today on April 30. And then
10 our goal, our objective is to file proposed rules with the Secretary of State in the
11 middle of next--this--well, next month, I guess, May, and then have a public
12 rulemaking hearing toward the middle or end of June with a closing date for written
13 testimony, usually several days to a week after the public hearing.

14 And then file final rules with the Secretary of State and publish the
15 information for all of you and all of our stakeholders in mid-July 2018. And then the
16 permanent rules will be effective perhaps on the 22nd of August. That's the last date
17 that they can become effective without allowing the temporary rule to expire and
18 having the rules revert to what they were before we published the temporary rule.

19 But we can definitely, if we have them ready in time, file permanent
20 rules that are effective before that time. We just can't go later than that. So that's
21 our--the timeline that we have, that we think is most likely at this point.

22 But if you have any thoughts about it, if you have any questions about
23 the timeline, we'd be glad to answer them if we can.

24 Okay. With that, Julia will actually take us through the agenda. And I
25 will kind of drive up there and hopefully people will be able to see the agenda on the

1 screen as we go along. And I'll try to keep up with Julia.

2 6:15: Thank you. Okay. So I'm going to start off by just giving a
3 general background, which is in the "Issues" document, so this might be a repeat if
4 you've read through it. But the purpose of our rulemaking meeting today is to
5 discuss the calculation of the worker's adjusted weekly wage for the purpose of
6 determining vocational eligibility and benefits. Also related is the general provisions
7 rule in 436-120-0003, and 147 is the wage rule that we're talking about today.

8 So one of the criteria for vocational eligibility is whether the worker has
9 the necessary physical capacities, knowledge, skills, and abilities to be employed in
10 a job with a wage of at least 80 percent of the adjusted weekly wage. If they are
11 found eligible for vocational benefits, that adjusted weekly wage also becomes
12 relevant in trying to return the worker to employment which is as close as possible to
13 their regular employment, which includes looking at their adjusted weekly wage.

14 This wage, it's a little confusing since we had rulemaking on the rate of
15 temporary disability rule today. The wage for vocational benefits, the adjusted
16 weekly wage, is different than the wage that's used to calculate a worker's
17 temporary disability benefits.

18 So consistent with statute, things that we need to look at when making
19 the calculation, is whether or not the worker's regular employment is seasonal or
20 temporary. We also have to look at if they one job at the time of injury or
21 aggravation, more than one job, and if they're receiving any unemployment benefits
22 in the prior year.

23 And in the "Issues" document, I have created a chart which basically
24 summarizes the different calculation methods that are currently provided under 120-
25 0147. It's on Page 2 of the "Issues" document. And it just goes through each of the

1 different scenarios and provides a summary of the current calculation methods.

2 There was a Court of Appeals decision that issued recently in
3 February, which is what prompted the temporary rule. It was the Chu v. SAIF
4 decision. And the Court there found that a worker's employment at the time of injury
5 includes all jobs held at the time of injury, not just the job at injury itself. Before that
6 rule, the calculation of the wage would only look at the job at injury in that scenario
7 when you don't have seasonal or temporary work. And the Chu v. SAIF decision, as
8 a result of that, we changed the rule and issued a temporary rule to indicate that you
9 do have to look at each of the jobs, not just the job itself at injury, when it's not
10 seasonal or temporary. And we provided a calculation method for doing that.

11 And so because we kind of have a baseline, our temporary rule is kind
12 of a baseline for the discussion anyway for today. A lot of the issues seem to nitpick
13 at what the language is in our current temporary rule. So we can discuss that and
14 have a conversation about peoples' feelings about the current language in the
15 temporary rule. And then there are some other issues that we're going to discuss.

16 So I'm going to point out which sections of the temporary rule I'm
17 talking about for those of you who like to have the language in front of you. So Issue
18 #1, it's under--most of these are dealing with the 0147 rule. And this is under (3)(c)
19 of the rule, and it's basically our Chu v. SAIF scenario. So if a worker's work at the
20 time of injury is not seasonal or temporary, and the worker is employed in more than
21 one job at the time of injury, looking at what should our calculation be for looking at
22 their weekly wage for the voc rules.

23 And under the temporary rule, what we had created was for each of
24 those jobs to use the same methods used to calculate the temporary disability as
25 described in the version of 436-060-0025 that was in effect on the date of injury. So

1 that's our time loss rate rule. And so basically saying whatever your rate of
2 temporary disability, whatever your weekly wage is for that, apply that to the voc rule
3 here.

4 And so we wanted to get your thoughts on the way that the temporary
5 rule is written. Again, that's (3)(c) of the temporary rule, and if people are
6 comfortable with that or have other impressions on how that should be handled.

7 So does everybody--if I'm hearing silence, I'm guessing people are
8 comfortable with looking at the rate of temporary disability, the weekly wage from the
9 rate of temporary disability rule and applying that for each of the jobs to determine
10 the wage in this scenario?

11 11:15: This is Keith with Oregon Trial Lawyers Association. I think we
12 find that reasonable.

13 11:19: Okay.

14 11:27: So sorry, Julia, you're talking about just the first two boxes.

15 Correct?

16 11:33: Are you looking at the chart?

17 11:34: Yes. Yeah. Fiscal--you're just talking about those two boxes?

18 11:38: So if you're looking at the chart on Page 2 of the "Issues"
19 document,--

20 11:42: Uh-huh.

21 11:43: --it's going to be third column, the last column on your right.

22 11:47: Yeah.

23 11:49: And it's the third method down. So it says for each job, use the
24 same method used to calculate temporary disability as described in the version of
25 436-060-0025 that was in effect on the date of injury. That's--and this is my

1 summary, so the chart is my summary. And then if you look at the temporary rule,
2 the actual language of the rule is in (3)(c).

3 12:09: Can I ask for clarification?

4 12:10: Sure.

5 12:10: Are we talking about the subject--

6 12:14: Employment.

7 12:15: --employment or are we talking about any employment? I'm a
8 Mary Kay dealer and that's on the--that's now.

9 12:24: So that's going to be a separate-- One of the issues that we'll
10 get to also is subject versus non-subject. Let me see if I can tell you the issue
11 number right now. Oh, that's our next--Issue #2. And so in Issue #2, we talk about
12 an option. I can get to this in a second. But clarifying the rules, the earnings from
13 non-subject employment from a secondary job does get included in the calculation.

14 But we can--it's--before we get to the subjectivity issue, I guess, just as
15 a general sense for--if you're looking at multiple jobs, the worker is not seasonal or
16 temporary if using the rate of temporary disability rule. It's reasonable. And then
17 we'll get to the subjectivity question. Okay.

18 13:39: Well, I think we do take issue. We're sorry to start out this way,
19 however.

20 13:42: Yeah.

21 13:46: So I almost think we have to talk about Issue #2 before we talk
22 about Issue #1.

23 13:59: Well, we can get--we can do Issue #2 and then we want to go
24 back to Issue #1.

25 14:01: Yeah. Can we do--

1 14:02: Is that...

2 14:02: --Issue #2 first?

3 14:03: Yeah.

4 14:03: I think that just the flow would be easier. Otherwise, we're
5 agreeing to something without having had that benefit weighing in on really what is
6 subject employment.

7 14:13: Sure.

8 14:14: Or employment specific to vocational benefits.

9 14:18: Okay. So if everyone's comfortable, I'll move on to Issue #2
10 and then we can move back to Issue #1. Issue #2, the relevant parts of the rule are
11 under (1)(d) and (3) of the rule. So when looking at the statute relating to the rate of
12 temporary disability, it allows a worker to receive supplemental disability benefits for
13 earnings the worker was receiving from all "subject employment." And that's
14 .210(2)(a)(B).

15 And then in reviewing the statute relating to vocational benefits, it
16 references "regular employment" as the employment the worker held at the time of
17 injury or claim for aggravation. And that's under .340(5). And so that means a
18 worker may be denied supplemental disability benefits because their secondary job
19 was not "subject employment", but that secondary job should be looked at when
20 analyzing entitlement to vocational benefits.

21 And so to avoid confusion, should our vocational rules clarify, where
22 applicable, that earnings from non-subject employment should be looked at when
23 analyzing entitlement to vocational benefits?

24 15:29: Can I ask a really--it may be a very obvious answer, but I'm not
25 understanding it. So the--so when we do the wage calculation, the extra wages

1 come out of the worker benefit fund. Where does the vocational rehab cost come
2 out of if the sole purpose that they are now eligible for rehab is voc rehab services, is
3 because of this--these other wages, which by the way, the worker may not be paying
4 into the worker benefit fund their cents per hour or whatever. So who pays for that?
5 I mean, how is that being paid for in the system now with the new temporary rule?

6 16:14: So my belief is the worker's benefit fund, the way the statute's
7 written, is that is that is the insurer or the self-insured employer who pays for the
8 vocational benefits.

9 16:29: So right now, it's a claims cost?

10 16:30: Uh-huh.

11 16:32: To the employer at injury.

12 16:34: Uh-huh.

13 16:35: Okay.

14 16:35: But if the secondary jobs were supplemental jobs and the
15 worker was eligible like in the Chu case, and that was the tipping point--

16 16:46: Yeah. That's what I'm getting to.

17 16:48: --the employer and the insurer aren't supposed to--or the
18 employer is not supposed to bear the costs of benefits eligible through the
19 supplemental disability scheme. So would those vocational services, if the
20 supplemental job tipped it over, be reimbursing the WBF? Because if not, who
21 would bear those costs? Do we pass them on to the employer when the statute
22 says you can't?

23 17:17: That's--and your--so your reasoning is exactly what I was
24 saying. That is going to be--and not knowing how many cases fall into this bucket, I
25 don't know how much money that's going to be in addition to the system. But yeah,

1 who's going to pay for it? Because--well, is there even a way right now, I mean like
2 because it's not into--it's currently part of the system. So it's just adding--

3 17:47: It was never...

4 17:48: --to the system but not being funded by the employers or the
5 employees in the workers' benefit fund. But it's not even anything you can quantify
6 at this point because there's no data saying how much. I think anybody that has any
7 form of income that's not a subject employment right now is now part of a game, and
8 there has been no collection of that, no tracking of that. So I don't even know how
9 you quantify--

10 18:13: Yeah.

11 18:13: --what the cost is going to be and who's going to bear it.

12 18:15: Well, does that--would that also include if you're working under
13 the table? Seriously.

14 18:22: No.

15 18:23: I mean, if I was injured and I was working under the table and
16 realize there was this brand new benefit out there, boy, I'd--you know, I may have to
17 meet with the IRS, but you know, there's potential there. I don't know, so--but am I
18 right, or is that not--is that--doesn't get figured in here?

19 18:42: Well, as far as the rulemaking meeting today, it's establishing
20 the adjusted weekly wage. So the worker benefit fund issue or question isn't part of
21 the rulemaking on establishing the worker's weekly wage. It doesn't address how
22 the payment works worker benefit fund, insurer, employer. That's a separate piece.

23 19:09: So shouldn't rules...

24 19:09: How do we figure that out?

25 19:11: That's kind of a big thing is who's going to pay for all of this?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

19:14: Yeah.

19:15: The problem is, we have the Chu case. And the Chu case doesn't describe the funding mechanism.

19:21: How to pay for it.

19:22: But it does describe how we're supposed to interpret the law.

19:28: But we're talking about considering employment that's never been part of the Workers' Comp system. I mean, I think the Mary Kay--who was that? Was it Kimberly?

19:41: Avon.

19:42: Mary...

19:44: AdvoCare. I mean, all these things, you know. dōTERRA. I can name off a whole bunch of those things. But is that now, all of a sudden, going to be part of the system?

19:52: Employment in Washington?

