

In the Matter of the Compensation of  
**TRICIA A. BATCHLER, Claimant**  
WCB Case No. 11-03982  
ORDER ON REVIEW

Ronald A Fontana, Claimant Attorneys  
Eric Miller LLC, Defense Attorneys

Reviewing Panel: Members Weddell, Langer, and Herman. Member Langer dissents in part.

The self-insured employer requests review of that portion of Administrative Law Judge (ALJ) Kekauoha's order that awarded temporary disability during claimant's participation in an "authorized training program" (ATP). In her respondent's brief, claimant challenges the ALJ's decision not to assess penalties and attorney fees for allegedly unreasonable claim processing. On review, the issues are jurisdiction, temporary disability, penalties, and attorney fees.

We adopt and affirm the ALJ's order with the following supplementation.

After claimant filed an occupational disease claim for bilateral hand and arm pain, the employer accepted disabling bilateral forearm and hand tenosynovitis. The employer first closed the claim on July 11, 2007, with temporary and permanent disability awards.

On March 31, 2008, claimant began an ATP, and the employer began paying TTD benefits. The ATP was extended and the employer paid temporary disability benefits through August 28, 2009. On June 30, 2010, a Notice of Closure awarded temporary disability from March 31, 2008 through August 28, 2009.

On July 20, 2010, the employer accepted, as new/omitted medical conditions, overuse syndrome and tendonitis, bilateral arms. The employer reopened the claim. On July 27, 2010, pursuant to an approved stipulation, the employer agreed to pay claimant temporary disability benefits from August 29, 2009 through June 30, 2010.

The employer issued another Notice of Closure on November 17, 2010, which awarded temporary disability from March 5, 2010 through October 15, 2010.

The employer referred claimant to Ms. Broten, a vocational counselor, for evaluation of eligibility for vocational services. (Ex. 27-1). Ms. Broten noted that a new condition had been accepted. (Ex. 28-2). Considering information in a Transferrable Skills Analysis, a current wage determination, and claimant's inability to return to work in a position that was suitable for her within the direct employment market at a wage that pays 80 percent of her adjusted weekly wage, Ms. Broten recommended that claimant be made eligible for vocational services on January 18, 2011. (Ex. 28-17). Ms. Broten issued a Notice of Eligibility for Vocational Assistance on January 28, 2011. (Ex. 28A-1). On June 27, 2011, Ms. Broten submitted a report in support of another ATP to the employer. (Ex. 31-2). In her report, Ms. Broten noted that claimant had a new accepted condition, which had lent itself to a new eligibility evaluation. (Ex. 31-3).

On July 29, 2011, the employer authorized a second ATP beginning July 29, 2011. (Ex. 31A-1). The employer did not pay temporary disability benefits during this ATP. Claimant requested a hearing, asserting her entitlement to TTD during the second ATP.

Reasoning that the payment of temporary disability benefits related to vocational assistance was a "matter concerning a claim," the ALJ found that the Hearings Division had jurisdiction over the matter. Determining that claimant was entitled to a new period of temporary disability during her second ATP, the ALJ awarded TTD from July 26, 2011. However, finding that the employer had a legitimate doubt regarding its liability for temporary disability during that period, the ALJ declined to assess penalties and attorney fees for unreasonable claim processing.

On review, the employer contends that we lack jurisdiction because the temporary disability dispute is related to vocational assistance. Alternatively, the employer argues that claimant is not entitled to TTD during the second ATP because she had already received her statutory maximum TTD under ORS 656.340(12) during the first ATP. In her respondent's brief, claimant also seeks a penalty and attorney fee award, asserting that the employer had no legitimate doubt as to its obligation to pay TTD during the second ATP. As explained below, we agree with the ALJ's conclusions.

### Jurisdiction

The employer contends that jurisdiction over this matter rests with the Director. In doing so, the employer cites ORS 656.340(16), which authorizes the

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Director to adopt rules concerning vocational assistance issues, including a dispute resolution process.<sup>1</sup> We disagree with the employer's contention.

