DEU Application of Almaraz/Guzman

Almaraz/Guzman Decision
- PDRS is rebuttable
- One method is to challenge any part of the rating such as impairment

Almaraz/Guzman Overview
- The stories of Mario Almaraz and Joyce Guzman
- What does Almaraz/Guzman say
- DEU Application

The Almaraz Story
- Mario injured back as a truck driver
- AMA Guides Impairment was 12 WP
- Doctor gave light work and “no prolonged sitting” restrictions, and said there was at least one component of job he couldn’t do
- WCJ gave 14% PD based on Guides impairment

Guzman Story
- Joyce developed bilateral CTS as a secretary
- Doctor gave 3 WPI for each arm based on Guides
- Doctor provided an alternate rating of 15 WPI per arm based on ADL losses
- WCJ gave 12 PD based on Guides impairment

Almaraz/Guzman I
- Held that PDRS and Guides were both prima facie evidence and therefore rebuttable
- If Guides impairment led to inequitable or disproportionate PD rating, it could be rebutted
- A rebuttal impairment can be partly or wholly outside of the Guides
Almaraz/Guzman II

• The PDRS rating is prima facie evidence and therefore rebuttable

• One can rebut a PD rating by successfully challenging one of its component parts, e.g. WPI

• Doctor must stay within the four corners of the Guides but may use any chapter, table or method that most accurately reflects the impairment

Limitations of Almaraz/Guzman

• Can’t arbitrarily choose a Guide’s method to achieve a desired result

• Report must constitute substantial evidence

• Doctor must set forth facts and reasoning to support rating

• Does not require doctor to provide AMA-compliant rating

Terms of Art

• Terms for by-the-book ratings:
  – AMA-compliant
  – Traditional

• Terms for non-AMA compliant ratings:
  – Alternative
  – Almaraz
  – Rebuttal
  – Non-traditional

AMA vs. Almaraz Ratings

AMA Guides

• Objectivity
• Consistency

Almaraz/Guzman

• Clinical judgment
AMA Guides is Presumption
Judge Determines whether AMA Guides rating is rebutted.
Judge weighs evidence

Rating Process – Overlapping Roles

Doctor
Rater

Diagnosis/Findings
Application of Guides
Application of PDRS

Rating Process

- Doctor provides impairment
- DEU rater turns impairment into disability
- DEU will apply rules of combining per PDRS

Annotating Almaraz Ratings

- DEU will designate Almaraz/Guzman rating with “Rating Per Almaraz Case”
- For non-scheduled ratings DEU will use “99” for last two digits of rating
- DEU may annotate possible rating issues

DEU Approach to Ratings

Three Rating Types
- Consultative Ratings
- Formal Ratings
- Summary Ratings

DEU Approach to Ratings

Consultative Ratings
- Ratings made at request of parties – mail in, walk in, MSC
- Provide both ratings per AMA Guides and Almaraz when possible
**DEU Approach to Ratings**

**Summary Ratings**
- Unrepresented
- QME panel or treating doctor
- Rate per AMA Guides as presumptive and annotate existence of Almaraz rating

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**Application of Almaraz/Guzman**

**Does doctor need to specifically cite Almaraz/Guzman?**

**What about errors in doctor's report?**
- Normal errors in doctor report will be corrected
- Does not trigger Almaraz rating

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**Example #1**

Two level cervical fusion, 38 year old carpenter

**ROM Impairments**
- Diagnostic 11 WP
- ROM 10 WP
- No Neurologic Impairment

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The following example does not imply that the Disability Evaluation Unit advocates the following approach as a deviation from the Guides. The AMA Guides remain the presumptive rating and should be utilized in the majority of cases.
Example #1

AMA Guides Rating

• ROM method applies
• Combine diagnostic and ROM
  11 C 10 = 20 WP

Example #1

Almaraz/Guzman Rating

• In doctor’s clinical judgment DRE method is more accurate assessment
• Cervical DRE IV – 28 WP

Example #1

Strengths of Almaraz/Guzman Approach

• Utilizes method found in Guides
• Doctor states more accurate assessment of impairment

Example #1

Weakness of Almaraz/Guzman Approach

• Guides already has a method for rating this impairment
• Guides hold that ROM method is to be used for multi-level fusions

The following example does not imply that the Disability Evaluation Unit advocates the following approach as a deviation from the Guides. The AMA Guides remain the presumptive rating and should be utilized in the majority of cases.

