

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

ELENA CAMPOS, *Applicant*

vs.

**HAZEL HAWKINS MEMORIAL HOSPITAL, permissibly self-insured, administered by
ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ12221306
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award, issued by the workers' compensation administrative law judge (WCJ) on March 1, 2021, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her left shoulder, that the opinions of pain medicine qualified medical examiner (QME) Michael Amster, M.D., constitute substantial evidence, and that the injury caused 38% permanent partial disability.

Defendant contends that the reports from Dr. Amster are not substantial evidence regarding an *Almaraz/Guzman* analysis,¹ and applicant's disability should be rated based on a strict application of the American Medical Association Guides to the Evaluation of Permanent Impairment, (AMA Guides).

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied². We did not receive an Answer from applicant. We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report,

¹*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).

² We note that there appear to be clerical errors on page 1 of the Report, referring to Dr. Amster as an AME, and on page 3 of the Report referring to Dr. Amster as Dr. Amsted.

which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to her left shoulder while working for defendant as a certified nursing assistant on July 12, 2018.

On November 8, 2019, QME. Dr. Amster evaluated applicant. Dr. Amster examined applicant, took a history and reviewed the medical record. The diagnoses included torn left rotator cuff and left shoulder bursitis. (Joint Exh. 3, Dr. Amster, November 27, 2019, p. 16.) The doctor stated that applicant's condition was not permanent and stationary. (Joint Exh. 3, p. 22.)

Applicant underwent left shoulder surgery, and she was re-evaluated by Dr. Amster on August 1, 2020. He re-examined applicant and reviewed the interim medical record. During the re-examination Dr. Amster asked applicant to describe the effect that her injury had on twenty-five different activities of daily living. (Joint Exh. 2, Dr. Amster, August 8, 2020, pp. 5 - 7.) The doctor concluded that applicant's condition had plateaued and had reached permanent and stationary status. (Joint Exh. 2, p. 21.) Dr. Amster determined that using restricted range of motion, delineated in the AMA Guides, as the measure of shoulder impairment, applicant's left shoulder injury caused 8% whole person impairment (WPI) and he included a 3% pain add-on for a total of 11% WPI. (Joint Exh. 2, p. 22.) He then stated:

Based on the impairment rating presented above, Ms. Campos incurred 11% whole person impairment (WPI) for the left upper extremity. I do not believe that this calculated impairment is an accurate representation of the applicant's upper extremity functional loss. As such, there is a clear indication for the application of the Almaraz-Guzman En Banc Decision in this case. ... ¶ For the left upper extremity, she reports to have difficulty in performing her activities of daily living. By analogy, Chapter 13, Table 13-16 on page 340 of the *AMA Guides* is used as basis for impairment. The applicant falls under Class 3 wherein the non-dominant extremity qualifies 15%-29% WPI. Under this Category, the individual can use the involved extremity but has difficulty with self-care activities. Therefore, the applicant is assigned with **22% WPI for the left upper extremity** which in my opinion accurately represents Ms. Campos' functional loss.

(Joint Exh. 2, p. 22, emphasis in original.)

The parties proceeded to trial on February 11, 2021. The issues submitted for decision included permanent disability/apportionment and Dr. Amster's *Almaraz/Guzman* rating of applicant's disability. (Minutes of Hearing and Summary of Evidence, February 11, 2021, p. 2.)

DISCUSSION

The Sixth District Court of Appeal explained that it agreed with the Appeals Board's conclusion that the 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. (*Milpitas Unified School Dist. v. Workers' Compensation Appeals Board supra*, (footnote 1).)

In his Report, the WCJ states:

The salient parts of the Court's opinion in *Milpitas Unified School District v. WCAB (Guzman)* (8/19/2010) ADJ3341185 include the following: impairment ratings are intended to reflect the severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common activities of daily living, excluding work. The Guides are not to be applied mechanically without regard to how accurately and completely they reflect the actual impairment sustained by the patient. A narrow interpretation (as argued for by Petitioner) is inconsistent with the clear provision that the Permanent Disability Rating Schedule (PDRS) is rebuttable and does not comport with the legislative directive to construe the workers' compensation statutes liberally with the purpose of extending their benefits for the protection of injured workers. The physician must use his/her clinical judgment, based on experience, training, skill, and thoroughness in clinical evaluation. The Guides state that if the medical evidence doesn't verify an impairment based on the standard chapter and tables, the physician may modify the impairment rating accordingly and then describe and explain his/her reasoning. (Report, p. 2.)

Table 13-16 of the AMA Guides describes the "Criteria for Rating Impairment of One Upper Extremity" and states that if an individual can use the "Nondominant Extremity" but has difficulty with self-care activities" the applicable impairment is from 15% to 29%. (AMA Guides p. 338 Table 13-16.)³

As noted above, Dr. Amster stated that as a result of applicant's left shoulder injury, she has difficulty in performing her activities of daily living, and therefore a strict application of the

³ Dr. Amster noted that applicant is right-hand dominate. (Joint Exh. 2, p. 14.)

AMA Guides did not give an “accurate representation of the applicant's upper extremity functional loss.” (Joint Exh. 2, p. 22.) During her re-examination, in response to Dr. Amster questions about her activities of daily living, applicant indicated that her left shoulder condition caused significant limitations in her ability to use her left arm. For example:

2. Regarding the ability to lift and carry objects, the applicant responded: *"I can only lift very light objects."*

10. Regarding the ability to reach and grasp something off a shelf at eye level, the applicant responded: *"I have some difficulty, but can still perform the activity well enough. If it requires the use of both shoulders/arms, left shoulder/arm is limited to very light objects."*

13. Regarding any difficulty with gripping, grasping, and holding and manipulating objects with the hands, the applicant responded: *"I have a lot of difficulty, but I can still perform the activity. Use of left hand is limited to light objects that do not require strength."*

14. Regarding any difficulty with _repetitive motions such as typing on a computer, the applicant responded: *"I have a lot of difficulty, but I can still perform the activity. I can only use my right hand to do repetitive motions."* (Joint Exh. 2, pp. 5 – 6, italics in original.)

