

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

CRAIG MINNIEFIELD, *Applicant*

vs.

**STATE OF CALIFORNIA - DEPARTMENT OF CORRECTIONS INMATE CLAIMS,
legally uninsured; administered by STATE COMPENSATION INSURANCE
FUND/STATE CONTRACT SERVICES, *Defendants***

**Adjudication Number: ADJ11198797
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on September 17, 2021, wherein the WCJ found in pertinent part that applicant's December 28, 2014 injury caused 33% permanent disability.

Applicant contends that based on the reports and the May 19, 2021 deposition testimony of orthopedic qualified medical examiner (QME) Nicole Chitnis, M.D., the injury caused 44% permanent disability.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to his left shoulder while employed by defendant as an inmate laborer on December 28, 2014. He underwent a course of treatment that included a left shoulder surgery on March 16, 2016. (Joint Exh. BB, Dr. Chitnis, August 28, 2018, p. 6, record review.)

QME Dr. Chitnis evaluated applicant on June 12, 2018, and she re-evaluated applicant on January 6, 2020. (Joint Exh. EE, Dr. Chitnis, February 5, 2020.) Regarding applicant's left

shoulder impairment Dr. Chitnis stated that, “Under the strict interpretation of the [AMA] Guides” applicant had 21% upper extremity impairment due to reduced range of motion, 10% upper extremity impairment based on the distal clavicle resection, and 17% upper extremity impairment based on loss of strength, for a total of 25% whole person impairment (WPI) and stated:

Per [the] Almaraz/Guzman II decision, the physician can use any graph or table in the Guides to most accurately describe the patient's impairment. I believe that the above WPI does accurately describe the patient's impairment.
(Joint Exh, EE, pp. 19 - 20.)

The parties proceeded to trial on July 15, 2020. (Minutes of Hearing and Summary of Evidence (MOH/SOE), July 15, 2020.) The issues submitted for decision included, permanent disability and “Strict rating versus the Almaraz/Guzman rating.” (MOH/SOE, p. 2.) The WCJ issued a Findings and Award on September 3, 2020, finding that based on the report from Dr. Chitnis, the injury caused 44% permanent disability. Defendant filed a Petition for Reconsideration. In our November 10, 2020 Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration (Opinion) we concluded that the June 19, 2018 report from Dr. Chitnis was not substantial evidence. Based thereon, we granted reconsideration and affirmed the F&A, except that we amended the F&A to defer the issue of the level of permanent disability caused by the injury and we returned the matter to the WCJ for further development of the record.¹

On May 19, 2021, Dr. Chitnis’ deposition was taken. (Joint Exh. GG, Dr. Chitnis, May 19, 2021, deposition transcript.) During the testimony regarding the February 5, 2020 report Dr. Chitnis agreed that she had combined range of motion impairment, distal clavicle resection impairment, and loss of strength impairment. (Joint Exh. GG, pp. 6 – 7.) The testimony then included:

Q. So our fundamental question is: Did you intend to use an Almaraz-Guzman rating regarding Mr. Minniefield's left shoulder?
A. No. I believe that the rating that I provided was accurate.

¹ In our November 10, 2020 Opinion we noted that Dr. Chitnis’ reference to “Almaraz/Guzman II” was in regard to the Appeals Board en banc decision which was affirmed by the Sixth District Court of Appeal, wherein the Court explained that the American Medical Association’s Guides to the Evaluation of Permanent Impairment (AMA Guides) provide guidelines for the exercise of professional skill and judgment which, in a given case, may result in ratings that depart from those based on the strict application of the AMA Guides. (*Almaraz v. Environmental Recovery Services / Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) (*Almaraz/Guzman II*) affirmed by *Milpitas Unified School Dist. v. Workers’ Compensation Appeals Board* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837] (modified on other grounds on September 1, 2010).)

Q. Okay. So that is the strict rating which would be the range of motion, with the distal clavicle resection; is that correct?

A. And the loss of strength.

Q. Okay. The loss of strength, it is my understanding, can't be combined with the range of motion and the distal clavicle resection. That is where the confusion is coming in.

A. You are saying it can't be combined?

Q. Correct.

A. I have always done that. Where in the Guides does it say that it cannot? Because it is very common when patients have a long-standing shoulder issue that they lose strength.

