Case Study in Rating 2018

Presented by
Disability Evaluation Unit

Torres vs. Greenbrae Management

• ADJ9355637
• Tree trimmer falls out of tree
• Strikes head
• Injury to head, neck, and psyche
Ear, nose and throat specialist

Vestibular Class I 5 WP
11.01.02.00 – 5 – [1.4]7 – 482J – 12 – 16 PD

Orthopedic Report

• Cervical strain and myofascial disorder

• Cervical DRE II: 5 WP

• Criteria stated
  - non-verifiable radiculopathy
  - asymmetric motion

• Per report no evidence of radiculopathy, disc herniation, or asymmetric motion
Cervical DRE Categories

<table>
<thead>
<tr>
<th>DRE I</th>
<th>Subjective findings only</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRE II 5-8 WP</td>
<td>Muscle guarding/asymmetric ROM</td>
</tr>
<tr>
<td></td>
<td>Unverified radiculopathy</td>
</tr>
<tr>
<td></td>
<td>Resolved verified radiculopathy</td>
</tr>
<tr>
<td>DRE III 15-18 WP</td>
<td>Unresolved verified radiculopathy</td>
</tr>
<tr>
<td></td>
<td>Spine surgery one level</td>
</tr>
<tr>
<td>DRE IV 25-28 WP</td>
<td>Alteration motion segment integrity (fusion)</td>
</tr>
<tr>
<td></td>
<td>Bilateral or multi-level radiculopathy</td>
</tr>
<tr>
<td></td>
<td>(cervical thoracic spines)</td>
</tr>
</tbody>
</table>

Headaches

- 3 WP for headaches
- Per PDRS page 1-12 stand must be added to ratable impairment
- Exception for headaches
- Headaches well-established pain syndrome without identifiable organ dysfunction (Table 18-1)
Orthopedic Report

- Cervical DRE II: 5 WP
  15.01.00.00 – 5 – [1.4]7 – 482J – 12 – 16 PD

- Headaches: 3 WP

Psychiatric Report

- GAF 61: 14 WP
  - Low end of 61-70 scale
  - Some difficulty in social occupational or school functioning

- PDRS Page 1-16
Global Assessment of Functioning

Designed an overall assessment on dealing with various problems in living

DSM IV Axis V

<table>
<thead>
<tr>
<th>GAF</th>
<th>WP</th>
<th>Functioning</th>
</tr>
</thead>
<tbody>
<tr>
<td>71-80</td>
<td>0</td>
<td>Transient symptoms</td>
</tr>
<tr>
<td>61-70</td>
<td>0.14</td>
<td>Mild symptoms, some difficulty in social, occupational or school functioning</td>
</tr>
<tr>
<td>51-60</td>
<td>15-29</td>
<td>Moderate symptoms, moderate difficulty in social, occupational or school functioning</td>
</tr>
<tr>
<td>41-50</td>
<td>30-48</td>
<td>Serious symptoms, serious impairment in social, occupational or school functioning</td>
</tr>
</tbody>
</table>

Psychiatric Report

- GAF did not accurately assess psychiatric functioning in a broad range
- PDRS 1-13 GAF does “consider psychological, social, and occupational functioning”
- Additional Impairment given per Almaraz/Guzman
- Add-on ratings
Almaraz/Guzman

- The PDRS is rebuttable
- Physician provides method that accurately reflects impairment
- Must stay within four corners of AMA Guides
- May use any chapter, table or method

Physician Best Practices

- Provide standard AMA Guides rating
- Explain how standard rating arrived at
- Determine if accurate rating or explain why not
- Provide alternative rating if necessary
- Explain how alternative rating arrived at
- Stay within four corners of AMA Guides
- Provide rationale why this is accurate rating
Almaraz/Guzman Ratings

• Cognitive Table 13-8

• Class I: 7 WP

![Table 13-8](image)


Emotional/Behavioral Impairment

• AMA Guides page 325 Section 13.3f

“Emotional disturbances originating in verifiable neurologic impairments (stroke, head injury) are assessed using the criteria in this chapter”

• Cognitive impairment is rated using Table 13-6

• Only the most severe of the four major cerebral impairments is rated: consciousness, cognitive, language, emotional – AMA Guides page 308
Almaraz/Guzman Ratings