19:53: Yeah. That was the other thing I was going to say.

19:54: Yeah. Employment...

19:55: Washington, Idaho, California as well.

20:00: So and the--you know, and the important thing to remember, too, is that the employment that we were talking about, that the Court was talking about in Chu, was employment that was qualified as supplemental employment. So it fell into our system.

20:13: Okay.

20:13: And we're talking about expanding it in these rules beyond, we think, what Chu was actually intending to do.

20:27: Because the three employers in Chu, we had our employer at

1 injury. And then the two other employers were eligible supplemental disability
2 employers, so we have claimed eligibility, provided benefits for them, and had a
3 process for obtaining the wage records to quantify what the average weekly wage is,
4 but--and with this expanded look, you're putting the insurer in the position where
5 we're going to have to possibly go to an employer who has no knowledge of the
6 Workers' Compensation claim. And are we allowed to say to them, "Your employee
7 has a Workers' Compensation claim?" Is that protected information?

8 21:09: And we need a copy of all their wages.

9 21:10: Yeah. And their dates of employment.

10 21:14: But SDB does--I mean, under the time loss provision, that was
11 heavily debated--

12 21:19: And it's the worker...

13 21:19: --at the time.

14 21:20: And it's the worker's burden to provide that to us.

15 21:22: Right. And with no impact on that secondary employment.

16 That's--

17 21:26: Right.

18 21:27: --why it's for the time loss portion--

19 21:28: Or--

20 21:28: --of it, it's all reimbursable.

21 21:29: --the employer at injury.

22 21:31: Pardon?

23 21:31: Or the employer at injury.

24 21:33: Or the employer at...

25 21:34: Yeah, the burden.

1 21:37: But we are talking about expanding the scope.

2 21:39: Yeah, for this rule.

3 21:42: Of where we've been playing, where we've ever played in the
4 Workers' Comp system.

5 21:46: We're applying the statutory language under .340, which is
6 different statutory language under .340 when...

7 21:54: Well, you're interpreting regular employment. You're talking
8 about employment and you're interpreting it in a certain way. And I guess what
9 we're suggesting is perhaps the Court wasn't interpreting it the way you are. There
10 is a way to interpret the language more narrowly because the Court was dealing with
11 a supplemental employment situation. Just for your consideration.

12 22:20: This is Keith. I'm reading the--this is Keith. I'm reading the last
13 paragraph. "We conclude that"--of the Chu decision. "We conclude ORS 656.340
14 requires consideration of all Claimant's employment in determining her eligibility for
15 vocational assistance." I mean, it seems pretty clear to me that it intends to include
16 all of Claimant's employment. It doesn't say all of Claimant's subject employment.

17 I understand that the fiscal impact is an issue. But you know, that's an
18 issue that needs to be sorted out, you know, through the legislative process and
19 through the rulemaking process. This is a Court decision and we have to follow it.

20 23:00: Oh, and then if somebody plays poker on the side -- I'm being
21 called out.

22 23:08: What's that?

23 23:08: I've paid taxes on the poker winnings I had last year.

24 23:12: She had to pay taxes on her lottery and poker winning last
25 year.

1 23:14 : You can bet your butt. I mean, if that's the case, that's on the
2 board. Right? That's on the table. I had to pay taxes on it.

3 23:21: So then you have rentals, everything?

4 23:24: Yeah. Right. Really.

5 23:28: What is a rental...

6 23:28: What do you guys think about that? Is that how you're seeing
7 it?

8 23:33: As far as what needs to be included?

9 23:35: Yeah. Or do you think these examples are included in the way
10 you've written the rule?

11 23:40: So the way that the rule's currently written, it talks about for all
12 employment, which is--

13 23:46: Right.

14 23:47: --applying it so it's all employment. And it's applying the
15 language in the statute. The statute talks about looking at the regular employment.
16 And then the Court interpreted regular employment to be all the jobs held at that
17 time.

18 24:01: Okay. So you would agree that these are examples that are
19 included under that--in the draft?

20 24:08: And the worker has to be--the onus is on the worker to present
21 these. Correct? It's not up to the TPA, self-insured employer, employer at injury to
22 track down the worker's prior work activities up to the worker to--as I recall, the
23 original bill that introduced the supplemental disability, that was specific to the
24 worker. It was--the onus was placed on the worker for reporting.

25 24:36: So the...

1 24:36: So I don't think we're going to have to go out and find out if
2 they're doing all these side jobs unless they...

3 24:42: The rule puts it on us.

4 24:44: Under (3), it says the insurer must determine...

5 24:48: Is that in Chu also?

6 24:53: It's the first paragraph under (3).

7 24:57: Page 2.

8 24:58: Page 2.

9 25:01: So--okay. But I am...

10 25:08: Oh, that's...

11 25:10: The insurer must determine the injury--the job at injury. Then
12 they have to contact everybody.

13 25:17: Yeah.

14 25:20: Including those...

15 25:21: Uh-huh.

16 25:25: I would...

17 25:29: Because that was never the intent originally. It was to--if
18 somebody wanted to present that information.

19 25:35: Is that why you put that in there?

20 25:37: Put what in?

21 25:39: Any other jobs held at the time of injury. Page 2 under
22 "determining weekly wage," that the insurer has to...

23 25:47: I'm not--are you looking at...

24 25:48: We're looking at the temporary rule.

25 25:51: At your two page or whatever.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

25:52: Page 2 and 3.

25:54: Which part of the temporary rule?

25:56: So if you go down to paragraph three, toward the bottom of the page, and then the insurer must determine the nature of the job at injury and any other jobs held at the time of injury.

26:05: Correct.

26:05: So the question is, your new language, and any other jobs held at the time of injury, is that--that seems to be a new requirement. I was wondering if you put that in there as a result of your interpretation of Chu? Or how else would you have gotten that?

26:18: Yeah. So with Chu, now if it's not seasonal or temporary and there's more than one job, then we used to just look at only the job at injury or job at the time of ag. And now we have to look at all the jobs. So it's just accounting for that additional scenario. So that's why that additional language went in there.

26:36: But you're also making the insurer find it out as opposed to the worker bearing the burden of bringing that forward.

26:46: So...

26:46: Am I right?

26:48: That it's--that is part of what the requirements were before. So and before, if you had more than one job at the time of aggravation, that was included. So the insurer--if you're talking about an aggravation, the insurer would have to determine the nature of the job at aggravation and any other jobs held at the time of aggravation. So that was the same. Now we're just adding it in one additional scenario.

27:09: Okay. So the job at aggravation, I guess I assume that was a

1 subsequent job, not one of like many than an employee might have held at the same
2 time.

3 27:16: The definition of job at aggravation is defined as job or jobs.
4 So under the old rules and the new rules, if you have more than one job at the time
5 of aggravation, all of those jobs are accounted for in the determination of
6 establishing the worker's weekly wage. So now we're saying at the time of injury,
7 you also have to do that. So the idea of looking at all the jobs already existed in the
8 agg context.

9 27:40: Okay. Okay.

10 27:45: And one question, or one thing going back to the, you know,
11 poker earnings or whatever. It does talk about--it's the job at the time of injury or the
12 job at the time of aggravation. So if you were playing poker at that time, then yeah.
13 But if you earn money from six months ago and that's not a job that you had at the
14 time of injury or aggravation, then it's not part of...

15 28:06: But how you determine that...

16 28:10: Because it's...

17 28:12: Yeah. I mean...

18 28:15: I know you're trying to--we've got to administer it. So--but how
19 does an insurer make a determination on what someone is--what is extra
20 employment at the time of injury if somebody, say, is a regular poker player and
21 plays five times a year, and they report their earnings to the IRS?

22 28:36: Well...

23 28:37 \$5,000...

24 28:38 And I did, yeah.

25 28:42: So I guess, I mean, the question would be, so I've got rental

1 property that I own in my name, not in a separate company name. But it's in my
2 name. And I'm getting rent regularly every week or every month, whatever you're
3 getting it. So that's going to be subject employment. I mean--or not subject
4 employment. It's going to an employment that's going to apply here.

5 29:04: Yeah.

6 29:05: Is that a wage...

7 29:07: I don't see how that--I don't see how gambling or real estate
8 income or investment income constitutes employment. I mean, I just can't imagine a
9 scenario where that's going to pass muster as employment unless you have self-
10 employment. I mean, the hallmarks of a self-employment setup.

11 29:23: Self-employment.

12 29:25: That is self-employment.

13 29:28: Self-employment.

14 29:30: Called wages on my taxes...

15 29:31: Yeah.

16 29:31: Yeah. Yeah.

17 29:33: So it does qualify. Just as Mary Kay or the other ones she
18 listed are, all of those.

19 29:40: But you know what you-- What about an inheritance? I mean,
20 technically, that's an income. And I don't think you're going to-- It seems that...

21 29:48: Yeah. That's a one-time--yeah.

22 29:51: Yeah. But I'm just saying what if, you know...

23 29:52: Oh, no. I hear you.

24 29:53: You can probably extend this. You know, is it really--is it any
25 money coming in, or are we talking about wages and earnings, you know?

1 30:01: Well, it says employment. So if we're talking about--
2 30:05: Okay.
3 30:05: --employment.
4 30:06: So if I own five rental cars,--
5 30:08: Uh-huh.
6 30:09: --that's--is that employment?
7 30:11: Yeah.
8 30:11: I don't think that it is.
9 30:13: And maybe that's what we need for the department is--maybe
10 we need--maybe what we need from you is some clarification--
11 30:20: Yeah.
12 30:21: --along that line of what you are considering to be regular
13 employment. I guess that's one of those--we were talking about reasonable. But in
14 the last meeting, somehow was regular. But anyway, so maybe that would be
15 helpful for us--
16 30:37: Yeah.
17 30:37: --to have some clarification around that.
18 30:41: So--the inheritance. So what if you're paid as the executor?
19 30:46: And that might be something separate.
20 30:49: Yeah.
21 30:50: That really does--that really is more of a paid ...
22 30:53: Uh-huh.
23 30:55: But the rest of it's--just a beneficiary.
24 30:57: Right.
25 30:58: Yeah.

1 31:00: What if you have oil wells and you're getting a supplemental
2 share? I have a girlfriend that does this. She gets money monthly from her oil wells
3 in the Dakotas. So is that considered? I'm just saying--you know, the reason I'm
4 bringing this up, as ridiculous as it may seem, is when you are in the midst of a claim
5 and you don't even know as an employer what you're supposed to be asking these
6 workers. And you're not even thinking all these--I wouldn't even think--know what to
7 advise my team as to ask a worker. And most workers don't want people knowing
8 that they have side jobs or they're getting income from other areas, or what have
9 you. So how are we going to get this information? Because it's so all-
10 encompassing now. If you read--if you take verbatim what the opinion says.

11 31:47: The order. Yeah.

12 31:47: I guess I don't know.

13 31:51: And are we only looking at disclosed jobs?

14 31:52: Yeah.

15 31:53: Because...

16 31:53: Exactly. And if I don't--if somebody forgets to disclose
17 something or I forgot to ask, "Oh, by the way, do you sell Mary Kay?" You know,
18 what am I looking at as they go in and do the calculations or you know, the benefits
19 that would come out of that additional? What am I looking at in attorney fees?
20 Because me oh my, I didn't know to ask that question. So we're not dealing with--
21 you know, we're dealing with employers across a broad spectrum. And I just--I
22 mean, I just don't know how to make it easy. I thought this morning was--I thought
23 this was going to be easy compared to morning. I mean, gosh.

24 32:38: Yeah.

25 32:40: Well, then how much onus is upon the insurer and the

1 employer to ask--again, this is another place in where we could use some
2 clarification. You know, if you have a worker who does not want to tell you that they
3 have other...