...

Q. ... So at this point is it your opinion that the range of motion, distal clavicle resection and loss of strength should be combined as Mr. Minniefield's final rating?

A. Yes.

Q. Okay. And just out of an abundance of caution, if it is true that they can't be combined per the Guides, would it be your opinion that under Almaraz-Guzman they should be?

A. Yes, definitely. I think, like I said before, I have done it, you know, for the last ten years and as have many, many other physicians.

Q. Sure.

A. I mean as long as you have weakness of the shoulder when you have had longstanding problems.

(Joint Exh. GG, pp. 7 – 8.)

The parties returned to trial on September 16, 2021, the transcript of Dr. Chitnis' May 19, 2021 deposition was admitted into evidence and the matter was submitted for decision. The issues included permanent disability and apportionment. (MOH/SOE, September 16, 2021, p. 2.)

DISCUSSION

As noted above, in her June 19, 2018 report, Dr. Chitnis, using a "strict interpretation" of the AMA Guides, assigned percentages of whole person impairment for applicant's left shoulder injury based on reduced range of motion, a distal clavicle resection, and loss of strength. (Joint Exh, EE, pp. 19 - 20.)

In the Upper Extremities section of the AMA Guides, it is stated that:

If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength could be combined with the other impairments, only if based on unrelated

etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (e.g., thumb amputation) that prevent effective application of maximal force in the region being evaluated. (AMA Guides, p. 508, emphasis in original.)

In her report, Dr. Chitnis assigned impairment based on loss of strength and reduced range of motion, which is inconsistent with a “strict interpretation” of the AMA Guides quoted above. At her deposition she testified that combining range of motion, with loss of strength, and distal clavicle resection was correct because, “I have always done that.” (Joint Exh. GG, p. 7.) Again, combining loss of strength impairment with reduced range of motion impairment is inconsistent with the provisions of the AMA Guides. (AMA Guides, p. 508.) Dr. Chitnis then testified that “under *Almaraz-Guzman*” the impairments should be combined, “I think, like I said before, I have done it, you know, for the last ten years and as have many, many other physicians.” (Joint Exh. GG, p. 8.)

To properly rate an injured worker’s disability by applying an *Almaraz/Guzman* analysis, the doctor is expected to: 1) provide a strict rating per the AMA Guides, 2) explain why the strict rating does not accurately reflect the applicant’s disability, 3) provide an alternative rating using the four corners of the AMA Guides, and 4) explain why that alternative rating more accurately reflects applicant’s level of disability. (*Milpitas Unified School Dist. v. Workers’ Compensation Appeals Board, supra*, at 828-829 [see footnote 1 above].) Here, Dr. Chitnis did not provide a strict rating per the AMA Guides, she did not explain why a strict rating would not accurately describe applicant’s disability, and she did not explain why her alternative rating more accurately identifies applicant’s level of disability. Her testimony that she has “always done that ... for the last ten years” does not constitute evidence that her alternative rating is more accurate than a strict rating per the AMA Guides.

As we explained in our prior Opinion, the June 19, 2018 report from Dr. Chitnis is not substantial evidence on the issue of applicant’s permanent disability and as discussed above, her May 19, 2021 deposition testimony does not constitute substantial evidence in support of her *Almaraz/Guzman* alternative rating of applicant’s disability. Thus, we agree with the WCJ’s decision regarding applicant’s permanent disability and we will not disturb the F&A.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award issued by the WCJ on September 17, 2021, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 3, 2021

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**CRAIG MINNIEFIELD
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC
STATE COMPENSATION INSURANCE FUND**

TLH/pc

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
CS

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

Date of Injury: December 28, 2014
Age on DOI: 52 years old
Occupation: Inmate Laborer
Parts of Body Injured: Accepted: left shoulder
Petitioners: Applicant
Timeliness: Petition filed timely
Verification: Petition was verified
Date of Order: September 17, 2021

Petitioners Contentions: Applicant contends that the WCJ acted without or in excess of its powers regarding the Order, Decision, or Award, that the evidence does not justify the Findings of Fact, and the Findings of Fact do not support the Order, Decision, or Award. Specifically, Applicant contends the permanent disability is 44%, and not 33%, based on the findings of QME Dr. Nicole Chitnis.