- Excessive sleepiness
- Sleep arousal Class I: 5 WP
- Epworth Scale 16

<table>
<thead>
<tr>
<th>Activity</th>
<th>Chance of Dozing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sitting and reading</td>
<td></td>
</tr>
<tr>
<td>Watching TV</td>
<td></td>
</tr>
<tr>
<td>Sitting in meeting</td>
<td></td>
</tr>
<tr>
<td>Passenger in car for an hour</td>
<td></td>
</tr>
<tr>
<td>Lying down in afternoon</td>
<td></td>
</tr>
<tr>
<td>Sitting and talking to someone</td>
<td></td>
</tr>
<tr>
<td>Sitting quietly after lunch</td>
<td></td>
</tr>
<tr>
<td>In a car and stopped in traffic</td>
<td></td>
</tr>
</tbody>
</table>

13.03.00.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
Almaraz/Guzman Ratings

• Loss of sexual desire

• Sexual Impairment Class I: 5 WP

<table>
<thead>
<tr>
<th>Class 1</th>
<th>1%-5% Impairment of the Whole Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sexual functioning is possible, but with difficulty of erection or ejaculation in men or lack of awareness, excitement, or lubrication in women</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class 2</th>
<th>15%-19% Impairment of the Whole Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reluctance or difficulty of sexual functioning is possible, but there is no awareness</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class 3</th>
<th>20% Impairment of the Whole Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No sexual functioning</td>
</tr>
</tbody>
</table>

07.05.00.00 – 5 – [1.4]7 – 482J – 12 – 16 PD

Psychiatric Impairment

• Psychiatrist determined to add cognitive, sleep arousal, and sexual impairments to psychiatric GAF impairment

• No specific reason given for adding impairments instead of combining

• What decision allows impairments to be added rather than combined?
Kite vs. East Bay

- ADJ6719136
- Bilateral hip replacements
- Physician adds rather than combining PD
- Most accurate reflection of PD
- Synergistic effect

Kite vs. East Bay

- WCALJ Award 66% PD

Left Hip

Right Hip
33 + 33 = 66 PD

- Defendant asked for reconsideration
- Decision Upheld
Combined Values Chart

- CVS is how disabilities are combined
- Residual chart \( A + B (1-A) \)
- Compaction increases with larger numbers
- Difficult to reach 100%

Combining vs. Adding

- A scientific formula has not been established to indicate the best way to combine impairments – AMA Guides page 10

- Impairments and disabilities are generally combined – PDRS page 1-10

- In general, impairment ratings within the same region are combined – AMA Guides page 10
Combining vs. Adding

- Cases of bilateral impairment....If the total combined whole person impairment does not seem to adequately reflect the actual extent of alteration in the individual’s ability to perform ADL, this should be noted.

  —AMA Guides page 435

Multiple impairments must be combined in a prescribed manner — PDRS page 1-5

<table>
<thead>
<tr>
<th>Case</th>
<th>Body Parts</th>
<th>Rationale</th>
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</thead>
<tbody>
<tr>
<td>Borelli vs. DMV 2014 Cal Wrk Comp PD Lexis 217</td>
<td>Right knee, cervical, lumbar spine - combined</td>
<td>Must have physician opinion</td>
</tr>
<tr>
<td>LaCount vs. LA County 2015 Cal Wrk Comp PD Lexis 47</td>
<td>Knee, hip and shoulder-added</td>
<td>Synergistic effect</td>
</tr>
<tr>
<td>Newberry vs SF 49ers 2017 Cal Wrk Comp PD Lexis 143</td>
<td>Knees, shoulder, lumbar spine - added</td>
<td>Synergistic effect</td>
</tr>
<tr>
<td>Sweetman vs. B.O.A. 2014 Cal Wrk Comp PD Lexis 510</td>
<td>Add spine and wrist, not psyche</td>
<td>No overlap between impairments</td>
</tr>
<tr>
<td>Diaz vs. State of CA 2015 Cal Wrk Comp PD Lexis 683</td>
<td>Upper and lower digestive impairments - added</td>
<td>No overlap between impairments</td>
</tr>
</tbody>
</table>
Synergy vs. Overlap

