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2022 Amendment to ORS 656.268(1)(a)

- “[A] physician or nurse practitioner may not retroactively determine a worker to be medically stationary more than 60 days prior to the date of the determination”
- Applies to “all claims that exist on, or arise on or after January 1, 2024, regardless of the date of injury or the date on which the claim is filed” unless the dispute was finally determined before January 1, 2024.

Facts

- On April 6, 2023, the worker's attending physician determined that the worker was medically stationary on August 22, 2020.
- The worker's compensation insurer closed the claim based on an August 22, 2020, medically stationary date.
- Before the Board, the worker argued that the 2022 amendments to ORS 656.268(1)(a) applied.

Questions for the Board

- 1. Did the 2022 amendment apply to a medically stationary determination made in 2023, before the January 1, 2024, applicability date?
- 2. If so, what was the effect of the amendment's application on the medically stationary determination?
 - Was the medically stationary determination wholly invalid; or
 - Would the medically stationary date be 60 days before the date of the determination?

Question 1 – Do the Amendments Apply?

- The Board concluded that the 2022 amendments applied.
- The claim existed on January 1, 2024. The claim was closed on April 12, 2023, and the worker requested the hearing in the current litigation on October 11, 2023.
- The medically stationary issue was pending before the Board, so was not finally determined before January 1, 2024.

Question 2 – How Does the Amendment Apply?

- ORS 656.268(1)(a) does not invalidate a physician's medically-stationary determination in its entirety.
- Rather, it reduces the amount of time a physician can backdate the worker's medically stationary date to 60 days.
- Consistent with Workers' Compensation Division rule, OAR 436-030-0035(9), which provides: that: "If the medically stationary date * * * is more than 60 days prior to the date of the determination, the medically stationary date is the 60th date prior to the date of the determination."

Applied to the Current Case

- The Board modified the medically stationary date to 60 days before the attending physician's April 6, 2023, determination, or February 5, 2023.