**II
FACTS**

Applicant sustained an accepted industrial injury to the left shoulder while employed on December 28, 2014 as an inmate laborer by the Department of Corrections and Rehabilitation. The matter went to trial and the issues submitted for decision were permanent disability, strict rating versus *Almaraz/Guzman* rating, apportionment, and attorney fees. Applicant was awarded permanent disability of 44% without apportionment based on the *Almaraz/Guzman* rating and a reasonable attorney fee was found of 15% of the permanent disability awarded. Defendant filed a Petition for Reconsideration contending the findings of QME Dr. Nicole Chitnis do not comply with *Milpitas Unified School District v. Guzman* (2010) 187 Cal. App. 4th 808 and is not substantial evidence. Defendant's Petition for Reconsideration was granted and the Findings and Award was affirmed but the level of permanent disability was deferred. The Opinion found that the trial record was not adequate to make a final determination regarding the level of permanent disability. Subsequently, Defendant deposed Dr. Chitnis and then the parties returned to trial and resubmitted the issue of permanent disability for decision. An award issued of 33% permanent disability based on the strict rating without apportionment and a reasonable attorney fee was found of 15% of the permanent disability awarded. In response, Applicant filed a Petition for Reconsideration.

**III
DISCUSSION**

Strict Rating versus *Almaraz/Guzman* Rating

Applicant suffered an admitted injury to the left shoulder. The factors of permanent disability are based on the QME Reports by Dr. Nicole Chitnis (Joint Exhibit AA - EE) and the deposition transcript of Dr. Chitnis (Joint Exhibit GG). There was no testimony at either trial.

Applicant first saw Dr. Chitnis for an evaluation on June 12, 2018. Applicant injured his left shoulder on December 28, 2014 while pushing a garbage can uphill, which jerked his arm when it started to roll down. Upon exam, Applicant had significant tenderness, significant adhesive capsulitis, reduced range of motion, reduced grip strength, and he was unable to offer much resistance. Dr. Chitnis' diagnosis was status post left shoulder arthroscopic surgery, left shoulder adhesive capsulitis, chronic full thickness tear of subscapularis, and AC and glenohumeral arthritis. Dr. Chitnis deferred other findings until receipt of the medical file. (Joint Exhibit AA)

Dr. Chitnis produced a supplemental report dated August 28, 2018 based on a record review. Dr. Chitnis noted a prior left shoulder injury a long time ago that improved without treatment. She also noted an MRI of the left shoulder in March 2015 showing evidence of a labral degeneration with rotator cuff tendinitis and partial tear of supraspinatus, and a surgery on March 16, 2016 consisting of a debridement, acromioplasty, distal clavicle resection, and MUA. In June 2016, it was noted that surgery did not go well and Applicant had pain and significant reduced range of motion. A MRA of the right shoulder in December 2016 showed partial tear of supraspinatus and AC arthritis. An MRI in May 2018 showed a full thickness tear of the subscapularis, tendinosis of supra and infraspinatus, evidence of adhesive capsulitis, mild chondromalacia of glenohumeral joint, and moderate AC arthritis. Dr. Chitnis recommended Applicant see another orthopedic surgeon for evaluation and treatment. Dr. Chitnis found the injury reported of December 28, 2014 to be directly responsible. Dr. Chitnis found Applicant had not reached permanent and stationary status. (Joint Exhibit BB)

On October 20, 2018, Dr. Chitnis produced a supplemental report based on additional records and did not change her opinions. (Joint Exhibit CC)

On January 6, 2020, Applicant had a re-evaluation addressed in the report by Dr. Chitnis dated February 5, 2020. Dr. Chitnis provided another record review. Upon exam, Applicant had diffuse tenderness, reduced strength, and reduced range of motion of the left shoulder. Dr. Chitnis' impression was of status post left shoulder arthroscopic surgery as well as left shoulder adhesive capsulitis, chronic full thickness tear of subscapularis, and AC and glenohumeral arthritis. Dr. Chitnis found improved range of motion, but significant adhesive capsulitis, and weakness of the left girdle from disuse. Dr. Chitnis opined that Applicant injured his left shoulder on December 2014 and then developed severe frozen shoulder for which he had surgery but continued to have pain and limited range of motion with progressive worsening of chronic pathology shown on a MRI in