Example #2

Carpenter 38 years old. Lumbar surgery with unresolved radiculopathy. Injured has difficulty with most ADL

Impairments Per AMA Guides

Lumbar DRE III: 13 WP
3 WP pain add-on
Example #2

AMA Guides Rating

- Single level, DRE method applies
- Add pain to DRE rating \((13 + 3 = 16 \text{ WP})\)
- \(15.03.01.00 - 16 - [5]17 - 380H - 21 - 21 \text{ PD}\)

Example #2

Almaraz Rating

- Doctor cites Almaraz and uses Figure 15-19
- 60 percent loss of lumbar spine function
- Combine with 3 WP pain add-on

Example #2

Almaraz Rating

- Figure 15-32 lumbar spine value \(\times\)% loss
  
  \(90 \times 60\% = 54 \text{ WP}\)
- \(15.03.01.99 - 57 - [5]72 - 380H - 77 - 77 \text{ PD}\)
  
  3 WP add-on included for pain
- Note that pain is added, not combined
- Note that 99 is used to designate unscheduled rating

Example #2

Strengths of Almaraz/Guzman Approach

- Figure 15-32 within Guides
- Doctor states more accurate assessment of impairment

Example #2

Weakness of Almaraz/Guzman Approach

- AMA Guides has method for rating
- Misuse of Figure 15-32
- How does doctor arrive at 60% functional loss?

The following example does not imply that the Disability Evaluation Unit advocates the following approach as a deviation from the Guides. The AMA Guides remain the presumptive rating and should be utilized in the majority of cases.
Example #3

Carpenter age 38, right knee injury

Impairments per AMA Guides

- Muscle Strength Grade 4 ext/flex
- Thigh atrophy 2 cm
- Range of motion 100 degrees flexion

AMA Guides Rating

- Muscle Strength (Table 17-32)
  Extension 12 LE  Flexion 12 LE
  12 C 12 = 23 LE
- Thigh Atrophy ((Table 17-6) 2 cm = 8 LE
- Knee Flexion (Table 17-9) 100 degrees = 10 LE

Example #3

Almaraz Rating

- Per Table 17-2 (cross usage chart) cannot combine ROM, muscle strength or atrophy
- Only greatest impairment is used
- Knee muscle strength = 23 LE x .4 = 9 WP

Example #3

Almaraz Rating

- Muscle Strength = 23 LE
- Atrophy = 8 LE
- ROM = 10 LE
- Combining Impairments at LE index
  23 C 10 C 8 = 37 LE x .4 = 15 WP

Example #3

Almaraz Rating

- Doctor cites Almaraz and states that impairment best assessed by ignoring Table 17-2 and combining all knee impairments
- Doctor then combines muscle strength, atrophy and ROM impairments at WP index

Example #3

Almaraz Rating

- Doctor has provided impairments per Almaraz
- Rater will still combine per PDRS pg. 1-11
- Unscheduled rating designated by last two digits 99
Example #3
Strengths of Almaraz/Guzman Approach

• Utilizes Table within Guides

• Doctor states more accurate assessment of impairment

Example #3
Weakness of Almaraz/Guzman Approach

• AMA Guides has method for rating

• Ignores cross usage chart table 17-2

• Creates issues of duplication of impairments

The following example does not imply that the Disability Evaluation Unit advocates the following approach as a deviation from the Guides. The AMA Guides remain the presumptive rating and should be utilized in the majority of cases.

Example #4
AMA Guides Rating Approach CTS

• Multiply maximum sensory value for nerve by percentage of sensory deficit

• Multiply maximum motor value for nerve by percentage of motor deficit

• Combine resulting values

Example #4
AMA Impairments

• Secretary age 40. Right carpal tunnel syndrome with surgical release. Positive nerve conduction studies with sensory and motor median nerve deficits

• Grade 4 sensory and motor impairments 15% nerve deficit

• Grip loss 80%

Table 16-15, p. 492
Example #4

**AMA Guides Rating**

- Sensory Nerve Impairment
  
  \[
  39 \times 0.15 = 6 \text{ UE}
  \]

- Motor Nerve Impairment
  
  \[
  10 \times 0.15 = 2 \text{ UE}
  \]

- Combine Sensory and Motor nerve impairments
  
  \[
  6 + 2 = 8 \text{ UE} \times 0.6 = 5 \text{ WP}
  \]

**Example #4**

**AMA Guides Rating**

- Rate for disability
  
  \[
  16.01.02.02 \rightarrow 5 \rightarrow [4]6 \rightarrow 112H \rightarrow 8 \rightarrow 8 \text{ PD}
  \]