The respective jurisdiction of the Board and the Director are defined by ORS 656.704. "Matters concerning a claim" are within the Board's jurisdiction, whereas "a matter other than a matter concerning a claim" is within the Director's jurisdiction. ORS 656.704(1), (2)(a); *see also AIG Claim Servs., Inc. v. Cole*, 205 Or App 170 (2006) (medical services disputes are in the Board's jurisdiction if they are "matters concerning a claim," but in the Director's jurisdiction if they are not "matters concerning a claim"). ORS 656.704(3)(a) defines "matters concerning a claim" as "those matters in which a worker's right to receive compensation, or the amount thereof, are directly in issue," but specifically excludes from that definition "disputes arising under ORS 656.340."

ORS 656.704(3)(a) provides that "disputes arising under ORS 656.340" are not "matters concerning a claim" in the Board's jurisdiction. Furthermore, ORS 656.340(16)(b) provides that disputes "regarding vocational assistance" are in the Director's jurisdiction. Nevertheless, as explained below, the matter that prompted claimant's hearing request was not a dispute "regarding vocational assistance" and did not "aris[e] under ORS 656.340." Instead, claimant's hearing request involves her entitlement to temporary disability compensation, and therefore falls within the general category of "matters concerning a claim," which are within our jurisdiction. *See Shawna L. Cooley*, 63 Van Natta 1667 (2011) (temporary disability is a "matter concerning a claim").

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<sup>1</sup> ORS 656.340(16) provides, in relevant part:

"(a) The Legislative Assembly finds that vocational rehabilitation of injured workers requires a high degree of cooperation between all of the participants in the vocational assistance process. Based on this finding, the Legislative Assembly concludes that disputes regarding eligibility for and extent of vocational assistance services should be resolved through nonadversarial procedures to the greatest extent possible consistent with constitutional principles. The director shall adopt by rule a procedure for resolving vocational assistance disputes in the manner provided in this subsection.

"(b) If a worker is dissatisfied with an action of the insurer or self-insured employer regarding vocational assistance, the worker must apply to the director for administrative review of the matter. Application for review must be made not later than the 60th day after the date the worker was notified of the action. The director shall complete the review within a reasonable time."

The payment of temporary disability compensation for a worker actively engaged in training after a claim closure is provided for by ORS 656.268(10).<sup>2</sup> ORS 656.340, by contrast, provides for vocational evaluation, help in directly obtaining employment, and training, but does not provide for the payment of temporary disability related to such assistance. ORS 656.340(7). Although ORS 656.340(12) states a maximum period of temporary disability compensation for a worker actively engaged in training, it does not provide for the payment of such benefits. Rather, it indicates that its limitation applies “[n]otwithstanding ORS 656.268.” Thus, “training-related” temporary disability benefits are provided for by ORS 656.268(10), rather than by ORS 656.340.

Here, claimant’s hearing request did not raise a vocational assistance issue. It is undisputed that claimant was participating in an ATP under ORS 656.340. Moreover, claimant does not raise further entitlement to vocational assistance under ORS 656.340. Rather, this dispute directly relates to claimant’s entitlement to temporary disability compensation under ORS 656.268(10), which is expressly cited in ORS 656.340(12). As a dispute “in which a worker’s right to receive compensation, or the amount thereof,” it is a “matter concerning a claim.”

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<sup>2</sup> ORS 656.268(10) states:

“If, after the notice of closure issued pursuant to this section, the worker becomes enrolled and actively engaged in training according to rules adopted pursuant to ORS 656.340 and ORS 656.726, any permanent disability payments due for work disability under the closure shall be suspended, and the worker shall receive temporary disability compensation and any permanent disability payments due for impairment while the worker is enrolled and actively engaged in the training. When the worker ceases to be enrolled and actively engaged in the training, the insurer or self-insured employer shall again close the claim pursuant to this section if the worker is medically stationary or if the worker’s accepted injury is no longer the major contributing cause of the worker’s combined or consequential condition or conditions pursuant to ORS 656.005(7). The closure shall include the duration of temporary total or temporary partial disability compensation. Permanent disability compensation shall be redetermined for work disability only. If the worker has returned to work or the worker’s attending physician has released the worker to return to regular or modified employment, the insurer or self-insured employer shall again close the claim. This notice of closure may be appealed only in the same manner as are other notices of closure under this section.”

The ALJ and the parties cite to ORS 656.268(9). However, in 2011, the legislature renumbered ORS 656.268(9) to ORS 656.268(10), but did not otherwise change it, effective January 1, 2012. Or Laws 2011, ch 99, §§ 1, 5.

