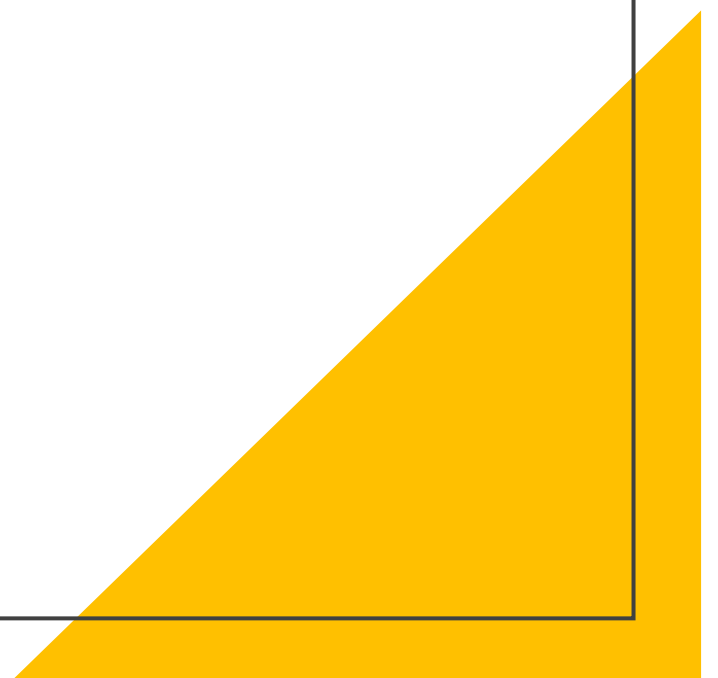


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Worker Requested Medical Examination (WRME)

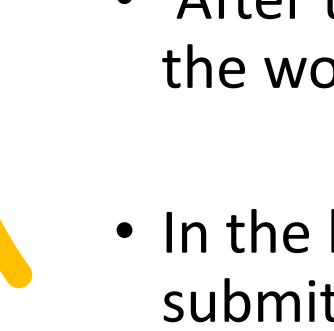
- Governed by ORS 656.325(1)(e) and OAR 436-060-0147(1)
 - Entitle worker to examination by physician selected by the Director of DCBS at the carrier's expense
- Three Requirements for Entitlement to a WRME
 - The worker has made a timely request for hearing on a denial of compensability
 - The denial 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

Whether the denial is based on one or more independent medical examination (IME) reports

- Board decisions on this requirement
 - *Julie Dellinger*, 72 Van Natta 35 (2020)
 - *Thomas S. Cardoza*, 73 Van Natta 561 (2021)
 - *Michelle L. Knowlden*, 75 Van Natta 505 (2023)
- Board held that a denial cannot be “based on” an independent medical examination report if the examination is conducted after the denial



Thomas S. Cardoza, 75 Van Natta 505 (2023)

- Facts
 - Worker filed a workers' compensation claim for a low back injury and the claim was denied by the workers' compensation carrier.
 - After the denial, a doctor performed an independent medical examination on the worker at the carrier's request and issued a report.
 - In the hearing proceeding before the Administrative Law Judge, the carrier submitted the report as evidence in support of the denial.
- 

Thomas S. Cardoza, 75 Van Natta 505 (2023)

- The Board acknowledged that the independent medical examination had been admitted into evidence at hearing as support for the carrier's denial.
- The Board held that the denial could not have been “based on” the independent medical examination report because it took place after the denial had issued.

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- The Court reversed the Board
- The text and context of ORS 656.325(1)(e) do not limit WRME eligibility to circumstances where an independent medical examination was performed before the denial
- The purpose of the statute is to provide the worker with an additional medical opinion where the medical reports are not in concurrence. That purpose would be frustrated by an interpretation that limits WRMEs to circumstances where the IME takes place before the denial, particularly where the carrier admits the post-denial report as evidence
- Where the carrier submits the post-denial IME report as evidence at the hearing to determine whether the denial should be upheld, the denial is based on the IME report

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- Denial of compensability is based on an IME for purposes of ORS 656.325(1)(e) if denial is based on the IME at the time the workers' WRME request was decided, not when hearing request is filed or when the denial issues.
- Denial of compensability is not just the initial written notice of denial but continues throughout the claim.
- Limiting a worker's right to a WRME solely because of the timing of the IME would be inconsistent with the purpose of the statute.

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- The carrier's compensability denial was based on the IME at the time the worker's WRME request was decided because the IME report supported the denial and the carrier had confirmed that it intended to use the IME report at the hearing to support its continued denial.

Questions?