- Grip is not used to rate peripheral nerve injuries per page 494 of AMA Guides

**Example #4**

**Almaraz Rating**

- Doctor states that grip loss best assesses injured’s impairment

- Grip loss 80% = 30 UE \times 0.6 = 18 WP

  \[
  16.01.04.00 \rightarrow 18 \rightarrow [4]22 \rightarrow 112E \rightarrow 20 \rightarrow 20 \text{ PD}
  \]

**Example #4**

**Strengths of Almaraz/Guzman Approach**

- Utilizes Table within Guides

- Doctor states more accurate assessment of impairment

**Example #4**

**Weakness of Almaraz/Guzman Approach**

- AMA Guides has method for rating

- Grip is not used to rate carpal tunnel per AMA Guides

The following example does not imply that the Disability Evaluation Unit advocates the following approach as a deviation from the Guides. The AMA Guides remain the presumptive rating and should be utilized in the majority of cases.
Example #5

- Housekeeper age 38. Lumbosacral strain, no radicular symptoms, muscle guarding with difficulty with heavy lifting.

**AMA Guides Impairment**

- Lumbar DRE II 8 WP

**DRE Category II**

**AMA Guides Table 15-3**

**Lumbar DRE Category 5-8 WP Impairment**

- Significant muscle guarding or asymmetric ROM
- Non-verifiable radiculopathy
- Resolved radiculopathy
- Fracture <25% compression of vertebrae

---

Example #5

**AMA Guides Rating**

- 15.03.01.00 – 8 – [5]10 – 340G – 12 – 12 PD

**Example #5**

**Almaraz Rating**

- Doctor states impairment best represented by Hernia Table 6-9 due to difficulty with heavy lifting
  - Hernia Class II 19 WP

**Example #5**

**Almaraz Rating**

  - Note that impairment number for lumbar spine used
  - FEC and occupation variant for spine used
Example #5
Strengths of Almaraz/Guzman Approach
• Utilizes Table within Guides
• Doctor states more accurate assessment of impairment

Example #5
Weakness of Almaraz/Guzman Approach
• AMA Guides has method for rating
• No criteria for use of Table 6-9
• Possible introduction of work preclusion

Recommended Almaraz Practices
• Include an AMA-compliant rating
  – It is difficult to assert that the AMA-compliant rating is inadequate if we don’t know what it is
• Identify any Almaraz rating
  – This avoids the possibility that DEU will construe the Almaraz impairment as an error and simply correct it
• Avoid using old schedule work restrictions
  – Specifically precluded by Almaraz

Summary
• Almaraz is the current law and DEU will provide ratings accordingly
• DEU will still apply PDRS rules to turn impairment into disability
• Judge ultimately makes determination if Almaraz applies based on evidence
Ogilvie FEC Calculations

FEC Factor is Rebuttable

FEC Rebuttal is a Four Step Process

1) Obtain wages for employee and for similar employees

2) Determine Proportional Earnings Loss

3) Calculating Ratings to Loss Ratio

4) Check to see if Ratings to Loss Ratio fall into Table A range

Obtaining Wage Information

For Employee
- Tax Records
- Paychecks
- EDD Wage Info
- Social Security

For Similar Employees
- EDD Wage Info
- US Depart. of Labor
- Social Security
- VR Expert

Estimated Earnings Loss

Similar Employees Earnings

minus

Employee Earnings

Proportional Earnings Loss

Estimated Earnings Loss

Similar Employee Earnings
Ratings to Loss Ratio

**Whole Person Impairment**

**Proportional Earnings Loss**

Comparison of rating to lost earnings

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**Compare to Table A**

- PDRS Table Range 0.45 to 1.810
- Is Ratings to Loss Ratio within Table A range?
- If yes then use corresponding FEC from Table A
- Then adjust impairment to disability using schedule

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**PDRS Table A**

<table>
<thead>
<tr>
<th>Range of Ratios</th>
<th>Low</th>
<th>High</th>
<th>FEC Rank</th>
<th>Adjustment Factor</th>
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</thead>
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<td>1.400000</td>
<td></td>
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**Compare to Table A**

- PDRS Table Range 0.45 to 1.810
- Is Ratings to Loss Ratio outside range?
- If so, use the following formula to determine individual FEC
  
  \[ (\frac{1.81}{a} \times .1) + 1 \]
  
  \( a \) = ratings to loss ratio

---

**The Origins of FEC**

**FEC Example #1**

- Electrician Age 45
- Lumbar Spine DRE III - 13 WP
- Employee earnings after injury $400/week
- Similar Employees $1000/week
FEC Example #1