The specific language of ORS 656.268(10) provides further support for our reasoning. ORS 656.268(10) provides that, when a worker ceases to be enrolled and actively engaged in training, the carrier shall close the claim and specify the duration of temporary disability compensation if the worker is medically stationary or if the worker's accepted injury is no longer the major contributing cause of the combined or consequential condition. Such a closure "may be appealed only in the same manner as are other notices of closure under [ORS 656.268]." Those procedures involve requesting reconsideration by the Director and, if a party objects to the reconsideration order, requesting a hearing under ORS 656.283. ORS 656.268(5)(c), (6)(g). ORS 656.283, in turn addresses the hearing rights on matters concerning a claim. Thus, the text of ORS 656.268(10) identifies a dispute regarding "training-related" temporary disability as a "matter concerning a claim" subject to our jurisdiction. See *Talley v. BCI Coca Cola Bottling*, 184 Or App 129, 137 (2002), *recons*, 185 Or App 521 (2002).<sup>3</sup>

In conclusion, the present dispute directly relates to claimant's "right to receive compensation, or amount thereof" under ORS 656.268(10), rather than claimant's right to vocational assistance under ORS 656.340. Consequently, it is a "matter concerning a claim" over which we have jurisdiction.

### Temporary Disability

As noted above, ORS 656.268(10) provides for the payment of temporary disability compensation while a claimant is "enrolled and actively engaged in" training. However, ORS 656.340(12) provides:

"Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary disability compensation for a maximum of 16 months. The insurer or self-insured employer may voluntarily extend the payment of temporary disability compensation to a maximum of 21 months. The costs related to vocational

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<sup>3</sup> The *Talley* court reasoned that under former ORS 656.268(8) (1991) (the predecessor to current ORS 656.268(10)), when a claim was reopened for vocational assistance and the claimant ceased to be enrolled in the training program, the processing of such a claim was ultimately subject to the Board's jurisdiction under ORS 656.283. 184 Or App at 137. As the employer notes, the statutory framework has since been amended. Nevertheless, as discussed above, our examination of the current statutory framework, including the text of current ORS 656.268(10), establishes that "training-related" temporary disability remains a matter concerning a claim under ORS 656.283(1) and, as such, ORS 656.704(3)(a) and within our jurisdiction.

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assistance training programs may be paid for periods longer than 21 months, but in no event may temporary disability benefits be paid for a period longer than 21 months”

Similarly, OAR 436-120-0443(13) provides that “temporary disability compensation is limited to 16 months unless extended to 21 months by the insurer. In no event will temporary disability compensation during training be paid for more than 21 months.”

The employer contends that these provisions limit claimant’s entitlement to temporary disability during the second ATP. Based on the following reasoning, we disagree.

When interpreting a statute, our first step is to examine its text and context. *State v. Gaines*, 346 Or 160, 171 (2009). Terms of common usage are generally given their plain, natural, and ordinary meaning. *Id.* at 175; *PGE v. Bureau of Labor & Indus.*, 317 Or 606, 611 (1993).

The 16-month limitation in the first sentence of ORS 656.340(12) applies to temporary disability compensation for workers “actively engaged in training.” The 21-month limitation in the second sentence of ORS 656.340(12) applies to a carrier’s voluntary extension of the payment of such benefits. The 21-month limitation in the third sentence of ORS 656.340(12) applies to “a period” in which such benefits are paid. Considering these provisions in context, we conclude that the 16- or 21-month limitation on the payment of “training-related” temporary disability applies to each “period” in which a worker is “actively engaged in training.” Therefore, the duration of “training-related” temporary disability benefits in one “period” in which a worker “actively engage[s] in training” does not limit a worker’s eligibility for such benefits in a subsequent “period” in which he or she “actively engage[s] in training.”

Here, claimant was initially “actively engaged in training” from March 21, 2008 through September 22, 2009. The employer then closed the claim, reopened the claim to process the new/omitted medical conditions, and reclosed the claim. Thereafter, in January 2011, claimant was found eligible for further vocational assistance, and the employer approved the second ATP beginning July 26, 2011. Claimant then became “actively engaged in training” again on July 26, 2011. Thus, claimant was not “actively engaged in training” during the 22 months between the end of the first ATP and the beginning of the second ATP.

Applying ORS 656.340(12), the issue becomes whether both ATPs were in the same “period,” during which claimant was “actively engaged in training,” or whether the second ATP was a new “period” during which claimant was “actively engaged in training.” We conclude that it was the latter.