4 32:54: Until they get an attorney.

5 32:57: Which maybe, you know, to follow up on that is make--put the
6 onus on the worker to declare the employment and then, Julia, you know, then it is
7 the employer's responsibility, as it says here, to verify it. You know, to verify and
8 clarify it. But if the worker hasn't disclosed, you know, that would be a totally
9 unfair...

10 33:19: Well, that was what the original statute was. That was the
11 original. That was the original. But you know, Keith pointed out--everybody's
12 pointing out the last paragraph of this, you know, that...

13 33:33: But how do you verify something--

14 33:34: Yeah.

15 33:35: --unknown?

16 33:36: That's kind of where...

17 33:37: Yeah. That's where I'm coming from. Exactly. Same thing.

18 33:40: So I put the onus on the worker. I don't know if you can put
19 language to that effect.

20 33:44: That's not what they did in Section 3 of the rules.

21 33:48: Right. And I think that's what we're pointing out is, is it a--you
22 know, I think that-- And Keith, I know you're out there. I think there are workers who
23 don't--either don't want to share that they got a second job, for whatever reasons,
24 personal. And so if a worker doesn't want to share that they have other
25 employment, maybe they haven't missed any work from--you know, they have been

1 able to their job that requires a lot of lifting, but they have a second job that allows
2 them to sit most of the time, so they can go do that job. And they don't want to let
3 that employer know. You know, it's--somehow in your--there has to be ability for the
4 worker to say, "Hey, I want to play" or "No, I don't."

5 34:39: Although I hate to bring it up...

6 34:40: I'm not--I don't disagree with that. I mean, it--while I don't like
7 the--sometimes the hard-and-fast and the black-and-white effect of the rule for
8 supplemental disability, it's workable. It provides the framework for asking the
9 question of the worker and for the worker to have a deadline of some sort to, you
10 know, get the information back that the insurer needs to process the claim. I don't
11 think it's unreasonable to ask the worker. And if the worker decides they don't want
12 to answer or provide any documentation, then you know, move on with what you got.
13 I mean, but you know, how you craft the rule exactly to make that the case, you
14 know, I'm not quite sure. But we do have similar language in the supplemental
15 disability rules. Now, whether that passed judic--or you know, Court scrutiny, that I
16 don't know. You know, but obviously, whenever we do have a Court decision like
17 this that changes the landscape, then it opens up the box for about 15 million other
18 questions. We've got several going back to the courts right now that, you know gave
19 major pronouncements on things like apportionment, and we still don't have all those
20 details worked out even though they're, you know, some fairly straightforward, I
21 think, details maybe.

22 But so anyway, I mean, I don't know what to say about that, whether
23 could make the rule fit within the case, but you know, I don't have any objection to,
24 you know, asking the worker for documentation and having some sort of deadline for
25 them to respond.

1 And I would say just for the record, I don't think gambling winnings,
2 and you know, income from investments and properties and things like that-- I
3 mean, it would make sense if you set yourself up with an LLC and paid yourself a
4 salary for managing your properties. I mean, that to me starts looking like
5 employment. But just, you know, the income from investments, yeah, you might be
6 doing some work over there, but I guess that wouldn't strike me as income. But I'm
7 sure, you know, some of my crafty colleagues might disagree with me. So I mean,
8 who knows?

9 36:38: Just said that...

10 36:39: I just said that too, Keith, because I would agree. I mean,
11 that's--a reasonable person would agree with that. But I'm not sure as it plays out,
12 because there could be a lot at stake here to get you within that 80 percent or not, to
13 be eligible for both services. And you know, the...

14 36:55: Well, I would say that if they can't do all of the things that they
15 do to--suddenly, they can't make any of the investment income, I mean, I guess at
16 some point that starts to look like a lot. So I guess there is a flipside to that as well.
17 I mean, maybe I shouldn't be so flippant about it, because you know, maybe there is
18 a--you know, maybe there is a loss there. But it seems to me like I would have to--if
19 I'm, you know, trying to prove this position, it seems to me like I'd probably have to
20 convince an ALJ that there was employment. And I--you know, I suspect that that
21 might not be the easiest to do with some of these examples.

22 But you know, you could add things to the definition as well. I mean,
23 you could add something to the definition of employment to clarify a little more what
24 that means or say that it doesn't mean gambling winnings, or doesn't mean income
25 from investments or something like that. So anyway, I've talked enough.

1 37:50: So in the ag industry, and I hate to...

2 37:52: Egg industry?

3 37:54: Oh, ag.

4 37:56: Agricultural industry, not very often, but often enough, I hate to
5 say, employees use other people's identification to work, and in the orchards,
6 different orchards, for a number of different reasons. One, the biggest one we deal
7 with is unemployment so they don't go over the weekly wage that they can make
8 and then get their full unemployment check. We deal with that all the time. They're
9 using somebody else's identification.

10 You can go downtown Portland and I could ask our guys what street
11 corner to stand on to buy identification with a different Social Security number. So
12 how do you deal--how would you deal with that if the employee/injured worker
13 comes in and says, "This is my second wages, but I used somebody else's Social
14 Security number?" How do you deal with that?

15 38:55: Can you--isn't that hard to verify in that case?

16 39:00: It's not verified.

17 39:03: No, I mean, I look at your--the rule, you know, with the
18 employer is supposed to verify. And that would be a tough one to verify.

19 39:10: Uh-huh.

20 39:11: Verify that the...

21 39:13: That he really did or another Joe Blow. I don't know.

22 39:16: They have to be authorized to work in the United States to
23 qualify for voc benefits anyway. So I think if they're in the process, it would...

24 39:24: So do you go through--do you verify something like that to
25 determine that?

1 39:31: If they can show documents that--yeah. We don't ask them if
2 their documents are good.

3 39:36: Well, yeah. I was going to say we--I mean, we take them--you
4 know, if it's--obviously, if it's--on its face value, if it's something that I don't believe is
5 legal, I won't hire them. But there's some really darn good documents out there. So
6 I mean--and we don't do verifying of any...

7 40:06: I like the idea of, you know, Keith bringing up that if there was
8 some kind of date certain, you know, what you have to do to get that information.
9 Sort of like when the insurer takes the statement of the injured worker and you verify
10 at that time if they have any other jobs or wages that they're earning. Is that going
11 to--I mean, would that be good enough from an insurer's perspective if there was
12 something written in the rules? So we have something certain within the rules.
13 When you ask the question, you get an answer. And then you know, a year later,
14 you find out that wasn't the right answer, that you can stick with what the worker
15 originally said. Does that make sense? I don't know.

16 40:49: If the eligibility is disputed, it's...

17 40:52: Yeah.

18 40:53: We're not the ones making that final decision.

19 40:56: Yeah.

20 40:58: We're saying we don't think they're eligible because of this, but
21 the worker has the right to challenge the eligibility. So I think the question is not
22 here. I think the question is over there with--on the not being...

23 41:14: Somebody...

24 41:17: If we ask and there's a date where they're supposed to provide
25 and they don't provide, how will that be held up?

1 41:25: Yeah.

2 41:29: Well, just--not to jump ahead, but Issue #11 does talk about
3 what's it like...

4 41:34: Runaway train.

5 41:37: You know, should we--on cases where we can't verify the
6 wages, some of the options are, not to steal your thunder, you know, allow the
7 insurer to make-- That's one of the issues, really, that needs to be discussed as well
8 today is what to do in cases where there isn't verifiable documentation.

9 41:52: Yeah.

10 41:53: So...

11 41:54: I've already had it come up in one of my cases for review. And
12 it was, you know, send a warning letter, demand an end date, have them provide it.
13 If they can't, then you move ahead with your process. What else can you do? But
14 we don't have anything set yet in how we're going to do that going forward. That's
15 kind of what this is for.

16 And Jenny, I was going to ask you if you had it come with job at agg
17 with voc stuff because they can have multiple jobs then, and how is that kind of
18 handled? Now, I haven't seen that come up.

19 42:28: I--if it has, I don't remember it. I don't believe so.

20 42:44: So we talked about Issue #1 and #2 kind of concurrently here.
21 I mean, we drifted a little bit from what they were initially, so let me just circle back.
22 Issue #1 was the method for calculating wages, more than one job. Currently, we
23 have it using the method under 436-060-0025 for each of those, each of the jobs
24 that they have. And Issue #2 was the subjectivity of employment, and clarifying in
25 the rule that earnings from non-subject employment from secondary jobs does get

1 included in the calculation, based on statutory language that we've got.

2 Any other comments on those two issues, thoughts, opinions before
3 we skip ahead to Issue #3?

4 43:30: I'll throw out there in Issue #1, what else are you going to use
5 to calculate the average weekly wage if you don't use 0025? So from the standpoint
6 of calculating the average weekly wage, that's the only thing you can use. I think the
7 real question is, in Issue #2 and beyond is, what employment gets pulled in? But if
8 it's pulled in, you can only go to 0025 to calculate it, so one's almost a non-issue.

9 43:57: Yeah.

10 44:06: Any other thoughts, comments?

11 44:09: So the critical question is what's important? The critical
12 question is what is important?

13 44:13: Yeah.

14 44:14: Yeah. Absolutely.

15 44:17: Can I ask a question?

16 44:17: Go ahead.

17 44:19: Another question, I'm not sure if it's one of the later issues, is
18 where the worker is still performing their other job or jobs, do you still include the
19 wage, then, for purposes of determining location and eligibility when the only work
20 they've missed is the actual job at injury? So are we using a lump wage when
21 they're not actually missing wages on that for those other employers or
22 employments?

23 44:44: Yes. So--and this is just to establish the weekly wage, and
24 then you'd look at the--are they capable of making 80 percent of their adjusted
25 weekly wage per the--you adjust the weekly wage per the rule, and then are they

1 capable of making 80 percent of that? So the fact that they're still working in that
2 other job would help towards making, you know, if they're--they'd be making some
3 money to see if they reached that 80 percent threshold or not. But it's part of the 80
4 percent threshold test, I think.

5 45:17: I didn't realize that. If we go back to supplemental disability, I
6 didn't realize, I thought it doesn't-- you wouldn't include the supplemental disability
7 calculation or the supplemental job calculation into--if they're still able to do it
8 because they're not missing time from work for that. So why would it be added in
9 that way? It just doesn't make sense to me.

10 45:43: Is it...

11 45:45: Because they may still do it. They may carry two jobs for--they
12 may have their Mary Kay business now until eternity, you know, and get their pink
13 car and all of that. But...

14 45:59: So they may eligible for supplemental disability.

15 46:01: But they're...

16 46:02: And not receiving any benefits.

17 46:05: They never...

18 46:06: Zero. Yeah.

19 46:06: Yeah. Yeah.

20 46:07: But then when we get to vocational eligibility, then that wage
21 gets brought into looking at the vocational eligibility. So I think the question Elaine
22 had was, if they're still doing their secondary job or--

23 46:22: Yeah. Would you...

24 46:22: --some employment, how does that factor into determining
25 eligibility if maybe they're released to regular work for everything but their job--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

46:31: Yeah.

46:31: --at injury.

46:32: Yeah.

46:34: And they're job at injury is just one day a week. But yet we have to take all of the wages from everything else to determine--

46:40: Oh, yeah.

46:40: --eligibility when they return to--and maybe never even received supplemental disability benefits because they've never been taken off of work for those.

46:58: So and that goes in--so and then you're looking to see if they have the knowledge, skills, and ability to be employed in a job with a wage of at least 80 percent of that adjusted weekly wage. So if they're still working in that secondary job, that would be towards part of their assessment of, do they have the knowledge, skills, and abilities to make 80 percent? So if their regular job was just a small piece of their earnings and they're doing everything else, then that's factored into that 80 percent assessment to see if they're even eligible.

