



What new Oregon rules are now in effect in light (or the wake!) of *Brown*?

By Kelly J. Niemeyer • March 17, 2015

The Oregon Workers' Compensation Division (WCD) recently adopted amendments to the administrative rules regarding claim closure and impairment that became effective March 1, 2015. Failure to follow these recent changes could result in vulnerable claim closures subject to rescission. Note, this summary is not exhaustive and only highlights some of the recent rule changes.

Claim Closure & Disability Ratings Post-Brown – OAR 436-030 & 035

The *Brown v. SAIF* case (262 Or App 640, May 2014) should be common knowledge at this point for claims administrators. In short, *Brown* has changed the focus of a "compensable injury" from that of the actual conditions accepted under the claim to an incident-based understanding. In other words, "compensable injury" and "accepted condition" are no longer interchangeable in the context of combined condition processing. Although *Brown* is not settled law (the *Brown* decision has been appealed to the Oregon Supreme Court) the WCD has nevertheless promulgated new rules to incorporate *Brown's* holding.

Determining medically stationary status post-Brown – OAR 436-030-0035

The rule now includes language that expands upon the definition of "medically stationary" in initial injury claims requiring that "conditions directly resulting from the work injury" are either medically stationary or stable. In other words, a statement from the claimant's attending physician or a preponderance of the medical evidence stating that the accepted conditions and their direct medical sequela is stationary is no longer good enough for purposes of claim closure. All conditions that directly resulted from the injury incident (even if not accepted) have to be deemed stationary.

Requirements for claim closure relative to impairment post-Brown – OAR 436-030-0020

The rule now states there must be "sufficient information" in the record to determine the extent of permanent disability. This is accomplished by a qualifying statement that there is no permanent impairment or a qualifying closing report. Importantly, the qualifying statement must be supported by the medical record.

In addition, a qualifying statement of no permanent impairment now

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New Oregon rules in effect now (continued)

requires the attending physician to state there is no reasonable expectation of permanent impairment caused by the accepted condition(s), the direct medical sequela of the accepted condition(s) or “a condition directly resulting from the work injury.” Likewise, a qualifying closing report relative to an initial injury claim must address conditions directly resulting from the work injury even if not accepted. The same rationale applies for permanent work restrictions. The physician must be able to state there are no permanent restrictions relative to conditions directly resulting from the work injury.

General principles “Eligibility for Impairment” – OAR 436-035-0007

The new rule now in effect expands upon what qualifies as eligible for impairment noting the loss is directly caused “in any part by the compensable injury.” This addition, arguably allows for the inclusion of conditions not specifically accepted under the claim.

Is there a light at the end of the tunnel?

Brown is under appeal and therefore there is a possibility the decision will be reversed. Arguably, the WCD’s new rules relative to Brown are premature. However, as they are now in effect we must abide by these rules when closing claims.

Notably, a Senate Bill has been sponsored by the Committee on Business & Transportation for the 2015 legislative session that could combat the effect of Brown. SB 649 appears to combat the Brown definition of compensable injury by defining a compensable injury instead as “one or more conditions resulting from an accidental injury...” The practical effect of this could be to bring the definition of a compensable injury back to one that is contingent on the accepted conditions rather than whatever is determined to have resulted from the injury incident even if not accepted. It is unclear that such a bill would gain traction in the Oregon legislature. As such, working within the confines of the rules as they presently stand is the best course of action for insurers trying to stay in compliance with the ever-shifting landscape of the Oregon Administrative Rules.

Final thoughts

- Claim closure just got a lot more complicated. Feel free to contact me directly or consult your defense counsel if you are unclear about the new rules in the context of closing your claims.
- IME cover letters must be geared to address these new rules. The attorneys at Reinisch Wilson Weier PC can be of help in asking the relevant and necessary questions to obtain the information you need to close a claim.
- Information from the attending physician must likewise be geared to address these new rule changes. Consult with your defense counsel. ■

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