OAR 436-120-0003(3) provides that the reopening of a claim to process a newly accepted condition is considered a new claim for purposes of vocational assistance.<sup>4</sup> This language supports the proposition that a claimant’s entitlement to benefits related to vocational assistance begins anew, and such entitlement is therefore independent of previous receipt of such benefits, when a claim that has been closed is reopened to accept a new/omitted medical condition.

Thus, OAR 436-120-0003(3) effectively defines a “period,” for purposes of training-related temporary disability benefits, as ending, and a new “period” beginning, with a claim for aggravation or reopening a claim to process a newly accepted condition. Such a definition is consistent with the text of the enabling statute. Further, we are unaware of any contrary legislative history.<sup>5</sup> *See also Gaines*, 346 Or at 171-72 (regardless of whether there is ambiguity in the text of a statute, the second step of interpreting the statute includes consideration of its legislative history).

This approach is also consistent with the context in which “training-related” temporary disability benefits are paid. ORS 656.268(10) requires the payment of such benefits where the worker becomes enrolled and actively engaged in training after a Notice of Closure has been issued. After the worker ceases to be enrolled and actively engaged in such training, pursuant to ORS 656.268(10), the carrier must issue another Notice of Closure if the worker is medically stationary or the

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<sup>4</sup> OAR 436-120-0003(3) provides: “Under these rules a claim for aggravation or reopening a claim to process a newly accepted condition will be considered a new claim for purposes of vocational assistance eligibility and vocational assistance, except as otherwise provided in these rules.”

<sup>5</sup> Although the employer cites legislative history indicating that ORS 656.340(12) was enacted to limit the expense of vocational training, the administrative rules and our interpretation of the statute preserve limits on the payment of “training-related” temporary disability benefits. This framework does not allow a claimant to receive more than 21 months of “training-related” temporary disability benefits before a claim is reopened for the processing of an aggravation or newly accepted condition, nor does it allow a claimant to receive more than 21 months of “training-related” temporary disability benefits after such an event. In other words, the administrative rules and our interpretation of the statute do not allow a claimant to receive “training-related” temporary disability benefits for a period longer than 21 months, and places defined limits on such periods. We are not aware of any legislative history indicating that the legislature intended different limits on the receipt of “training-related” temporary disability benefits.

accepted injury is no longer the major contributing cause of the combined or consequential conditions pursuant to ORS 656.005(7). Each such Notice of Closure states the duration of temporary disability. ORS 656.268(5)(a)(B).

Thus, where a claimant has been awarded “training-related” temporary disability by a Notice of Closure, and the claim is reopened for the acceptance and processing of a new/omitted medical condition, the reopening of the claim occurs after the Notice of Closure has already defined a period of “training-related” temporary disability. To consider the reopening of the claim to process the newly accepted condition to have begun a new “period,” for purposes of “training-related” temporary disability benefits is consistent with this scheme.

Turning to the present case, the employer issued a post-ATP Notice of Closure on June 30, 2010, which awarded “training-related” temporary disability for the “period” from March 31, 2008 through August 28, 2009. (Ex. 18C-1). When it reopened the claim to process the newly accepted conditions, it began a new “period” during which claimant could receive such benefits. Thus, after the claim was again closed, on November 17, 2010, and claimant became enrolled and actively engaged in training during the second ATP, on July 29, 2011, she was again entitled to “training-related” temporary disability under ORS 656.268(10).

The employer contends that claimant’s second ATP is not related to her newly accepted conditions. Instead, the employer contends that the second ATP is related to the same initial claim to which the first ATP related. Therefore, the employer contends that claimant’s eligibility for temporary disability benefits during the second ATP should be limited by her receipt of such benefits during the first ATP.

The employer referred claimant for the January 2011 eligibility determination because of the newly accepted conditions, and the second ATP resulted from that eligibility determination. (Ex. 31-3). Thus, the employer’s contention relates to a vocational assistance issue that has already been resolved.

Furthermore, the text of ORS 656.268(10) and OAR 436-120-0003(3) does not draw a distinction between vocational assistance related to the newly accepted condition and vocational assistance related to the previously accepted condition. To the contrary, OAR 436-120-0003(3) provides for the *reopening* of the claim for the processing of a newly accepted condition to be treated as a new claim for purposes of vocational assistance, without distinguishing between vocational assistance related to the newly accepted condition and vocational assistance related

to previously accepted conditions. Similarly, ORS 656.268(10) simply conditions temporary disability benefits on “enroll[ment] and active engage[ment] in training,” regardless of the condition to which that training relates.

