DEU Application of Almaraz/Guzman

1

Almaraz/Guzman Decision

- PDRS is rebuttable

- One method is to challenge any part of the rating such as impairment

2

Almaraz/Guzman Overview

- The stories of Mario Almaraz and Joyce Guzman

- What does Almaraz/Guzman say

- DEU Application

3

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

4

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

5

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

6

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
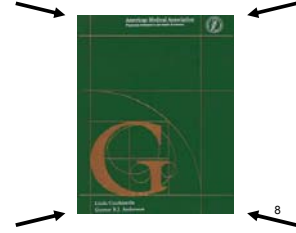
Take Two

What are the "Four Corners"

Hmm…that's a tough one.

HINT:

8

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

9

Almaraz/Guzman Decision

Within Four Corners of AMA Guides

Physician may use any

- Chapter
- Table
- Method

10

Terms of Art

- Terms for by-the-book ratings:
  – AMA-compliant
  – Traditional
- Terms for non-AMA compliant ratings:
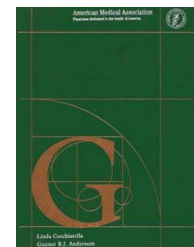 – Alternative
  – Almaraz
  – Rebuttal
  – Non-traditional

AMA vs. Almaraz Ratings

AMA Guides

- Objectivity
- Consistency

Almaraz/Guzman
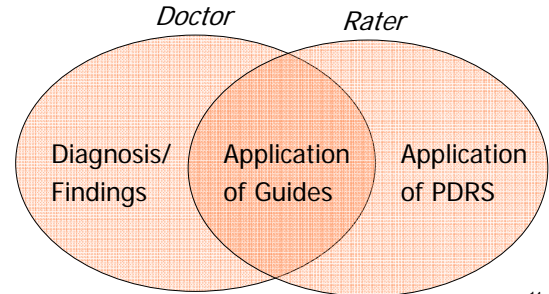
- Clinical judgment

12

2

AMA Guides is Presumption

Judge Determines whether AMA Guides rating is rebutted.

Judge weighs evidence

13

Rating Process – Overlapping Roles

Doctor   *Rater*

Diagnosis/ Findings | Application of Guides | Application of PDRS

14

Rating Process

- Doctor provides impairment

- DEU rater turns impairment into disability

- DEU will apply rules of combining per PDRS

15

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

16

DEU Approach to Ratings

Three Rating Types

- Consultative Ratings

- Formal Ratings

- Summary Ratings

Summaries

Formals
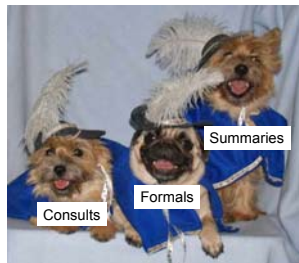
Consults

17

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

18

DEU Approach to Ratings

Summary Ratings

- Unrepresented

- QME panel or treating doctor

- Rate per AMA Guides as presumptive and annotate existence of Almaraz rating

19

DEU Approach to Ratings

Formal Ratings

- Based on judge's instructions after trial

- Follow judge instructions as finder of fact

20

Application of Almaraz/Guzman

Does doctor need to specifically cite Almaraz/Guzman?

21

Application of Almaraz/Guzman

What about errors in doctor's report?

- Normal errors in doctor report will be corrected

- Does not trigger Almaraz rating

22

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.

23

Example #1

Two level cervical fusion, 38 year old carpenter

ROM Impairments

- Diagnostic 11 WP

- ROM 10 WP

- No Neurologic Impairment

24

Example #1

AMA Guides Rating

- ROM method applies

- Combine diagnostic and ROM
  11 C 10 = 20 WP

- 15.01.02.04 – 20 – [5]25 – 380H – 30 – 30 PD

25

Example #1

Almaraz/Guzman Rating

- In doctor's clinical judgment DRE method is more accurate assessment

- Cervical DRE IV – 28 WP

- 15.01.01.00 – 28 – [5]36 – 380H – 42 – 42 PD

26

Example #1

Strengths of Almaraz/Guzman Approach

- Utilizes method found in Guides

- Doctor states more accurate assessment of impairment

27

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

28

DANGER

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.