In the Opinion on Decision, the WCJ stated:

Dr. Amster has described significant impact of the disability on activities of daily living and significant limitations and pain that applicant continues to suffer as a result of this injury. He has reasonably concluded that a strict AMA Guides rating is not the most accurate measurement of applicant’s impairment and has applied an alternative approach to rating the impairment, within the four corners of the AMA Guides.

(F&A, p. 3, Opinion on Decision.)

Having reviewed the reports from Dr. Amster, it is clear that he initially provided a strict rating of applicant’s impairment per the AMA Guides, he explained why that rating did not accurately describe applicant’s disability, he then provided an alternative rating based on Table 13-16 of the AMA Guides, and he explained why, based on the limitations of applicant’s activities of daily living, the alternative rating more accurately described applicant’s disability. We agree with the WCJ that Dr. Amster’s opinions and his conclusion regarding applicant’s disability, comply with the requirements we described in *Almaraz/Guzman II*. (*Almaraz v. Environmental Recovery Services / Guzman v. Milpitas Unified School District supra; Milpitas Unified School*

Dist. v. Workers' Compensation Appeals Board, supra.) Thus, his reports constitute substantial evidence and we will not disturb the F&A.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on March 1, 2021, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 19, 2021

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

**ELENA CAMPOS
RATTO LAW FIRM
GOLDMAN MAGDALIN**

TLH/pc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Defendant has filed a timely, verified Petition for Reconsideration, on the usual statutory grounds, contending that the WCJ erred in adopting the QME's *Almaraz/Guzman* rating in the Findings & Award of March 1, 2021. The Petition is without merit, and I recommend it be denied.

II

STATEMENT OF MATERIAL FACTS

Applicant, Elena Campos, was employed on 7/12/18 as a CNA by Hazel Hawkins Memorial Hospital when she sustained an admitted injury to her left shoulder in the course of lifting up a heavy patient from her bed. (Report of AME Amster, Ex. J-3, 11/27/19, p. 3) When she was re-evaluated by Dr. Amster (Report of 8/8/20, Ex. J-2), he found she was at maximum medical improvement but was left with impairments that he rated using both a strict approach to the AMA Guides (11% WPI), as well as an alternative rating from the Guides that he found was more accurate (22% WPI) (*Id*, p.22).

This followed a very extensive discussion (Ex. J-2, pp. 4-7), covering three pages, of how applicant's injury has adversely affected the function of her injured left shoulder and arm, as well as the compensatory effects of relying primarily on the uninjured right arm and shoulder, to perform even light tasks. He found that the strict AMA Guides rating did not accurately reflect applicant's upper extremity functional loss, considering the difficulties applicant experienced in performing her activities of daily living. Instead, he applied an alternative rating from the Guides by analogy, from Chapter 13, Table 13-16, on page 340. In the challenged Findings & Award, I found as follows:

Dr. Amster has described significant impact of the disability on activities of daily living and significant limitations and pain that applicant continues to suffer as a result of this injury. He has reasonably concluded that a strict AMA Guides rating is not the most accurate measurement of applicant's impairment and has applied an alternative approach to rating the impairment, within the four corners of the AMA Guides. I find that Dr. Amster's opinions accord with the principles enunciated in the Almaraz/Guzman decisions and qualify as substantial medical evidence.

Accordingly, I awarded applicant permanent disability based on Dr. Amster's alternative rating.

III

DISCUSSION

The salient parts of the Court's opinion in *Milpitas Unified School District v. WCAB* (Guzman) (8/19/2010) ADJ3341185 include the following: impairment ratings are intended to reflect the severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common activities of daily living, excluding work. The Guides are not to be applied mechanically without regard to how accurately and completely they reflect the actual impairment sustained by the patient. A narrow interpretation (as argued for by Petitioner) is inconsistent with the clear provision that the Permanent Disability Rating Schedule (PDRS) is rebuttable and does not comport with the legislative directive to construe the workers' compensation statutes liberally with the purpose of extending their benefits for the protection of injured workers. The physician must use his/her clinical judgment, based on experience, training, skill, and thoroughness in clinical evaluation. The Guides state that if the medical evidence doesn't verify an impairment based on the standard chapter and tables, the physician may modify the impairment rating accordingly and then describe and explain his/her reasoning.

Applying these principles to facts in the present case, I determined that Dr. Amsted's assignment of the alternative rating from Chapter 13 was proper. He provided an unusually lengthy and detailed discussion, under several headings in his report, of the impact this injury has had on applicant's activities and functional use of her upper extremities. He concluded that the standard AMA Guides rating did not accurately represent applicant's actual impairment, based on what he reported were the functional limitations caused by the industrial injury in applicant's ability to perform tasks and activities in her daily life away from work. He selected an alternative rating from the AMA Guides that he found more accurately reflected those limitations and difficulties. I found his analysis reasonable and convincing and made my award accordingly.

IV

RECOMMENDATION

I recommend that the Petition for Reconsideration be Denied.

Respectfully submitted,
MICHAEL H. YOUNG
Workers' Compensation Administrative Law Judge