47:27: So what I'm determining, no substantial handicap or do we have substantial handicap analysis? If the worker worked 80 hours a week at interview, can I use 80 hours?

47:44: That is--

47:45: Just throwing that out there.

47:45: --a really good point. That's a really good point. Yeah. I haven't thought about that. Wow. Yeah. That's what got them up here on wages as opposed to down here because they were willing to put in another 40 hours a week at a secondary job. So you don't--you're not basing it on 40-hour workweek. You're

1 basing it on an 80-hour workweek.

2 48:14: It just seems like the rule should be able to go both ways.

3 48:16: Yeah.

4 48:17: Can you say it one more time? Because I'm not sure that I'm
5 following it quite...

6 48:22: So when I'm determining if the worker has a substantial
7 handicap to employment, making sure they have the knowledge, skills, and abilities
8 to make at least 20 percent of what they were making before, Chu had three jobs, so
9 she was working 75 hours a week. So when I was determining whether or not she
10 had a substantial handicap, then I should be able to use 75 hours a week and not
11 40.

12 48:44: Not 40.

13 48:45: Uh-huh.

14 48:48: Yeah. Which would lessen her...

15 48:51: Right.

16 48:51: Yeah.

17 48:55: That makes more sense. I mean, just overall, it's more logical.

18 49:05: I'm guessing that wouldn't really fly, though. That's why I bring
19 it up. Seriously.

20 49:10: Good scenario.

21 49:14: And it happens.

22 49:14: Well yeah, I was going to say. Yeah.

23 49:15: It happens all the time when probably half our workforce works
24 at another house next door and vice versa. But you know, what's your definition or
25 temporary or seasonal? What is the definition of seasonal in this scenario?

1 49:33: That's also an issue to be discussed. Okay. Any other
2 comments on Issue #1 and #2? And then we'll move on to #3 because a lot of the
3 things that are being brought up also are part of the next issues on here.

4 Okay. So Issue #3, statute indicates "suitable employment" means
5 that--means "employment that produces a weekly wage within 20 percent of that
6 currently being paid for employment that was the worker's regular employment."
7 Consistent with that definition, we define the "job at aggravation" to talk about "the
8 job or jobs the worker held on the date of the agg claim." And we also state that
9 volunteer work does not constitute a job under that subsection of the rule.

10 And so should we similarly articulate in the rule that, when analyzing
11 jobs at injury, and any other jobs held at the time of injury, that volunteer work is not
12 included in the calculation of the worker's weekly wage? And the statute is talking
13 about what's being paid.

14 And so the option we have identified was, articulating in the rule that,
15 when analyzing jobs at injury, and other jobs held at the time of injury, volunteer
16 work is not included in the calculation of the worker's weekly wage. Any questions
17 about that? Thoughts, concerns, opinions? Okay.

18 Issue #4, if people are good to move on. So Issue #4 is under--if
19 people want to look at the rule, we're looking at (3)(a) of Rule 147. And so under
20 statute, if the worker's regular employment was seasonal or temporary, the worker's
21 wage shall be averaged based on a combination of the worker's earned income and
22 any unemployment insurance payments. Chu v. SAIF, the Court found a worker's
23 regular employment at the time of injury includes all jobs held at the time of injury,
24 not just the job where the injury occurred.

25 Our prior permanent rule articulated calculation methods for seasonal

1 or temporary employment under (3)(a) of the rule. And it explained, "When the job
2 at injury or job at aggravation was seasonal or temporary, calculate the worker's
3 average weekly wage as follows."

4 Should we add additional language to clarify that these calculation
5 methods also apply if the other jobs--if the other paid jobs held at the time of injury
6 were seasonal or temporary?

7 And so this is--if you look at the--(3)(a) of the rule, it's highlighted in red
8 because that is what we put in the temporary rule, adding in or any other jobs held at
9 the time of injury. So as far as the language in (3)(a) that we changed, any
10 questions or concerns related to that?

11 52:44: You're talking about Page 2 on the smaller document. Right?

12 52:54: Which...

13 52:54: On the smaller one.

14 52:55: On the temporary rule, yes, Page 2.

15 52:57: Okay. Sorry. I don't have the same printout. And it's up on the
16 screen as well. So that's in blue. (3)(a).

17 53:09: Yeah, that's it.

18 53:09: Yeah. Yeah. Thank you, Fred. Any questions before we move
19 on to Issue #5?

20 All right. Issue #5 talks about--so given Chu v. SAIF, you're not just
21 looking at the nature of the job at injury. You have to look at the nature of all the
22 other jobs at the time of injury to see if they're seasonal, temporary, permanent. And
23 our--so under (3) of the rule and under (2)(i) of the rule in the temporary rule, we
24 defined what time of injury means. And so this issue gets at the definition of time of
25 injury and confirming that you have to look at the nature of any other jobs held at the

1 time of injury. And so...

2 54:13: I seem to have lost it, so sorry.

3 54:16: That's okay. And so this was language that we were talking
4 about earlier under (3), saying the insurer must determine the nature of the job at
5 injury and any other jobs held at the time of injury, so adding in that language. And
6 then also defining what time of injury means, and that's in part due to the fact that in
7 the occupational disease context, the date of injury may not be the same thing as
8 the time of the injury that we're looking at for this voc rule.

9 54:51: So for the occupational disease, they can't--is it when there's
10 verification, they can work at any of the jobs?

11 54:58: Yeah. So we have it defined as the time that there's medical
12 verification that the worker is unable to work, so--because of the disability caused by
13 the occupational disease. So...

14 55:09: So like in Chu, there was a work release saying that they can't
15 go back to Fred Meyer, but SAIF--they didn't have a work release for--but still...

16 55:19: Yeah. The way the language is now, it's just talking about the
17 date that they are unable to work.

18 55:30: So it's unable to work any employment?

19 55:34: That's the way it's worded right now.

20 55:35: So then, we...

21 55:36: Well, right now, it's just "unable to work." But...

22 55:39: So then, as the insurer, if they had not qualified supplemental
23 disability, self-employment, we would then need to go to get job description, job
24 analysis for all of that employment also and present all of that to the doctor, the AP,
25 and ask not only job at injury, but all of these other employments, if it was perfected,

1 to confirm whether they could do those jobs, too.

2 56:14: So Part (2)(e) in the rule has job at injury, so this is part of the
3 old rule as well. This isn't changed in the temp rule. So even under the old rule, it
4 was the same. For an occupational disease claim, the job at injury is the job the
5 worker held at the time. There's medical verification that the worker is unable to
6 work because of the disability caused by the occupational disease. So the time of
7 injury definition is basically saying, that's the time we're looking at.

8 Because we originally had--we thought about contemplating looking
9 back to the job held at the time of the job of injury, but we didn't want anyone to
10 interpret that to mean a job that you held maybe a year ago when you had a job--the
11 job at injury, and you didn't hold it at the time of the date of injury. So it's tying back
12 to the language that's in (2)(e), which is the same language that's in there.

13 57:04: Yeah. I--

14 57:04: Yeah.

15 57:05: --get that.

16 57:06: Uh-huh.

17 57:06: And in the old world, it was pretty defined. We knew who that
18 was. In this new world, if it's all employment, we may not know who those
19 employers are or we might find out later. And then, well, what if we haven't been
20 doing something because they're working for the employer at injury or aggravation,
21 but there's another that would be qualified here, and all of a sudden, they're not able
22 to work there? Would that then pull us into not being in compliance with the rule?
23 Because we just...

24 57:49: So...

25 57:50: You're adding a lot more moving parts to this, so we need to be

1 clear what employment we're talking about or what point of time because as a
2 claims administrator, we're focusing on the employer at injury or possibly the
3 employer at aggravation if we're looking at it from voc or the employer at the time of
4 the occupational disease. But in that case, we only need those wages to calculate
5 the average weekly wage. And we're not then going back to that employer and
6 saying, "What's the job restrictions there?" Because that's just for the purposes of
7 calculating the average weekly wage. We're still going back to the employer that
8 they were--have the claim with as far as processing the claim and determining
9 employability. So we're adding extra layers to this.

10 58:52: So the extra layer, the--I guess the triggering event to what
11 you're looking at is when there's medical verification of an inability to work, who are
12 they working for?

13 59:04: So they've worked for six different construction--

14 59:05: Uh-huh.

15 59:06: --companies. And your date of injury is back here with
16 Construction Company A, but your first disability on the occupational disease is five
17 employers later. We're calculating the average weekly wage based on the
18 employment five employers later. But really, our communications with the employer
19 at injury, and if we're looking at work disability with the purposes of permanent
20 impairment, we're looking at the job analysis back here at the employer at injury, not
21 the employer at the time of medical verification of inability to work. So now, we're
22 having to get job analysis here and job analysis with this employer that we really
23 don't have a relationship with, but for the fact that we need the payroll records to
24 calculate an average weekly wage. But now, they're being pulled in because we're
25 going to need job descriptions in that. And so are we verifying the inability to work

1 based on this employment, which was the regular employment that the claim is
2 based on, or that employment, which is the employment that they had at the time
3 that they were disabled or medical verification of inability to work.

4 (Part 2) 0:22: So are you asking me how it's written now is to look at the date
5 there's medical verification of an inability to work--

6 0:27: Yeah.

7 0:28: --which is the way--which is not different from what the last
8 permanent rule was.

9 0:38: Right now, we just care about the wage.

10 0:39: Uh-huh.

11 0:40: How it's seeming to grow...

12 0:44: You're going to be managing several different aspects. Yeah.

13 Their employment with the other employer and...

14 0:49: How do you force that employer to give you--

15 0:51: Oh, my gosh.

16 0:52: --a job description or job analysis. How do you...

17 0:58: And well...

18 0:58: Because there are some costs involved in that. And an
19 employer is going to look at you and say, "I don't have time for that."

20 1:03: Yeah. Who pays-- Does that get paid through the...

21 1:07: I guess we would have to go to the attending physician and say,
22 "Here's potentially, I'm going to say five employers that they worked for at the time of
23 injury, and two of those at least three where you have to get job analysis for each
24 one of those and send all of that to the doctor and say, "Okay. This is the job at
25 injury, so we know when they do the regular job here." But then for these other jobs

1 because they do these jobs also because it seems to be weighing into the eligibility
2 decision, where now just under the supplemental disability model, that again is the
3 worker's burden. The worker goes to the attending and says, "Is this work release or
4 these restrictions for job at injury and any supplemental employers?" So I'm just
5 trying to, in my head, think how we're going to work through this process. Well,
6 Jenny is going to work through this process.

7 2:13: Is the bigger message for lining this up as much as possible with
8 supplemental? Is that kind of what the message is?

9 2:20: I think if it was just limited to supplemental, which apparently it's
10 not, there's mechanisms in place to follow that process through. It's when you throw
11 in--and not even talk about poker earnings, but just actual employment with another
12 employer...

13 2:38: Subject.

14 2:39: Subject.

15 2:40: Subject, yeah.

16 2:41: Or even just a subject employment is you're adding a lot more
17 variables in that that were now--you can clarify, well, if not this, what about this and
18 this? And where inability of medical verification of inability to work, we're just not
19 focusing on the known, but also the unknown.

20 3:01: I think the answer to your question is yes. And I think that, you
21 know, as I sit and listen to this because I get lost when I listen to Dan, but I think--
22 and it's not--because it's complicated. But I think that--I think the message for the
23 Department a little bit is that we can't look at just one little piece of the claim. We
24 have to administer the whole claim. And so when we're working the--doing the voc
25 piece, we're also working the other pieces of the claim. So just considering how

1 everything sort of works together, I think it's important. I don't know if that was what
2 you were trying to say, but that's what I caught.

3 3:50: Nice summary.

4 3:53: So--okay. So for my benefit, in addition to the employment
5 definition, what are other suggestions to have it closer to what you guys do with
6 supplemental?

7 4:18: I think it would come down to, we would almost have to verify not
8 only the supplemental, but all employment as early in the claim as possible, to the
9 extent that we know what it is and who it is, and what those wages are. And then
10 almost look to the future and say, "Could this ever become a problem?" And start
11 gathering information along the way.

12 4:46: So almost lining it up with supplemental disabilities and send the
13 notice out to the worker asking about supplemental disability that would then include
14 this? Is that what you're saying?

15 4:59: Yeah.

16 5:00: So it would get that right up front in a claim later.

17 5:05: And if you don't, then it would be considered at the end of the
18 claim with voc?

19 5:10: Uh-huh.

20 5:13: So it's a shifting of the burden issue?

21 5:19: It's--yeah. I mean, this is shifting things a lot--

22 5:23: Yeah.

23 5:25: --from-- And I think...

24 5:26: There was no value judgment on--

25 5:27: Yeah.

1 5:27: --the word burden.

2 5:28: Yeah.

3 5:28: I mean...

4 5:30: Well, and I think that--you know, I mean, the case is the way it is.
5 But I don't think that I can understate some of the difficulty for self-insured
6 employers, TPAs, and insurers in dealing with employers who are not the employer
7 at injury in the middle of a claim. And it's partially, you know, the protection of the
8 worker and their confidential information, because we take that really seriously at
9 SAIF. We work really hard not to shift when we've got a worker who's worked for
10 two of our insureds to make sure that we're not mixing those things up. I mean, it's--
11 so we work really hard at that, and now we're kind of being told that we need to
12 maybe be thinking about how we do--how we mix those a little bit. So yeah, it is--in
13 some ways, it's shifting the burden. But again, I think it's not so much--it's just
14 clarifying when it happens. That's all.

15 6:32: Yeah. Well, who has the obligation to bring forth the
16 information?

17 6:36: Yeah.

18 6:37: Okay.

19 6:38: Yeah. And I think like everything else in comp, I think that there
20 are always opportunities for a worker to come back and say a reason why they didn't
21 or couldn't, and then to relook at it. But yeah, I guess that would be our preference
22 to know the information from the worker as early in the claim as possible.

23 7:01: I have a question, Dan. So Chu, we're talking about just
24 determining the wage for voc. So you talked about going back to the doctor to get
25 like five work releases for each of the jobs. That's--I don't understand how you went

1 there when we're just talking about getting the income.

2 7:20: Well, if we're talking about--time of injury means their inability or
3 medical verification to work. What we may have is from the employer at injury or the
4 employer at the time they file the occupational disease or have the medical
5 verification. But if this is throwing a new date that that could start, it could have been
6 any of those intervening employers because if they have different work restrictions,--

7 7:50: Yeah.

8 7:50: --and they're at a very sedentary employment now, well, maybe
9 they can still do that, but they can't do a job that had higher work restrictions in the
10 past because we never were focused on that. It's the one off, one off, one off
11 situation, but those are the ones that come up that we have disputes over. And so--
12 yeah.

13 8:18: Hearing loss would be a perfect example. You could have the
14 hearing loss back five or six employers,--

15 8:24: Sure.

16 8:24: --and the words would be very different and maybe, you know,
17 no opportunity for exposure during those other employers. But you've got to go all
18 the way back five employers where the exposure was. But then you've got to look at
19 the other intervening, so--I think we should read the...

20 8:48: I think we should pump oxygen into this room.

21 8:59: Does anybody have any additional thoughts, ideas, comments
22 before we move on to the next issue? Okay. You'll all be happy, I think, for Issue #6
23 because it's probably more housekeeping.

24 So if we look at Section (3)(b) of the temporary rule, our permanent
25 rule, it talks about when the job at injury was not seasonal or temporary, you're

1 going to use the weekly wage upon which temporary disability was based, and then
2 convert it to the adjusted weekly wage as described under Section 4 of the rule.

3 So given the opinion in Chu v. SAIF, we plan to add a rule for when the
4 job at injury was not seasonal or temporary and the worker held more than one job
5 at the time of injury, the scenario we've been talking about. So should we therefore
6 add to the quote that I just talked about, clarification that that is only applying when
7 the worker did not hold more than one job at the time of injury?

8 So basically, taking our old permanent rule and just clarifying that that
9 scenario is only when the job is not applying--only when the worker did not have
10 more than one job at the time of injury. And again, if we look at the temporary rule
11 under (3)(b), it's right at the top of the screen there. Thank you, Fred. It is the blue
12 language under (b) at the very top. It's just a clarifying statement.

13 Anybody have any concerns about that change? Thoughts? Okay.

14 Issue #7. So this is under (3)(a), big (C) and big (D) of our rule. There
15 we go. So you can see the current language that is provided. It's the--we didn't
16 change it except for the word "the" that's crossed out. So earned income is defined
17 in our rule, and it's for specified consideration from all employers for services
18 performed from all jobs held at the time of injury or aggravation. That's in (2)(C) of
19 the rule. And so when applying these rules, we combine a worker's 52 weeks of
20 earned income from the jobs held at the time of injury or aggravation, and add that to
21 payments from unemployment benefits, unemployment insurance benefits. If the
22 worker held other jobs in the 52 weeks before the injury or agg, but those jobs were
23 not held at the time of the injury or agg, then neither the income nor the weeks
24 worked in that position should be included in the calculation. Should we clarify the
25 portion of our rule which talks about dividing by the number of weeks worked in the

1 52 weeks before the date of injury or aggravation? So it's clarified that you're only
2 looking at the weeks the worker worked and the jobs held at the time of the injury or
3 aggravation. So if you're looking at big (C) and big (D)-- Actually, I'll just come up
4 here and I'll highlight one or two.

5 12:28: So here in big (C), divide the worker's earned income by the
6 number of weeks the worker worked. And down in (D), it talks about divide the total
7 number of the weeks the worker worked. And so we're not talking about all the
8 weeks the worker worked in that 52-week period, but basically accounting for the
9 periods of time that you're using income.

10 If the income is included in the calculation of the weeks worked, they're
11 included in the calculation. If the income is not included, you're not including those
12 weeks in the division.

13 12:59: But for this case, unemployment was added in with wages,
14 again, the average weekly wage?

15 13:05: Yes. And that has not changed.

16 13:07: Okay.

17 13:10: And that's from statutory language under 340.

18 13:13: Okay.

19 13:26: So it's basically just adding, if you look at where it's highlighted
20 there, it's divide the total by the number of weeks the worker worked in those jobs.
21 So we're talking about in the jobs that you're using in that calculation. So anybody
22 have any concerns, questions about that?

23 Okay. I'll move on to Issue #8. So this is talking about (3)(A) through
24 (D) of our rule. And it's really a structure issue. So (3)(A) gives four separate
25 methods for calculating the worker's weekly wage when the jobs at injury or agg are

1 seasonal or temporary. So it says if it's seasonal or temporary, here's your
2 calculation methods. And it breaks those calculation methods down into big (A), big
3 (B), big (C), big (D).

4 Then if we scroll down in the rule, it talks about (3)(b), (3)(c), and
5 (3)(d), the little (b), (c), (d), gives separate calculation methods for when the jobs
6 were not seasonal or temporary. And so there's no--in (3)(A), we have it all broken
7 down into capital letters. And in (3)(b), (c), and (d), we do not. So the idea is to
8 make it more consistent and have--I guess one option is to create paragraph under
9 little (b) to result in consistency between the structure of (a) and (b).

10 Another option would be to remove the capital (A), capital (B), capital
11 (C), capital (D) of the rules and move those into subsections so it's consistent with
12 the way the other parts are written, or to not change the structure. Any questions,
13 concerns, thoughts on the best way to change the structure or-- The idea is not to
14 substantively change it based on this issue, but to make it more consistent.

15 15:46: I would say that this is the section of the rules that I get the
16 most questions about. And if there was a way to make it much simpler, like your
17 graph, would be very, very helpful.

18 16:01: Yeah. And I guess on top of that, as I'm looking at this, and I
19 don't deal with these rules very often.

20 16:05: But whenever you tell people when it's not this way, do this, I
21 don't know if there's a way to write it in the positive as opposed to the--it's the
22 negative. It's just--I think that's always confusing.

23 16:21: Are you talking about the not seasonal or temporary?

24 16:25: It's not this way we do this. And it's just--for me, it's just a
25 general statement. It's just--it's like...

1 16:32: Then you get into the double negative.

2 16:34: Yeah. You get--there are double negatives and it's--you have

3 to really go, "What?" So there's a lot.

4 16:47: Okay. So me just being, again, not very familiar with the rules,

5 but like with big--with little (a), big (C) and (D), Matt did explain them, the difference

6 between the two. But are we really just talking about if they have unemployment or

7 not between those two paragraphs?

8 17:11: Not completely.

9 17:12: Not completely.

10 17:13: Oh, okay.

11 17:13: Okay. I'm sharing from a person that doesn't have to use these

12 rules very much. And I was trying to understand it, but I'm...

13 17:21: Yeah.

14 17:22: He explained it, so I get it, but maybe.

15 17:29: Yeah. One's more than one job at agg with no unemployment,

16 and the other is one or more jobs at injury or agg with unemployment. So...

17 17:40: So why would it say more than one job, and then the next one

18 says one or more jobs? I'm drawing a blank.

19 17:50: One of them has unemployment. One of them...

20 17:50: But more than one job. And the next paragraph says one or

21 more jobs. I mean, and the unemployment is separate.

22 17:58: But sub (a) is the one that addresses your issue.

23 18:02: Yeah. Sub (a).

24 18:05: That's the one. It's the current...

25 18:14: I'm looking at (c) and (d). In the first sentence of (c), it says, "If

1 the worker held more than one job.”

2 18:18: I know. But if you go back to (a) it says, “The worker’s regular
3 employment at the job at injury and they didn’t hold any more jobs and they didn’t
4 receive unemployment.” (a) is the one that is--it actually addresses the one. That’s
5 where you don’t say more than one job. Does that make sense?

6 18:43: I don’t have-- But I guess the thing that’s really kind of scary is
7 that we’re having so much trouble figuring out what the rules mean.

8 18:50: Yeah.

9 18:50: And I’m not saying that it’s--it’s really hard, but...

10 19:18: Any other thoughts before we move on to Issue #9? Okay.
11 And as Fred said at the beginning, too, any time--I know you guys
12 have mentioned some fiscal impacts. But continue to mention those as we move
13 along, if you think of anything.

14 Under 120-0147(3) and (4) of the rule, if multiple jobs are held at the
15 time of the job at injury or aggravation, the rule provides methods for calculating the
16 wage, but it doesn’t clarify that this should be done for each of the jobs separately.
17 And that those wages should then be added and--added together and adjusted
18 under (4).

19 So should we amend the rules to clarify that the calculation is done for
20 each job, and the total of all of those wages is then adjusted under (4) of the rule?

21 And currently, in (4) of the rule, the temporary rule, we did add in
22 language with the total of all of the wages. I mean, questions, thoughts, concerns
23 about that change? Okay.

24 So Issue #10, if everybody’s okay, we’re moving on, is under (3) of our
25 rule, it requires, in some scenarios, that we look at the average weekly wage to be

1 calculated using the same methods used to calculate temporary disability as
2 described in 436-060-0025. The rule does not articulate which version--the last
3 permanent rule does not articulate which version should be used. And in looking at
4 applicability, 436-060-0025 applies based on the date of injury, and the voc rules are
5 generally under the workers' comp law at the time--in effect at the time of the
6 vocational assistance.