- Synergy is the interference with the ability to compensate for an injury
- Overlap is when one impairment is included within another
- Related, but separate conditions are rated separately and combined – AMA Guides page 19
- In general, impairments within the same region are combined, before combining the regional impairment rating with that from another region – AMA Guides page 10

AMA Guides and Duplication (Table 17-2 Condensed)

<table>
<thead>
<tr>
<th></th>
<th>Gait</th>
<th>Atrophy</th>
<th>Muscle Strength</th>
<th>ROM</th>
<th>DJD</th>
<th>DBE</th>
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</thead>
<tbody>
<tr>
<td>Gait</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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<td></td>
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<tr>
<td>Atrophy</td>
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<td>Muscle</td>
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<td>Strength</td>
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<td>DBE</td>
<td>X</td>
<td>X</td>
<td>X</td>
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</tr>
</tbody>
</table>
AMA Guides and Duplication

• **Decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of pains that prevent maximum application of force...** - AMA Guides page 508

• **Impairment due to arthroplasty cannot be combined with impairments due to instability, subluxation, or dislocation.** – AMA Guides page 505

LC 4660.1

• No increases for sleep dysfunction, sexual dysfunction or psychiatric disorder arising out of a compensable physical injury.

• Exceptions for psychiatric impairment
  1) Victim of or direct exposure to a violent act
  2) Catastrophic injury – including a severe head injury
WCALJ Decision

- WCALJ tossed out sleep arousal, sex, and psychiatric impairments under LC 4660.1
- Instructed to rate headache, cervical spine, cognitive, vestibular impairments
- Instruction to add instead of combine vestibular impairment

Formal Rating

15.01.01.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
21 C 16 C 11 = 41 PD

11.01.02.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
41 + 16 = 57 Final PD
Applicant Requests Reconsideration

Psychiatric impairment should be included because

• Did not arise out of a physical injury, but caused by accident itself

• Catastrophic injury exception

• Victim of violent act

Arising from Injury

• Not possible to determine in this case whether the psychiatric was caused by the initial fall

• Psychiatric did not state what percentage caused by injury itself and what percentage arose from physical injury

• Parties did not seek clarification from AME on this issue
Catastrophic Injury Exception

• AME diagnosis was psychiatric injury secondary to mild traumatic brain injury
• Catastrophic injury includes, but not limited to, loss of limb, paralysis, severe burn, or severe head injury
• Therefore unclear if catastrophic injury exception met
• Commissioners choose to concentrate on violent act exception instead of arising out of or catastrophic injury

Victim of Violent Act

• Violent act defined as an act characterized by either strong physical force, extreme or intense force, or an act that is vehemently threatening

• Victim is defined as one that is acted on and adversely affected by a force or agent
Victim of Violent Act

- Interpreting violent act as a criminal act was considered too narrow

- LC 4660.1 did not specify criminal act

- Broader interpretation of LC 4660.1 violent act exception will still limit psychiatric injuries
Almaraz/Guzman and LC4660.1

• Can sexual impairment and sleep arousal impairment still be rated under Almraz/Guzman?

• Does the need for accurate impairment override LC4660.1?

No, LC4660.1 trumps Almaraz/Guzman considerations

LC 4660.1 and Duplication

• AMA Guides page 4

• Impairment percentages reflect severity of medical condition and decrease to perform activities of daily living

• Whole person impairment estimate impact on individual’s ability to perform activities of daily living.
Table 1-2 Activities of Daily Living

- Self-care, hygiene
- Communication
- Physical activity
- Sensory function
- Non-specialized hand activities
- Travel
- Sexual function
- Sleep

Commissioners Panel Decision

- To allow additional consideration for such disorders (sleep arousal and sexual dysfunction) outside of the strict rating would

1) Violate LC Section 4660.1

2) Allow two impairments for the same injury
Rating on Reconsideration

15.01.01.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
35 C 21 C 16 C 11 = 62 PD
11.01.02.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
62 + 16 = 78 Final PD

Rating if Cognitive PD added

15.01.01.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
11.01.02.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
35 C 16 C 16 C 11 = 59 PD
59 + 21 = 80 Final PD
Rating if Cognitive added as Part of Psychiatric Impairment

35 + 21 = 56 PD
15.01.01.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
11.01.02.00 – 5 – [1.4]7 – 482J – 12 – 16 PD
56 C 16 C 16 C 11 = 72 PD

Questions?