29

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
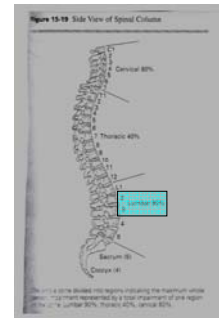
30

Example #2

AMA Guides Rating

- Single level, DRE method applies

- Add pain to DRE rating (13 + 3 = 16 WP)

- 15.03.01.00 – 16 – [5]17 – 380H – 21 – 21 PD

31

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

32

Example #2

Almaraz Rating

- Figure 15-32 lumbar spine value x % loss
  90 x 60% = 54 WP

- 15.03.01.99 – 57 – [5]72 – 380H – 77 – 77 PD
  3 WP add-on included for pain

- Note that pain is added, not combined

- Note that 99 is used to designate unscheduled rating

33

Example #2

Strengths of Almaraz/Guzman Approach

- Figure 15-32 within Guides

- Doctor states more accurate assessment of impairment

34

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?

35

DANGER

CONFORMITY HAZARD

AMA Guides Violation

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.

36

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

37

Example #3

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

38

Example #3

AMA Guides 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

- 17.05.05.00 – 9 – [2]10 – 380I – 15 – 15 PD

39

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

40

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

- 17.05.06.99 – 15 – [2]17 – 380I – 23 – 23 PD

41

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

42

7

Example #3

Strengths of Almaraz/Guzman Approach

- Utilizes Table within Guides

- Doctor states more accurate assessment of impairment

43

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

DANGER

CONFORMITY HAZARD

AMA Guides Violation

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.

45

Example #4

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

AMA Impairments

- Grade 4 sensory and motor impairments 15% nerve deficit

- Grip loss 80%

46

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

47

Example #4

Table 16-15, p. 492

Table 16-15 Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficit Deficits of the Major Peripheral Nerves

Nerve	Maximum % Upper Extremity Impairment Due to:	
	Sensory Deficit or Pain *	Motor Deficit†
Pectorals (medial and lateral)	0	5
Axillary	5	35
Dorsal scapular	0	5
Long thoracic	0	15
Medial antebrachial cutaneous	5	0
Medial brachial cutaneous	5	0
Median (above midforearm)	39	44
Median (anterior interosseous branch)	0	15
Median (below midforearm)	39	10
Radial palmar digital of thumb		
Ulnar palmar digital of thumb	11	0
Radial palmar digital of index finger	5	0
Ulnar palmar digital of index finger	4	0
Radial palmar digital of middle finger	5	0
Ulnar palmar digital of middle finger	4	0
Radial palmar digital of ring finger	3	0
Musculocutaneous	5	25
Radial (upper arm with loss of triceps)	5	42
Radial (elbow with sparing of triceps)	5	35

Example #4

AMA Guides Rating

- Sensory Nerve Impairment
  39 x .15 = 6 UE

- Motor Nerve Impairment
  10 x .15 = 2 UE

- Combine Sensory and Motor nerve impairments
  6 C 2 = 8 UE x .6 = 5 WP
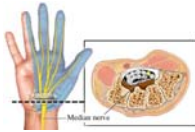
49

Example #4

AMA Guides Rating

- Rate for disability
  16.01.02.02 – 5 – [4]6 – 112H – 8 – 8 PD

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

50

Example #4

Almaraz Rating

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

- Grip loss 80% = 30 UE x .6 = 18 WP
  16.01.04.00 – 18 – [4]22 – 112E – 20 – 20 PD

51

Example #4

Strengths of Almaraz/Guzman Approach

- Utilizes Table within Guides

- Doctor states more accurate assessment of impairment

52

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.

54

9

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

55

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

56

Example #5

AMA Guides Rating

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

57

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

58

Example #5

Table 6-9 Criteria for Rating Permanent Impairment Due to Herniation

Class 1 0%-9% Impairment of the Whole Person	Class 2 10%-19% Impairment of the Whole Person	Class 3 20%-30% Impairment of the Whole Person
Palpable defect in supporting structures of abdominal wall	Palpable defect in supporting structures of abdominal wall	Palpable defect in supporting structures of abdominal wall
and	and	and
slight protrusion at site of defect with increased abdominal pressure; readily reducible	frequent or persistent protrusion at site of defect with increased abdominal pressure; manually reducible	persistent, irreducible, or irreparable protrusion at site of defect
or	or	and
occasional mild discomfort at site of defect but not precluding most activities of daily living	frequent discomfort, precluding heavy lifting but not hampering some activities of daily living	limitation in activities of daily living

59

Example #5

Almaraz Rating

- 15.03.01.99 – 19 – [5]24 – 340G – 27 – 27 PD

- Note that impairment number for lumbar spine used

- FEC and occupation variant for spine used

60

Example #5

Strengths of Almaraz/Guzman Approach

• Utilizes Table within Guides

• Doctor states more accurate assessment of impairment

61

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

62

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

63

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

64

Ogilvie FEC Calculations

1

Ogilvie Decision

FEC Factor is Rebuttable

2

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

3

Obtaining Wage Information

For Employee

- Tax Records

- Paychecks

- EDD Wage Info

- Social Security

For Similar Employees

- EDD Wage Info
  http://www.labormarketinfo.edd.ca.gov

- Social Security

- US Depart. of Labor

- VR Expert

4

Estimated Earnings Loss

Similar Employees Earnings

minus

Employee Earnings

5

Proportional Earnings Loss

Estimated Earnings Loss
Similar Employee Earnings

6

Ratings to Loss Ratio

Whole Person Impairment
Proportional Earnings Loss

Comparison of rating to lost earnings

7

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

8

PDRS Table A

PDRS Page 1-7

Range of Ratios		FEC Rank	Adjustment Factor
Low	High		
1.647	1.810	1	1.100000
1.476	1.646	2	1.428770
1.305	1.475	3	1.185714
1.134	1.304	4	1.228571
0.963	1.133	5	1.271429
0.792	0.962	6	1.314286
0.621	0.791	7	1.357143
0.450	0.620	8	1.400000

If Ratings to Loss Ratio is 1.420 what is FEC?

9

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

- ([1.81/a] x .1) +1   a =ratings to loss ratio

10

The Origins of FEC

Ah yes, FEC

11

FEC Example #1

- Electrician Age 45

- Lumbar Spine DRE III - 13 WP

- Employee earnings after injury $400/week

- Similar Employees $1000/week

12

2

FEC Example #1

Estimated earnings Loss

- Similar Employees
- Employee After Injury
- Estimated Earning 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

PDRS Page 1-7

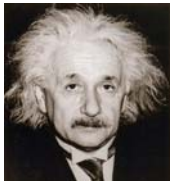| Range of Ratios			
Low	High	FEC Rank	Adjustment Factor
1.647	1.810	1	1.100000
1.476	1.646	2	1.428770
1.305	1.475	3	1.185714
1.134	1.304	4	1.228571
0.963	1.133	5	1.271429
0.792	0.962	6	1.314286
0.621	0.791	7	1.357143
0.450	0.620	8	1.400000

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

FEC Example #1

- Apply Formula ([1.81/a] x .1) + 1
  a = ratings to loss ratio

- 1.81/0.21667 = 8.35372

- 8.35372 x .1 = 0.83537

This FEC stuff is really tricky

- 0.83537 + 1 = 1.83537 FEC adjustment

FEC Example

- 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

19

FEC is Easier Than You Thought

Find x.

6 cm

7 cm

I found it!

20

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

21

Multiple Body Parts

Composite Method

• Use the total combined whole person impairment

• Alternative Approach

22

FEC Example #2

• Secretary Age 22

• Carpal Tunnel 13 WP
  Shoulder ROM 10 WP

• Proportional Earnings Loss 100%

23

Line By Line Method

Carpal Tunnel 13 WP
• Rating to Earnings Loss =

Shoulder 10 WP
• Rating to Earnings Loss =

24

4

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 in100% earnings loss
10 WP alone results in100% earnings loss

25

HEALTH ALERT

26

Composite Method

- Combine Whole Person Impairments before adjustment for FEC, occupation and age

- Apply calculated Ogilvie FEC to all body parts

27

Composite Method

- Calculate Whole Person Impairment

- Calculate Ratings to Loss Ratio:
  WP   =
  Proportional Earnings Loss =

- Earnings to Loss Ratio   =

28

Compare Table A

PDRS Page 1-7

Range of Ratios		FEC Rank	Adjustment Factor
Low	High		
1.647	1.810	1	1.100000
1.476	1.646	2	1.428770
1.305	1.475	3	1.185714
1.134	1.304	4	1.228571
0.963	1.133	5	1.271429
0.792	0.962	6	1.314286
0.621	0.791	7	1.357143
0.450	0.620	8	1.400000

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

29

Composite Method

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

16.01.02.02 – 13 –[1.82273]24 -112H – 29 – 25 PD (A)
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

30

5

Slide 31

Rocket Science

The calculated FEC per Ogilvie is 2.29231

31

Slide 32

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

32

Slide 33

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

33

Slide 34

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

34

Slide 35

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

35

Slide 36

Use of Ogilvie FEC Rebuttal Method

• Case by case basis

• Must be used **judiciously**

36

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

37

Rater's Responsibility

1) Determine Rating to Loss Ratio

2) Calculate FEC adjustment

3) Rate for disability

38

7