May 2018. Dr. Chitnis found Applicant to be permanent and stationary with 21% upper extremity impairment based on range of motion, 10% upper extremity impairment based on distal clavicle resection, and 17% upper extremity impairment based on loss of strength. (Joint Exhibit EE)

As described above, a Findings and Award issued which included a finding of 44% permanent disability. Defendant filed a Petition for Reconsideration contending the QME Reports by Dr. Chitnis did not support the *Almaraz/Guzman* rating. The Recon Unit issued an Opinion and Order Granting Petition for Reconsideration and Decision. The Opinion affirmed the Findings and Award but deferred the issue of the level of permanent disability.

The Opinion indicates that Dr. Chitnis applied a strict interpretation of the AMA Guides for the left shoulder using reduced range of motion, a distal clavicle, resection, and loss of strength which cannot be rated together and then Dr. Chitnis indicated the rating accurately reflected the impairment per *Almaraz/Guzman*. The Opinion states as follows:

To properly rate an injured worker's disability by applying an *Almaraz/Guzman* analysis, the doctor is expected to: 1) provide a strict rating per the AMA Guides, 2) explain why the strict rating does not accurately reflect the applicant's disability, 3) provide an alternative rating using the four corners of the AMA Guides, and 4) explain why that alternative rating more accurately reflects applicant's level of disability. (*Milpitas Unified School Dist. v. Workers' Compensation Appeals Board*, supra, at 828-829 [see footnote 1 above].) Although it appears that Dr. Chitnis believes her impairment rating to be accurate, her "strict interpretation" of the AMA Guides is not actually a strict application, and she did not provide an explanation of her reasoning for the *Almaraz/Guzman* analysis. Thus, the report is not substantial evidence and cannot be the basis for the award of permanent disability indemnity.

Subsequently, Defendant took the deposition of Dr. Chitnis. During her deposition, Dr. Chitnis testified that she did not intend to use an *Almaraz/Guzman* rating and believed the rating she provided to be accurate. Dr. Chitnis testified that range of motion, distal clavicle resection, and loss of strength should be combined for the final rating. She testified that if motion and strength cannot be combined in a strict rating then they should be combined under *Almaraz/Guzman*. She testified that she combines motion and strength when there is weakness of the shoulder and longstanding problems. (Joint Exhibit GG)

Although Dr. Chitnis clarified her intent during the deposition, she did not explain why the strict rating does not accurately reflect Applicant's disability. In addition, she did not explain why the *Almaraz/Guzman* rating is more accurate.

The findings of Dr. Chitnis rate as follows:

Left Shoulder 16.02.02.00 – 18 [1.4] 25 – 460G – 28 – 33%

The evidence supports a finding that Applicant is entitled to permanent disability of 33% under the strict rating and without apportionment. This is equivalent to 152 weeks of indemnity payable at the rate of \$160.00 per week in the total sum of \$24,320.

Apportionment

The Court cannot rely on a medical-legal report unless it is substantial evidence. *Escobedo v. Marshalls* (2007) 70 Cal. Comp. Cases 604, 620 (en banc). In order for a medical-legal report to be substantial evidence, the opinions must be based on reasonable medical probability. *Id.* The opinions cannot be based on speculation or guess, and must set forth the reasoning upon which it is based. *Id.* at 620-21. In particular, the basis for apportionment must be clear; the medical-legal report must “describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion.” *Id.* at 621. This means that the medical-legal report must explain the nature of the non-industrial factor, and how and why the non-industrial factor is responsible for part of the disability. *Id.* at 622.

Dr. Chitnis highlighted a history of prior left shoulder injuries, sports in younger days, positive ANA, and a sister with lupus and found 80% of impairment due to the industrial injury of December 28, 2014 and 20% due to other non-industrial factors. (Joint Exhibit EE) It is unclear how prior injuries, playing sports, having ANA, or his sister’s condition relate to Applicant’s impairment. There is no analysis of these non-industrial factors. The findings do not support a finding of apportionment.

IV RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Applicant’s Petition for Reconsideration be denied.

Respectfully submitted,

DATE: October 8, 2021
Ariel Aldrich
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE