

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CLAIMS EVALUATION, DETERMINATION AND RECONSIDERATION**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 030 (Temporary Rules)**

EFFECTIVE FEBRUARY 1, 1999

Fees and Penalties within the Reconsideration Proceeding

436-030-0175 (1) An insurer failing to provide information or documentation as set forth in OAR 436-030-0135, 0145 and 0165 may be assessed civil penalties pursuant to OAR 436-030-0580. Failure to comply with the requirements set forth in OAR 436-030-0135, 0145 and 0165 may also be grounds for extending the reconsideration proceeding pursuant to ORS 656.268(6).

(2) If upon reconsideration of a Notice of Closure there is an increase of 25 percent or more in the amount of permanent disability compensation from that awarded by the Notice of Closure, and the worker is found to be at least 20 percent permanently disabled, the insurer shall be ordered to pay the worker a penalty equal to 25 percent of the increased amount of permanent disability compensation. If an increase in compensation results from the promulgation of a temporary emergency rule, penalties will not be assessed. For claims with medically stationary dates or statutory closure dates on or after June 7, 1995, if the increase in compensation results from new information obtained through a medical arbiter examination, the penalty shall not be assessed.

(3) For the purpose of section (2) of this rule, a worker who receives a total sum of 64 degrees of scheduled or unscheduled disability or a combination thereof, shall be found to be at least 20 percent disabled. As an illustration, a worker who receives 20 percent disability of a great toe (3.6 degrees) is not considered 20 percent permanently disabled because the great toe is only a portion of the whole person. A worker who is 100 percent permanently disabled is entitled to 320 degrees of disability. A worker who receives 64 degrees (20 percent of 320 degrees), whether scheduled, unscheduled or a combination thereof, shall be considered the equivalent of at least 20 percent permanently disabled for the purposes of this rule.

(4) Attorney fees may only be authorized when a Request for Reconsideration is submitted by an attorney representing a worker or the attorney provides documentation of representation, and a valid signed retainer agreement has been filed with the department. The reconsideration order shall order the insurer to pay the attorney 10 percent out of any additional compensation awarded but not more than the maximum attorney fee allowed in OAR 438-015-0040(1) and (2) and OAR 438-015-0045, effective [January 1, 1997] **February 1, 1999**. "Additional compensation" includes an increase in a permanent or temporary disability award.

Stat. Auth.: ORS 656.726(3)(a)

Stats. Implemented: ORS 656.268(4)(g), (6)(c)

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