Accordingly, under these circumstances, claimant’s entitlement to “training-related” temporary disability benefits during the second ATP is consistent with both ORS 656.340(12) and OAR 436-120-0443(13). Moreover, claimant’s entitlement to such benefits is not limited by her receipt of such benefits during the first ATP.

### Penalties/Attorney Fees

Under ORS 656.262(11)(a), if a carrier unreasonably delays or unreasonably refuses to pay compensation, the carrier shall be liable for an additional amount up to 25 percent of the amounts “then due.” The standard for determining an unreasonable resistance to the payment of compensation is whether, from a legal standpoint, the carrier had a legitimate doubt as to its liability. *Int’l Paper Co. v. Huntley*, 106 Or App 107, 110 (1991). If so, the refusal to pay is not unreasonable. “Unreasonableness” and “legitimate doubt” are to be considered in light of all the evidence then available to the carrier. *Brown v. Argonaut Ins.*, 93 Or App 588, 591 (1988).

Here, the employer contended that ORS 656.340(12) limited claimant’s training-related temporary disability benefits. Although we disagree with the employer’s position, it is a reasonable interpretation of the statutory language and not contrary to case precedent. Therefore, we find that the employer had a legitimate doubt about its liability for temporary disability benefits during claimant’s second ATP. See *Michael A. Ditzler*, 56 Van Natta 1819, 1823 (2004) (carrier’s position not unreasonable where there was no legal precedent interpreting the applicable statute at the time of its allegedly unreasonable claim processing). Therefore, we a penalty and attorney fee under ORS 656.262(11)(a) are not warranted.

Claimant’s attorney is entitled to an assessed fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant’s attorney’s services on review in response to the employer’s appellant’s brief is \$5,000, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant’s respondent’s brief), the complexity of the issue, and the value of the interest involved. Claimant’s counsel is not entitled to an attorney fee for services devoted to the penalty and attorney fee issues.

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ORDER

The ALJ's order dated October 28, 2011 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$5,000, payable by the employer.

Entered at Salem, Oregon on July 25, 2012

Member Langer dissenting in part.

The majority concludes that claimant is entitled to temporary disability compensation during her second authorized training program (ATP) because her claim had been reopened for the processing of a newly accepted condition. Because I interpret ORS 656.340(12) to limit the duration of "training-related" temporary disability without regard to whether a carrier has reopened a claim to process a newly accepted condition, I respectfully dissent.<sup>6</sup>

As the majority notes, ORS 656.268(10) provides for the payment of temporary disability compensation if, after a claim is closed, a worker becomes enrolled and actively engaged in an ATP. During that period, the worker shall receive temporary disability compensation, but any permanent disability payments due to work disability under the closure shall be suspended. ORS 656.268(10). When the worker ceases to be enrolled and actively engaged in the ATP, if the worker is medically stationary or the accepted injury is no longer the major contributing cause of the worker's combined or consequential conditions, the carrier shall close the claim again. *Id.* At that time, permanent disability compensation shall be redetermined for work disability. *Id.*

Whereas ORS 656.268(10) provides for the payment of "training-related" temporary disability benefits, such benefits are limited by ORS 656.340(12), which provides:

"Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary disability compensation for a maximum of 16 months. The insurer or self-insured employer may voluntarily extend the payment of temporary disability compensation to a

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<sup>6</sup> I agree with the majority's analysis regarding the jurisdiction issue.

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maximum of 21 months. The costs related to vocational assistance training programs may be paid for periods longer than 21 months, but in no event may temporary disability benefits be paid for a period longer than 21 months.”

The majority accepts that claimant’s “training-related” temporary disability benefits are limited to a period of 16 or 21 months. However, the majority reasons that when the employer reopened the claim to process the newly accepted conditions of overuse syndrome and tendonitis, it began a new “period” during which her active engagement in training entitles her to temporary disability for another 16 or 21 months.

