



Oregon

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Department of Consumer and Business Services
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Dec. 22, 2014

To: Insurers, third-party administrators, attorneys, injured workers, and WCD all staff

Subject: Spurger v. SAIF and interpretation of repetitive use

Industry Notice

SUMMARY: This industry notice explains the Workers' Compensation Division's (WCD) implementation of *Spurger v. SAIF*, 266 Or App 183 (2014), as well as WCD's interpretation of when a worker is "significantly limited in the repetitive use" of a body part under OAR 436-035-0019(1).

BACKGROUND: Under OAR 436-035-0019(1), "[a] worker is entitled to a 5 percent chronic condition impairment value for each applicable body part, when a preponderance of medical opinion establishes that, due to a chronic and permanent medical condition, the worker is **significantly limited in the repetitive use**" of one or more of the listed body parts.

In *Spurger*, the Court of Appeals held that, when evaluating whether a worker is "significantly limited in the repetitive use" of a body part, the relevant inquiry is whether the limitations described in the medical-opinion evidence show that the worker is significantly limited, and not whether a physician described the limitations as "significant" according to the physician's understanding of the term. 266 Or App at 192. While *Spurger* addressed an order issued by the Workers' Compensation Board (WCB), the WCD's evaluation of whether a worker is "significantly limited in the repetitive use" of a body part is controlled by the court's determination of the proper analysis under OAR 436-035-0019(1).

ANALYSIS: This notice explains how WCD will determine "whether the limitations described in the medical-opinion evidence show that the worker is significantly limited" under OAR 436-035-0019(1). "Significantly limited" is defined by neither rule nor statute. Absent statutory and administrative definition, we look to a term's plain meaning. "Significant" is defined, most relevantly, as "having or expressing a meaning; meaningful" or "important; notable; valuable." See *The American Heritage Dictionary, New College Edition*; see also, *Webster's II New College Dictionary*. "Limited" is defined as "confined or restricted." *Id.*

In applying those definitions to OAR 436-035-0019(1), it is necessary to establish when a confinement or restriction to the "repetitive use" of a body part is important, meaningful, or notable. In the context of work restrictions, a repetitive use limitation is generally compensable when the worker is limited to "frequent" repetitive use or action. Although OAR 436-035-0019(1) provides an award for impairment, WCD finds it reasonable to adopt an equivalent standard for the limited purpose of defining when a confinement or restriction is important, meaningful, or notable. Accordingly, WCD will interpret confined or restricted ("limited") "repetitive use" under OAR 436-035-0019(1) as important, meaningful, or notable ("significant") when the



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worker is limited to frequent use of the body part. Consistent with the use of the term in the context of work restrictions, frequent means the ability to use the body part for up to two-thirds of a period of time.

IMPLEMENTATION: Based on the above analysis, WCD interprets the relevant inquiry under OAR 436-035-0019(1) as follows: *Because of a permanent and chronic condition caused by the compensable injury, is the worker unable to repetitively use the body part for more than two-thirds of a period of time?*

Any frequency is permissible as long as usage is repeated. Any duration is permissible and any intensity is permissible. However, the confinement or restriction must be caused in part by a permanent and chronic condition resulting from the compensable injury. For example, if a worker is unable to repetitively use a body part for more than two-thirds of a 24-hour period, but the inability is not caused by the compensable injury, the worker does not qualify for a chronic condition impairment value.

WCD will apply the above inquiry to any Notice of Closure received starting Dec. 23, 2014.

John Shilts, Administrator
Workers' Compensation Division