7 So should we permanently amend the rules to state that the version of
8 436-060-0025 which should be used is the version that was in effect on the date of
9 injury?

10 21:37: Yes.

11 21:39: Okay. Okay.

12 21:44: So I just want clarification of one thing. And maybe this is a
13 good time to do it. So when this gets overturned by the Supreme Court is that
14 everything will go back to the way it was. The temporary rule will go out, I think it
15 went out this time within one week and two days of the Court case, Court decision
16 coming down.

17 So when this case wins, the Supreme Court will--to reverse it, will it--
18 everything would go back to the same, what we're dealing with right now. Because
19 when you say permanent, I--I just like, ahh, you know...

20 22:19: So permanent is a rule that's in effect until it subsequently gets
21 replaced, is a good way to think of it. So...

22 22:27: I just want to make sure I understand that.

23 22:29: So it can get changed again in the future if there's a--either by
24 temporary rule, temporary rules can get issued much more quickly than permanent
25 rules, which require a longer rulemaking process. But can also get replaced with

1 future permanent rules. So it's permanent until it's otherwise replaced.

2 22:47: Okay.

3 22:53: All right. I'm going to move on to Issue #11, which has kind of
4 been alluded to already, unless anybody has questions under #10.

5 Okay. So Issue #11 has to do with what people are--what the insurer
6 or the self-insured employer is supposed to do if they can't get the records. So if the
7 worker had more than one job at the time of injury or aggravation, they may need to
8 provide payroll information for the other job(s) to allow for the calculation of the
9 weekly wage. Sometimes, even if the worker wants to, they might not be able to
10 supply that information.

11 According to the Fair Labor Standards Act, payroll records must be
12 kept for at least three years. Presumably, there would be relevant payroll
13 information from the employer at injury, since the records would be needed to
14 calculate the weekly wage of the worker for temporary disability benefits. It's less
15 clear if relevant records would be available from a secondary employer. And so
16 should our rules provide a calculation method in the event that the records are not
17 available?

18 In making the determination, we thought it's important to recognize that
19 our rules currently--our current rule requires that all figures used in the determination
20 of a weekly wage be supported by verifiable documentation, such as a worker's
21 federal or tax returns, payroll records, or reports of earnings or unemployment
22 insurance payments from the Oregon Employment Department. And that's under
23 (1)(c) of the rule.

24 And that language appears to stem from the statute, which explains
25 that, for a worker whose regular employment was seasonal or temporary, their wage

1 has to be based on a combination of earned income and unemployment insurance
2 benefits; and only earned income evidenced by verifiable documentation such as
3 federal or state tax returns shall be used in that particular calculation.

4 So I want to open it up for discussion to get your thoughts on what is
5 the best way to handle a situation where the records are not available, and how
6 should the calculation be used? And a few of the options that we had thought of is
7 allowing the insurer to make a reasonable calculation of the weekly wage based on
8 the information available. Allowing exclusion of the reported wage if there is no
9 verifiable documentation offered.

10 25:03: Yeah.

11 25:04: Requiring that the calculation be made based on a combination
12 of verifiable documentation, such as a tax return, and the Oregon Labor Market
13 Information System, or some sort of combination of those options or any other
14 options that you guys have in mind that should be considered.

15 25:21: Why wouldn't it be based on solid information anyways? I
16 mean, I think that that would--that that's a key. So that would be Item 2, allow
17 exclusion of the reported wage if there is no verifiable information offered.

18 25:40: Agreed.

19 25:40: Agreed.

20 25:50: One of the thoughts, too, we've talked about the Oregon Labor
21 Market Information. I'm curious for those of you who handle those--that information,
22 is that--would you see something like that working or being problematic to account
23 for kind of what is verifiable, or what information you do have available in the wage
24 calculation? Would something like that work to account for it?

25 26:14: Don't you run into a problem, though, too, Julia, if--even if you

1 can nail down a wage, you would have no way of calculating or knowing what hours
2 the person worked or how many days per week you worked?

3 26:26: Wage does not...

4 26:28: Or did they really work at that job?

5 26:29: Well, yeah. You know, there are a whole bunch of variables,
6 you know, if it's unverified.

7 26:37: You know, and in the first bullet point that you have there
8 where you say--

9 26:38: Uh-huh.

10 26:38: --information available, it may be that the only information
11 available is what I told you.

12 26:44: So I guess my question is, when--or a scenario I could see
13 coming up is where you have piecemeal information. So maybe you have the
14 employment agreement saying that you work five days a week at X dollars an hour,
15 40 hours a week. Or maybe you have your W-2 that shows your 52 weeks of
16 wages, but not the 52 weeks that's relevant to the calculation. So you can see this
17 person is claiming they earned X, Y, Z, and we've got piecemeal information that fills
18 in some of the blanks to help us see that they're earning it. But we don't have the
19 exact document that shows the 52-week period that we need to get those wages.
20 What are people's thoughts in those scenarios? Do we exclude it completely
21 because we don't have the verifiable information for the information needed to
22 calculate the wage? Or do we account for it in some reasonable way, trying to--you
23 know, because we have some information but not all of the information.
24 Something's verifiable but not the exact thing that is needed.

25 27:43: So this 656 requires--or puts the burden on the worker to

1 establish the extent of their disability, providing verifiable documentation would seem
2 to fall within that burden, I think, to establish the extent of their disability by providing
3 their loss, which would come through wage records, pay stubs, tax filings.

4 28:09: So if we think of somebody who had a W-2 and they can show
5 that they earned X dollars in a year, but they didn't have their 52 weeks of wages
6 because they threw away their pay stubs for that year and the employer no longer
7 has them, what are your thoughts? Would that worker get it excluded or included in
8 some way? How would situations like that be best handled?

9 28:29: They can get the Employment Department and get the printout
10 of wages based on quarters, and that's what I would request in that situation. So
11 then we would know which quarters they worked and how much they made in each
12 quarter.

13 28:43: Uh-huh.

14 28:47: So with that, you could kind of try to figure out whether it was
15 consistent wage in each quarter, and then I mean, I personally would work with the
16 worker to figure out something that was reasonable, to divide by the number of
17 weeks they worked or something.

18 29:06: And I'm inclined to agree with Jen. It seems patently unfair.
19 We know that the worker worked, and that he's--you know, it's going to be excluded
20 based on those particulars and not having the specific 52 weeks. You know, that
21 just feels bad. I don't know if there's a-- Good luck guessing all the possible
22 scenarios, you know, on how that might play out. But if you put some kind of
23 minimum language, you know, if--you know, the precise weeks aren't available, then
24 if there were a way to, you know, fabricate a calculation. Or if there were multiple
25 ways to calculate, I don't know if you want to say the least of those or the average of

1 those. Does that make sense?

2 29:53: Uh-huh.

3 29:54: I mean, I...

4 29:54: Yeah.

5 29:54: I'm just putting that out there, because I think there should be a
6 method to try to ingest--or inject some equity into it. That's for sure.

7 30:03: And that's still verifiable income. So that scenario--we're only
8 getting into this scenario because we have verifiable information.

9 30:13: Uh-huh.

10 30:13: Yeah.

11 30:14: Right. Yeah.

12 30:18: And I think the Employment Security Department is....

13 30:23: Keith, did you have something?

14 30:25: Yeah. This is Keith. I mean, you know, I feel like some of the
15 documentation we've discussed, I think, is verifiable. And you know, I agree that the
16 general rule is that it's on the worker to establish entitlement to benefits and level of
17 disability and things like that. And I think the worker reasonably should be able to
18 make an argument that this is the hours I worked, this is how I was employed. You
19 don't have to take my word for it. Here's my tax documentation. Maybe here's, you
20 know, printouts from Social Security or unemployment, or the employment
21 department, or you know, whatever it is. But it seems like the worker should be able
22 to piece some of that together without--you know, short of being able to provide 52
23 weeks of payroll and numbers of hours worked and everything like that. You know, I
24 don't think that level of detail is fair to expect of a worker after, you know, the
25 employer has already destroyed the wage documents and everything else, because

1 some of these things do come up, you know, after the fact and later on, so a couple
2 years later. So I think allowing the rule to be open enough just to allow the worker to
3 establish, you know, verifiable documentation, corroborate what I'm telling you about
4 what I did, what I earned, et cetera. And I'm not sure that requires necessarily a
5 change to the rule, you know, the language just being verifiable documentation. So I
6 guess that's my take on it.

7 31:44: Yeah.

8 31:44: And I think Keith has a very practical--and that's--approach.
9 And that's what we do with an average weekly wage, but we have to get to some
10 shred of verifiable documentation first. And if we have that, we can back into an
11 average weekly wage. But if we're only getting the worker saying, "This is what I
12 worked," and they can't even produce a W-2, a 1099, something, one payroll
13 statement sometimes is enough to back into an average weekly wage and say,
14 "Yeah, you know, this is consistent with what the worker is saying." But when we
15 don't even have that...

16 32:28: Any other thoughts, comments on that issue before we move
17 on?

18 32:36: Speaking specifically to OLMIS, the labor marker information, it
19 would be hard for that to be fair because that wouldn't really give the worker any
20 credit for tenure or making above or below what was kind of typical for the job. Also,
21 OLMIS data is often outdated. For example, the minimum wage goes up every July.
22 It's not usually until the following year that that's updated.

23 33:08: Okay.

24 33:10: So that might--I think you would end up underpaying workers
25 that way.

1 33:16: Thank you. Okay. Issue #12. So this is an issue getting into
2 definitions of seasonal and temporary. So according to statute, if the worker's
3 regular employment was seasonal or temporary, the wage is averaged on a
4 combination of earned income and unemployment insurance benefits.

5 Our administrative rule then goes on to provide calculation methods
6 depending on if the job was "seasonal or temporary" or if the job was "not seasonal
7 or temporary," so we use the same language. But the term "seasonal or temporary"
8 is not directly defined in our rule. And instead, under our definitions, our rules give
9 definitions for permanent employment and permanent year-round employment.

10 So "permanent employment" is a job with no projected end date or a
11 job that has no projected end date at the time of hire. And it can be year-round or
12 seasonal.

13 "Permanent, year-round employment" is permanent employment in
14 which the worker worked or was scheduled or projected to work in a 48 or more-
15 calendar week period. Paid leave is counted as work time. And permanent year-
16 round employment does include trial service. It does not include employment with
17 an annual salary set by contract or self-employment.

18 So we wanted to discuss the use of the terminology "permanent
19 employment" and "permanent year-round employment" and "seasonal or temporary"
20 to see if clarity can or should be offered in our rule on those terms.

21 And so a couple of thoughts that we had were specifically defining
22 seasonal or temporary work in the rule; rather than referencing seasonal or
23 temporary work, reference work which is not permanent, year-round employment; no
24 change; or other.

25 35:02: Has this been an issue?

1 35:05: What was that, Jaye? I didn't hear you.

2 35:06: Has it been an issue, the definition of seasonal or temporary?
3 The fact that there isn't a definition.

4 35:14: Not that we've seen. Not that I've seen. Speak for myself.

5 35:19: I think this was brought up by people that were looking at it
6 internally.

7 35:21: Yeah.

8 35:23: But from my position, and that's...

9 35:35: How tough would it be to provide those definitions? Where I'm
10 coming from is if the language is used anywhere in the rules, it's kind of nice to have
11 a reference point. But if it's--if you folks aren't seeing this brought up frequently, is it
12 kind of just a solution looking for a problem?

13 35:57: Yeah. Yeah. I guess that was kind of my point is it kind of
14 worries me when we haven't had a definition there or problem. And then we create
15 definitions and everyone's saying we start looking for problems.

