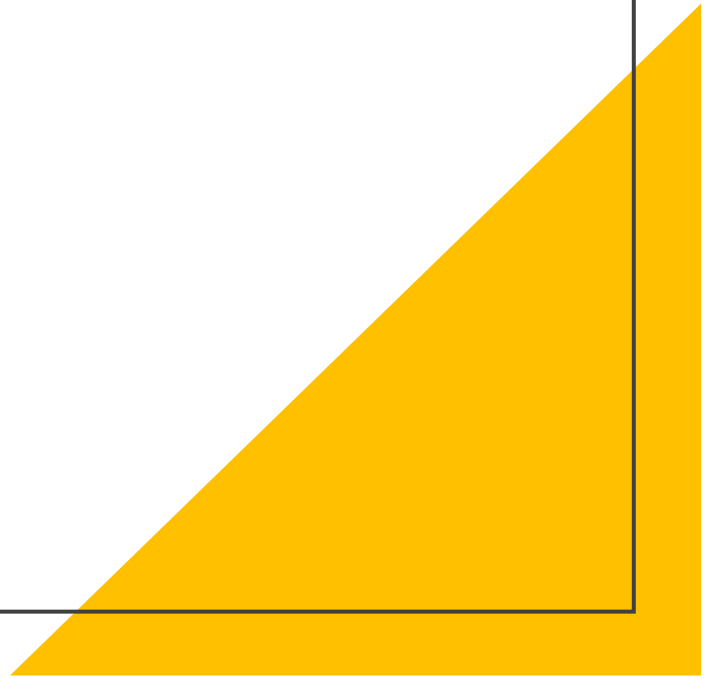


Michelle L. Knowlden

75 Van Natta 505 (2023)



Worker Requested Medical Examination (WRME)

- Governed by ORS 656.325(1)(e) and OAR 436-060-0147(1)
 - Entitle worker to examination by physician selected by the Director of DCBS at the carrier's expense
- Three Requirements for Entitlement to a WRME
 - The worker has made a timely request for hearing on a denial of compensability
 - The denial is based on the report of one or more independent medical examinations
 - The attending physician or authorized nurse practitioner does not concur with the report or reports

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- Whether denial is based on one or more independent medical examination (IME) reports
- Board decisions on this requirement
 - Board has held that IME means an “in-person” examination requested by a carrier pursuant to ORS 656.325(1)(a) and not a records review. Denise Amos, 65 Van Natta 2100, 2102 (2013)
 - Board has held that denial must be “in fact” based on an in-person examination. Julie A. Dellinger, 72 Van Natta 35 (2020); Lorinda A. Gauthier, 70 Van Natta 96 (2018)

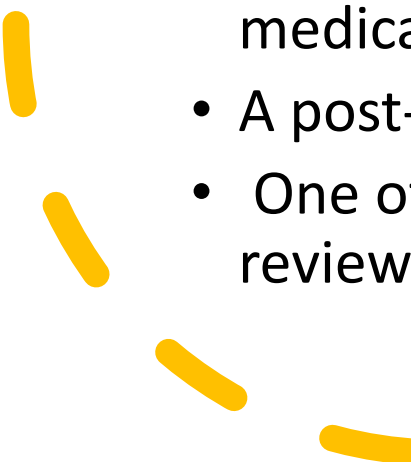
Based on an
in-person
examination
“in-fact”

- Lorinda L. Gauthier, 70 Van Natta 96 (2018)
 - Board held that denial was not “based on” an in-person examination when the, although the denial stated that it was based on an IME, the denial was in-fact based on a record review.
- Julie Dellinger, 72 Van Natta 35 (2020)
 - Board held that although the carrier relied on a post-denial IME to support its denial, the denial was not “based on” the post-denial IME.



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- Facts

- 3 denials of new or omitted medical condition claims related to the worker's 2019 work injury
 - Denials were proceeded by record reviews and records from worker's treating physician
 - 2 denials stated that they were "based in whole or in part on an independent medical examination"
 - A post-denial IME was conducted.
 - One of the record reviews was scheduled as an in-person IME, but a record review was performed instead due to the Covid-19 pandemic
- 


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- *Denise Amos*, 65 Van Natta 2100 (2013)
 - No WRME entitlement insofar as denials were based on records reviews
- *Lorinda L. Gauthier*, 70 Van Natta 96 (2018)
 - No WRME entitlement although denials stated that they were based on an IME because they were not “in fact” based on an IME
- *Julie A. Dellinger*, 72 Van Natta 35 (2020)
 - No WRME entitlement although the carrier obtained an IME after the denials had issued, because the denials could not have been “based on” the post-denial IME



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- Acknowledged worker's argument that in-person examination was not available due to the Covid-19 pandemic
 - Board may not relax a statutory requirement for extraordinary circumstances.
- 

Board Member Ceja, Concurring

- Board Member Ceja agreed that the worker had not established her entitlement to a WRME under the requirements of ORS 656.325(1)(e) as previously interpreted by the Board
- Expressed concern that Board decisions substantially limit injured workers' access to WRMEs, which can assist in leveling the playing field for injured workers who have fewer financial resources than carriers
- Prior Concurrences by Board Member Ousey addressing WRMEs
 - Thomas S. Cardoza, 73 Van Natta 561 (2021)
 - Kevin J. Siegrist, 72 Van Natta 491 (2020)

Board Member Ceja Concurring



- ORS 656.325(1)(e) is focused on providing a comparable examination to workers when a carrier bases a denial on an IME
- Policy concerns regarding providing workers with comparable resources as those available to carriers also apply to record reviews
- Suggests amendment to ORS 656.325(1)(e) to allow workers to receive comparable record reviews at carriers' expense when carrier bases denial on a records review

Board Member Ceja, Concurring



- Carrier has significant flexibility in utilizing post-denial IME without creating entitlement to WRME
- Distinction between a denial being “based on” an IME and an IME being used to support the denial in litigation does not support purpose of providing workers with comparable examination to that obtained by the carrier – suggests statute be revised to address