I find no support in the statutory text and context for inserting in ORS 656.340(12) multiple “periods” of vocational training based on a reopening of a claim. The statutory text unambiguously sets the maximum limits on the payment of “training-related” temporary disability benefits without referencing any independent “periods” of the worker’s active participation in vocational training in the course of a claim. Further, ORS 656.340(12) does not imply such “periods” by cross-referencing statutes pertinent to aggravation claims or new or omitted medical condition claims and related claim reopening actions. *See* ORS 656.262(7); ORS 656.267; ORS 656.273. Moreover, the third sentence of ORS 656.340(12) specifically provides that the payment of temporary disability benefits “in no event” may exceed 21 months. Accordingly, in my view, the majority’s construction of ORS 656.340(12) violates the principle that in interpreting a statute, we may not insert what has been omitted by the legislature nor omit what the legislature has inserted. ORS 174.010; *Cayton v. Safelite Glass Corp.*, 231 Or App 644, 650 (2009).

Furthermore, the statutory context does not support finding a legislative intent to provide a new set of vocational assistance benefits upon every claim reopening. To the contrary, ORS 656.340(14)(a) provides that determination of eligibility for vocational assistance does not entitle all workers to the same type or extent of assistance. ORS 656.340(14)(c) provides that nothing in this section shall be interpreted to expand the availability of training under this section. These provisions demonstrate an intent to limit entitlement to training and related benefits to the specific parameters of the statute. In addition, while the legislature has amended ORS 656.340 on several occasions since the inception of the vocational assistance provisions in 1987, the language limiting the payment of temporary disability compensation in subsection (12) remains unchanged.

The majority finds support for its analysis in OAR 436-120-0003(3). That rule states: “Under these rules a claim for aggravation or reopening a claim to process a newly accepted condition will be considered a new claim for purposes of vocational assistance eligibility and vocational assistance, except as otherwise provided in these rules.”

It is axiomatic that an administrative agency may not, by its rules, amend, alter, enlarge, or limit the terms of a statute. *Cook v. Workers’ Comp. Dep’t*, 306 Or 134, 138 (1998). Nevertheless, my understanding of the Director’s rules, including OAR 436-120-0003(3), is consistent with my interpretation of ORS 656.340(12).

The principle that the reopening of a claim to process a newly accepted condition, or a claim for aggravation, is considered a “new claim for purposes of vocational assistance eligibility and vocational assistance” simply requires a carrier to process the claim. OAR 436-120-0003(3) does not, by itself, provide that a claimant is entitled to vocational assistance, which is addressed by other rules. If the claimant had been determined eligible for vocational assistance during the original claim opening, the carrier must consider, upon a reopening of the claim for aggravation or new or omitted medical conditions, whether claimant remains eligible for vocational assistance. That decision includes a determination of whether, subject to the limits (16 and 21 months) of ORS 656.340(12), any remaining benefits are available to the claimant. If the claimant had not received vocational assistance during the original claim opening, the carrier would make a new eligibility decision upon a reopening of the claim.

Consistent with ORS 656.340(12), the Director’s rules addressing the entitlement to vocational assistance benefits distinguish between “training-related” temporary disability compensation and “training costs.” These provisions mirror the statutory scheme. OAR 436-120-0443(12) provides that a worker “actively engaged in training must receive temporary disability compensation under ORS 656.268 and ORS 656.340.” Thus, this rule also incorporates the 16 or 21 month limitation on such benefits imposed by ORS 656.340(12). Similarly, OAR 436-120-0443(13) provides: “Temporary disability compensation is limited to 16 months unless extended to 21 months by the insurer. In no event will temporary disability compensation during training be paid for more than 21 months.”

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OAR 436-120-0443(14) provides that training costs may be paid for periods longer than 21 months and sets forth examples of reasons for extending training. This provision, however, is separate from and not applicable to “training-related” temporary disability compensation. *See* OAR 436-120-0443(12), (13).<sup>7</sup>

ORS 656.340(12) allows a carrier to provide voluntarily temporary disability compensation for up to 21 months of vocational training. Here, the employer paid more than 16 months of such benefits, but did not voluntarily extend them for the second ATP.<sup>8</sup> Under such circumstances, I conclude that the employer is not required to pay such benefits during the second ATP. Accordingly, I would reverse.

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<sup>7</sup> The record reflects that my interpretation of the applicable statutes and administrative rules is carried out in practice. *See* Ex. 13A-2, a vocational reviewer’s explanation to the parties that claimant would be entitled to “a total of 21 months of time loss for the life of the claim.”

<sup>8</sup> The employer paid “training-related” temporary benefits for approximately 17 months. (Ex. 18C-1).