16 36:08: Yeah.

17 36:14: Okay. Any other thoughts? No? Okay.

18 Issue #13 is actually getting to a different rule. Under 120-0003(2)(b),
19 director's decisions under 436-120-0008 regarding eligibility are based on the rules
20 in effect on the date the insurer issued the notice. Our prior rule did not account for
21 this Chu v. SAIF scenario. So more than one job at the time of injury when the
22 worker did not perform seasonal or temporary work.

23 And so Chu v. SAIF had found that that part of the rule was not valid.

24 And as a result, if a worker is falling into that category, it would be inappropriate to
25 base their eligibility determination on the rules in effect on the date the insurer

1 issued the notice because that rule might not have existed at that time.

2 So should we therefore add a provision similar to--essentially saying,
3 "If an eligibility decision involves, whatever the rule number is related to the Chu v.
4 SAIF scenario, that the director's decisions under the rule regarding eligibility will be
5 based on the rules in effect on the date of the director's order."

6 37:40: It's basically making everything retroactive.

7 37:43: Essentially making the Chu v. SAIF scenario retroactive.

8 37:47: The rule of the land from here going forward.

9 37:49: Right.

10 37:55: If all the...

11 37:57: Well, the limitation in this, the way the rule is currently written is
12 that it's based on the date that the insurer issued their decision. So if the insurer
13 issued their decision before we had this temp rule in effect, if we're dealing with a
14 decision from December, there is no rule to address the scenario with more than one
15 job at the time of injury because that scenario didn't exist in our prior rules.

16 38:25: So when a claim for aggravation comes up from a claim that
17 closed four years ago, and the worker had a supplemental job and there's a change,
18 then it's going to affect those old claims as well? Is that what that means?

19 38:45: For job at aggravation? Is that what you're referring?

20 38:49: When you aggravate--

21 38:53: So job at aggravation...

22 38:53: --an injury that has--where you paid out supplemental disability,
23 and now it aggravates four years later, this would affect those claims--reopen. I still
24 want to know who's paying for this.

25 39:08: Yeah, I know. Me, too.

1 39:10: Well, if it was the job at agg, then multiple jobs would have
2 been considered already. It wouldn't change.

3 39:15: It will change if the aggravation--then you're having to make a
4 decision about voc this time around because of the aggravation.

5 39:23: Uh-huh.

6 39:25: Again, that's why I'm wondering, who is going to pay for all of
7 this?

8 39:29: The job at aggravation, that did not change. Job at aggravation
9 has always included all jobs at the time of agg.

10 39:34: Well, I understand, but we never looked at voc. We never
11 looked at the additional benefits.

12 39:39: Uh-huh.

13 39:39: So I mean, we're just--this is brand-new territory. And so all
14 those claims that are less than--is it seven years in Oregon for aggravation?

15 39:50: Five.

16 39:51: Five. Okay. Sorry. Different state. So five years. So we're
17 talking five years of claims that are sitting out here. And I don't know how many
18 there are that had supplemental disability. When those--if those do reopen, any of
19 those reopen for aggravation, then you're looking at a different scenario.

20 40:11: Or is it just supplemental?

21 40:12: Yeah. That's what I'm asking. Yeah.

22 40:15: As far as I understand it, we're talking about any employment.

23 40:18: Well, yeah, that's true. That's true. I guess I'm using the
24 wrong term. Yeah. Yeah.

25 40:25: I wish it was what you were saying.

1 40:25: Yeah. No. I hear what you're saying. I'm saying it wrong. So
2 it's...

3 40:32: I'm thinking more about our existing claims that have been
4 open for--

5 40:34: Yeah.

6 40:34: --a period of time, that we're getting to the point where we're
7 determining eligibility and having to go back a year, two years, three years to, "Hey,
8 worker, what were you doing three years ago when you were injured?" We're now
9 looking at whether you're eligible for voc. Did you have other employment at that
10 time? Go get us those payroll records.

11 40:58: Yeah.

12 40:57: Not as complicated if there was SDB claimed. Right?

13 41:01: Right.

14 41:01: Yeah.

15 41:01: Right.

16 41:02: Because if there was, yeah, now--yeah. And okay. I guess I'm
17 just looking at the--clear up here and looking down at not only this housekeeping
18 issue or this Issue #13, but overall, the breadth of the costs that this could
19 encompass. And again, how is that going to be paid for?

20 So as a stakeholder in the system, I would really like to know when
21 that rulemaking is going to take place because I imagine it could even change
22 depending on how many of these there are, how much the worker benefit fund, the
23 assessment would have to be, which does affect everybody.

24 41:48: Are you asking if money would be paid out of the fund for...

25 41:52: The voc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

41:52: For voc.

41:54: You know, yeah, yeah. You know, for the additional services.

41:57: Because generally speaking...

41:58: Additional awards. Any additional benefits that they're going to get associated with this that are specific to the supplemental jobs, or however we want to define that, sorry, whatever the correct...

42:11: Because I don't know if there would be statutory authority for the division to pay money out of the workers' benefit fund for this because it's usually something very direct in statute before any money comes out of the fund.

42:22: And I think that to Sheri's point, and I know you're supposed to look at fiscal impact...

42:27: Yeah.

42:29: On rules, and I don't think it's so much the rules particularly as the Court of Appeals...

42:36: No.

42:38: But I mean, it's an issue and we don't know yet. And I don't know how, from an insurer's perspective, how we charge our employers. Because I don't think the staff plan has anticipated this. So you know, as we're reporting data to NCCI so they can make loss cost, I don't know how--I don't know how we do this. I don't know how we take, you know, the expense for voc that normally wouldn't have been available because...

43:16: Because it was within--they were already--they were well within their 80 percent.

43:19: Uh-huh.

43:20: Then their job at injury...

1 43:22: And so we add the job...

2 43:24: Yeah. So that's--then that's where I'm saying, where is this

3 going to be paid? Is it going to be paid--it certainly isn't going to be paid by the

4 employer if it's the supplemental jobs that put it over the edge.

5 43:35: Well, ultimately, it is paid by the employer's...

6 43:37: Well, no, I understand that.

7 43:39: Because if it's...

8 43:39: Because they have to--

9 43:39: Yeah.

10 43:39: --pay the cents per man hour. But I meant specific to their

11 rates, their insurance rates.

12 43:45: Well, it will, ultimately.

13 43:46: Yeah.

14 43:46; You know, if it goes into the system, if insurers aren't charging--

15 you know, when you have your premium and your loss cost, if that's where they

16 anticipate. And then there are our expenses on top of that. And if we don't have a

17 place to put it...

18 44:01: Oh, I see, the expenses.

19 44:03: Right. We don't have a--

20 44:03: For managing it.

21 44:03: --place to put it on the claim, then it goes to our--

22 44:07: Got it.

23 44:07: --expenses, which is rolled up into what we charge employers.

24 44:12: Okay. So we're looking at the expenses to manage that will

25 perhaps go into the claims cost. We're looking at the worker benefit fund. And then

1 how about pure premium?

2 44:23: Potentially.

3 44:24: Okay. So those areas are going to have to be looked at as part
4 of the loss, the impact statement.

5 44:31: Because ultimately, depending on how we report it, report the
6 data, it will impact loss costs.

7 44:40: Got it.

8 44:44: This is Keith. I'd just like to offer a little perspective. I mean,
9 these unexpected court cases cause losses on all sides. I mean, workers have
10 suffered greatly after the Brown and Schleiss decisions and how things are being
11 applied there. So you know, we're all taking our beatings out there when these court
12 cases come out and they're not anticipated and not expected the way they're going
13 to operate. So I'd just like to offer that perspective on this. Some of these things
14 don't go with rule changes. It just happens. And it's what the court says, when the
15 court says what it says. We all have to figure out how to make it work, so...

16 45:17: I think it's important, though, to have to have this discussion so
17 that they have to put in an impact, cost impact statement, part of the rules. So this
18 isn't a personal statement. It is a factual statement that I want to make sure they get
19 it clear as to what this is going to cost the system when they put this--when they
20 publish the permanent rule. I think that's important. So that's where I was going
21 with that.

22 45:44: That's there. And I don't see any--you know, I don't envision us
23 opposing the idea of the worker benefit fund being a part of that discussion because
24 it is for--as you guys have pointed out, it creates parity with the rules regarding
25 supplemental disability which is, you know, very similar issue to this. So it make

1 sense that worker benefit covers one, that it would help out with the other as well, at
2 least from where I'm sitting.

3 46:15: And that, too, would have to be--Lou, that would have to be a
4 separate rule also if it were to come out of the worker benefit fund.

5 46:24: Oh, I think it's...

6 46:23: That would have to go back to...

7 46:25: I think it's actually...

8 46:26: Okay. It's already...

9 46:27: The statute. Yeah.

10 46:28: Yeah.

11 46:28: It's already in the statute.

12 46:29: I don't think you can do that by rule.

13 46:30: I think you have to...

14 46:31: Okay. That's what I'm saying. Okay. So then we also have to
15 change the statute. So can you change--can you do that? I mean, as we're talking
16 about the permanent rules without the funding mechanism already in place, how
17 does that work? I've never been in a scenario like this in the 26 years I've been
18 doing this. I don't ever remember something like this happening.

19 46:58: The department's doing what it has to do

20 46:59: No, I understand. I'm just curious how it works.

21 47:03: Are you talking about just proposed legislation?

22 47:04: Yeah. For the worker to pay for it.

23 47:04: Right.

24 47:08: I think that's what you were saying because it has to be in
25 statute, then there would have to be some sort of legislation drawn up or drafted.

1 47:15: I agree. But what I'm saying is, the rule has to go into effect
2 before the statute. So there will be a funding mechanism. Yeah, that's what I--
3 Does that make sense?

4 47:24: Yeah. You're saying that the rule is going to require a payment
5 of money. There's discussion of the worker benefit fund. But you can't do that
6 without legislation.

7 47:31: Yeah. But you can't...

8 47:33: So who pays for it?

9 47:33: Yeah. That's where I'm--yeah.

10 47:36: And I think at this point, without that statutory change, it would
11 be the insurer/employer that would be--

12 47:40: Yeah.

13 47:40: --putting a cost,--

14 47:41: Yeah.

15 47:41: --on part of the claims cost.

16 47:46: In a sense, the Court made the decision that our rules just
17 would be putting in some parameters around that and--

18 47:52: Yeah.

19 47:52: --how to implement that decision.

20 47:55: Uh-huh.

21 47:55: But nothing too fundamental.

22 48:05: So can I ask a question of NCCI, Todd?

23 48:06: Yes.

24 48:08: So you know, going with this discussion that we just had and
25 the unknown, you know, especially when you're talking legislation to get something

1 passed and to the legislature, so then that would be a direct insurance cost whereas
2 the worker benefit fund, right now, until there is legislation, it's a direct cost to the
3 insurers, insurance/insurers, as opposed to the worker benefit fund that is a shared
4 assessment between--well, if employers so choose for the portion that goes for the
5 workers.

6 So how does that--when you're looking at something that is going to
7 impact the system, as far as premiums-- And the reason I say this, you guys, I have
8 jobs that we bid out two years in advance. And I understand all of the public entities
9 also, you know, are working on biennial budgets. So I'm just trying to--again, I've
10 never seen this happen before where we have an unintended, unknown amount of
11 money that's going to go out with no way to fund it other than back on the insurers.
12 And those insureds and insurers are not just private employers. It's public
13 employers as well. So how, you know, as they're calculating what that's going to be,
14 does NCCI kind of go in and look at that before the ratings come out at the end of
15 this year? Or is that next year you'll look at that?