Estimated earnings Loss

- Similar Employees
- Employee After Injury
- Estimated Earnings Loss

FEC Example #1

- Calculate Proportional Earnings Loss
- Estimated Earnings Loss
- Similar Employee Earnings
- Proportional Earnings Loss =

FEC Example #1

- Calculate ratings to Loss Ratio
- Whole Person Impairment 13%
- Proportional Earnings Loss 60%
- Ratings to Loss Ratio = 0.21667

Compare to Table A

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<td>1</td>
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</tbody>
</table>

Does Ratings to Loss Ratio fall within Table A range?
Ratings to Loss Ratio = 0.21667

FEC Example #1

- Apply FEC adjustment to Impairment
- Whole Person Impairment = 13
- FEC x 1.83537
- After FEC Adjustment 23.8598
- Round to 24
FEC Example #1
• Adjust for age and Occupation
  15.03.01.00 – 13 – [ ]24 – 380H – 29 – 31 PD

• Compare to Pre-Ogilvie Formula
  15.03.01.00 – 13 – [5]17 – 380H – 21 – 22 PD

FEC is Easier Than You Thought

Multiple Body Parts

Two Methods
Difference is how to calculate ratings to earnings loss ratio

• Line by Line – Calculate FEC separately for each line of disability

• Standard approach

FEC Example #2
• Secretary Age 22

• Carpal Tunnel 13 WP
  Shoulder ROM 10 WP

• Proportional Earnings Loss 100%

Multiple Body Parts

Composite Method

• Use the total combined whole person impairment

• Alternative Approach

Line By Line Method

Carpal Tunnel 13 WP
• Rating to Earnings Loss =

Shoulder 10 WP
• Rating to Earnings Loss =
Line By Line Method

- Adjust for disability by applying Ogilvie FEC, occupation, and age

FEC Carpal Tunnel due to .13 ratings/loss ratio = 2.39231
FEC Shoulder due to .10 ratings/loss ratio = 2.81000

16.01.02.02 – 13 – [2.39231]31-112H-37-32 PD (A)
16.02.01.00 – 10 – [2.81000]28-112D-24-20 PD (A)
(A) 32 C 20 = 46 Final PD
13 WP alone results in 100% earnings loss
10 WP alone results in 100% earnings loss

Composite Method

- Combine Whole Person Impairments before adjustment for FEC, occupation and age
- Apply calculated Ogilvie FEC to all body parts

Composite Method

- Calculate Whole Person Impairment
- Calculate Ratings to Loss Ratio:
  \[ WP = \ \text{Proportional Earnings Loss} \]
- Earnings to Loss Ratio = 

Compare Table A

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</table>

Earnings to Loss Ratio =

Does Ratings to Loss Ratio 0.22 fall in Table A Range?

Composite Method

- FEC Adjustment = 1.82273
- Adjust for disability by applying Ogilvie FEC, occupation, and age

16.02.01.00 – 10 – [1.82273]18 -112D-15 – 12 PD (A)
(A) 25 C 12 = 34 Final PD
13 WP C 9 WP results 100% loss of earnings
The calculated FEC per Ogilvie is 2.29231

Reasons for Line By Line Method
1) Individual FEC for each body part
2) Impairment is adjusted line by line
3) LC 3202 - Ogilvie does not specify method

Reasons For Composite Method
1) Avoids pyramiding the proportional loss of earnings capacity
2) Acknowledges all impairments contribute to overall DFEC
3) The connection of body part to DFEC via RAND study is severed by Ogilvie rebuttal

Exceptions to Ogilvie
Injured's post-injury earnings greater than similar employees
• Negative Proportional Earnings Loss
• Negative Ratings to Loss Ratio
• FEC formula does not work

Difficulties Determining Earnings Loss
1) Difficulty obtaining wage info
2) Post-injury earnings do not reflect earning capacity
   • Significant period of temporary disability
   • Employee malingering
   • Retirement
   • Economic factors
   • Other intervening factors

Use of Ogilvie FEC Rebuttal Method
• Case by case basis
  • Must be used judiciously
Judge’s Responsibility
If parties cannot agree, judge must:
• Decide if Ogilvie appropriate
• Determine validity of wage info
• Determine either injured employee post-injury and similar employee earnings or Estimated Earnings Loss
• Provide WP impairment or medical report to obtain it

Rater’s Responsibility
1) Determine Rating to Loss Ratio
2) Calculate FEC adjustment
3) Rate for disability