16 49:47: Well, we'll look at it this year. But similar to the issue we talked
17 about this morning, there's just really not enough data to really say, this is going to
18 be the direct impact. I mean, you can say maybe--you know, I actually like to use
19 the word indeterminate because we expect some impact but we can't quantify good
20 enough data to quantify it. So we'll certainly look at this in all case law that is
21 impactful to the system. And if we can quantify it, we will.

22 50:15: We will.

23 50:17: But otherwise, we'll look at, you know, all the other economic
24 factors as well, as our wage is rising in the industry, what's happening with the
25 unemployment rate and everything else, so...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

50:29: Okay.

50:30: So it's helpful to get all the details and the leads here today, and then as our actuarial team looks at this kind of stuff, try and answer those questions and see if they can put a number on it.

50:41: You're saying it's one of the factors you'll take into consideration when you take a look at the...

50:45 When they do rates.

50:46: When they do rates. And I thought so. I just didn't know if it would be this year or next year when they would do that. And then--oh, and there was one other question. Sorry, I just lost it.

51:00: Can I ask one while you're thinking? So would the employer's experience mod be affected in this instance as well? If it's not coming out of the supplemental and there's nobody else--

51:13: Yeah.

51:13: --to fund it, then it seems as though and all of a sudden the cost is...

51:18: Yeah. Claims costs. It would affect your...

51:20: Right. So that has a big impact to smaller business in this state.

51:28: Well, and to Todd's point, we really don't know...

51:29: Yeah, we don't.

51:29: And I was just kind of whispering to Dan, I mean, we need to go back and look to see, you know, the claims we think that it might be. But because we haven't asked the question of...

51:39: Yeah. We haven't asked all these employment questions. So

1 there may be claims that you didn't even realize would meet that criteria based on
2 this wider expanse of employment.

3 51:55: Well, the baseline of that would be your SDB claims.

4 51:57: Yes.

5 51:59: And then just increase from there.

6 52:00: Extrapolate them out. Yeah.

7 52:04: How many SD claims do we get? Does the department know
8 based on annually, do they have any data on that? Do you guys know?

9 52:15: I don't know if we do. We probably can get it.

10 52:22: Is that what...

11 52:23: I think so.

12 52:24: Yeah.

13 52:24: Let me see if I got an email, if I can find it quickly, the more
14 important question.

15 52:35: So in 2017, there were 248 workers who received
16 supplemental disability.

17 52:40: But then we would have to add on to that, all of the workers
18 that we determine eligible for supplemental--

19 52:47: Yeah.

20 52:47: --disability because they reported to have secondary
21 employment, they just didn't report is as being eligible.

22 52:54: Right.

23 52:55: And so...

24 52:57: And this right now doesn't have any--

25 52:58: Doesn't have any...

1 52:59: --guidelines on that.

2 53:02: And so we're finding ineligibilities of probably about a four-to-
3 one rate. So for every five workers that say they're eligible--or for every five workers
4 that say they have a secondary job, we're probably determining one eligible. That's
5 for a number of reasons, like it's non-subject work because they are babysitting or
6 they have self-employment, or they just don't provide any information. Or they just
7 didn't understand the question of, do you have a second job? So--but about--we're
8 doing probably about 200 eligibility decisions a year, where they're eligible for
9 benefits.

10 53:47: So those were workers that were denied voc rehab?

11 53:51: SDB.

12 53:54 : S...

13 53:56: The ones that you denied SDB.

14 53:58: Yeah. Well, not even that. I'm thinking the workers who may
15 have had the supplemental disability but then were not eligible for voc rehab
16 services,--

17 54:08: Oh.

18 54:10: --does this open the door for all of those workers that were at
19 some point denied voc? Does that open that up when we're talking about the state
20 thing? Does that open up the door that you could have potentially workers that now
21 would fall under like Chu did, that could come back based on that date? That's what
22 I'm asking.

23 54:28: Yeah.

24 54:31: So the language in (3) that we're talking about is only for the
25 director's decisions.

1 54:40: The director's decisions?

2 54:41: Yeah. Looking not just at--because right now, you look at the
3 date that the insurer issued the notice. And then that has an appeal period on it,
4 so...

5 54:56: Sixty days.

6 54:56: Sixty days. And if it is appealed, then the director would issue
7 a decision. So for the director's decisions for those cases that were appealed,
8 looking at basically the rule that will be written for the Chu v. SAIF scenario, because
9 the Court said that our prior rule wasn't valid, so--

10 55:14: Yeah.

11 55:16: --we need a rule to apply, if that situation comes up.

12 55:21: But if an ineligibility decision became final, I think that's what
13 you're asking.

14 55:27: Yeah, I'm asking are they really...

15 55:27: If the door reopens.

16 55:28: Because this is invalid, the rule--

17 55:29: Right.

18 55:29: --was invalid. So that's what I'm asking. Keith, what would you
19 do with that, if you thought about one of your clients that wasn't eligible for voc back
20 in the day? I mean, wouldn't you try to...

21 55:42: Well, yeah. No. I have an obligation. I essentially should have
22 availed myself to the same argument that Mr. Chu's attorney did while it was still in
23 play and while it was still under appeal. And once it's a final done deal, then I think
24 the only way you get back into it is if circumstances change and somehow there's
25 another eligibility determination or something like that. I'm not sure how likely that

1 would be. But I don't think that you'd be in a situation where you can go and reopen
2 a final decision and say, "Oh, I didn't make the Chu argument. I, you know, just
3 didn't think about that. But now that it's out there, I'd like it to be applied." That's not
4 how it works when things are final, so I don't think you'd be able--

5 56:23: So it probably goes back...

6 56:23: --to do that.

7 56:24: It probably goes back, Keith, wouldn't you then agree, that it
8 would be if you're still within your aggravation rights and for whatever reason that
9 claim reopens, aggravates, that's...

10 56:35: Yeah. I mean, in theory, a claim could reopen within your
11 aggravation rights and maybe you're not eligible, and your voc determination doesn't
12 go your way. And then maybe there's a subsequent reopening. And at that point,
13 then you think, oh, I should make the Chu argument and argue all this stuff applies.
14 I mean, you'd have another bite of the apple, then. But once your first determination
15 is final, you're not going to be able to go back to the department and say, you know,
16 "Actually, I'd like this new Court case to apply." I mean, that wouldn't--it wouldn't
17 work that way. Once it's final, it's final.

18 57:07: Well, and as I ask these questions...

19 57:10: Unless there's...

20 57:10: When I ask these questions, I just want you all to know that I
21 usually--if a worker usually always, because they fall within the 80 percent rule,
22 always applies to construction because we have high-wage earners. So I'm asking
23 these questions not from a personal standpoint but for the state and everything that
24 we all have to do to--as a community. So that's why I'm asking these questions, so
25 that we're all paying attention to the impacts it could make across the board.

1 57:42: And what I was trying to get at when I was thinking you were
2 going down a different road was, if SDB for time loss was determined not eligible
3 because they didn't make a time frame or it wasn't subject, it wouldn't mean now
4 that they couldn't use that employment for vocational.

5 57:59: Correct. Correct.

6 58:02: That doesn't trump that.

7 58:03: Yeah. Got it.

8 58:10: I have a few housekeeping matters. But before I get to that,
9 any other thoughts on the issues that we discussed, fiscal impacts we discussed,
10 ideas, concerns? Okay.

11 So the housekeeping issues. The first one, we have a reference to
12 "temporary or seasonal", elsewhere we say "seasonal or temporary." So just making
13 it consistent. Issue number two is when talking about time of the injury, eliminating
14 the word "the" so it's "time of the injury."

15 And under--and then there's a--under three, I have create consistency
16 between paragraphs and subsections. So there are several areas where there's
17 inconsistencies. Under little (a), big (A), changing "is based" to "was based." The
18 term "was based" is also used in the rule, so making it consistent.

19 Under little (b) there, we've got make the following change under A--
20 little (a), big (A), "When the worker's regular employment is the job at injury and the
21 worker did not hold more than one job at the time of injury, and did not receive
22 unemployment insurance benefits during the 50 weeks to before the--52 weeks
23 before the injury," and then saying "use the" and getting rid of "the worker's average
24 weekly wage is." That is in part, again, just a consistency issue between the
25 different parts of the rule. And under little (a), we already have that you're supposed

1 to calculate the worker's average weekly wage as follows. And so that language is
2 kind of duplicative. And again, just creating consistency. Any concerns yet so far on
3 anything I've said?

4 So under Housekeeping Item #(3)(c), make the following change under
5 little (a), big (B). And again, it's similar. I do have it up on the screen in front of you.
6 But it is eliminating the term, "the worker's average weekly wage is calculated
7 using," and just saying "use the" instead. Again, the little (a) of the rule indicates that
8 you're supposed to calculate the worker's average weekly wage as follows. And that
9 would just make it more consistent between all the different subsections.

10 Under (d) up there, we've got make the following change under little
11 (a), big (C) and big (D), changing the word "if" to "when." If you look at our rule,
12 some of the subsections start with the word "when." Other subsections start with the
13 word "if." So just making it consistent between all of those.

14 (E) up on the screen there is creating an introduction paragraph in little
15 (b), similar to the introduction paragraph in (a). And it provides some proposed
16 language. "When paragraph (a) of the rule does not apply, calculate the worker's
17 average weekly wage as follows, then convert the adjusted weekly wage as
18 described in section (4) of this rule." And that's basically mimicking the language
19 that's used in little (a) to create, again, consistency between the different sections.

20 And this, I think we talked about this as an issue, but moving under (3)
21 of the rule, moving little (b), little (c), little (d) into big (A), big (B), big (C). Again, just
22 a structure issue similar to the structure under little (a) of the rule.

23 And then the last housekeeping item was creating consistency in the
24 newly created parts of subsection (b) by stating, "When the worker's regular
25 employment is the either 'job at injury' or 'job at aggravation,' and the worker either

1 held or did not hold more than one job at the time of injury,” use, and then providing
2 the calculation method. So essentially just creating consistency between the
3 languages used throughout the rule for the different calculation methods.

4 Any concerns about those consistency items? Housekeeping issues?

5 No?

6 62:37: You did a great job, Julia.

7 62:38: Yeah.

8 62:38: Thank you.

9 62:39: Both--in both this morning and the second...

10 62:41: Yeah. It's really tough.

11 62:42: Yeah. It's really tough work.

12 62:44: I appreciate everyone coming and...

13 62:46: I have to say,--

14 62:47: Yes.

15 62:47: --I think that's been the--this has been the hardest set of
16 rulemaking meetings I've been involved with for a very long time, as far as
17 brainpower goes.

18 62:54: That makes me feel better, anyway.

19 62:58: I've got a headache. I need some ibuprofen.

20 63:01: I forgot my Advil this morning. I'm regretting it.

21 63:07: And just like I said, oxygen, we just need oxygen.

22 63:08: Yes, yes. Very well. No, I appreciate everyone coming and all
23 your feedback. We really--it's very helpful, so thank you so much. We will adjourn.

24 Thank you, everyone on the telephone.

25 63:19: Thanks, all.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

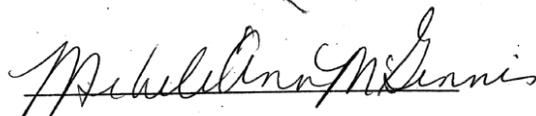
63:21: Thank you, Keith. I'm going to hang up.

(WHEREUPON, the proceedings were adjourned.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I hereby certify that the foregoing proceeding was transcribed from the recorded audio on 5/15/2018 and that I attest that this transcript is a true and accurate record of the proceeding to the best of my ability.


Michelle Ann McInnis
Court Reporter