ALMARAZ/GUZMAN
WHAT WORKS & WHAT DOESN'T WORK

by:
JULIUS YOUNG
BOXER & GERSON, LLP
300 Frank H. Ogawa Plaza, Suite 500
Oakland, CA 94612
(510) 286-2932
Boxerlaw.com
Workerscompzone.com

A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess

A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions.

Substantial evidence means evidence that, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It must be reasonable in nature, credible, and of solid value.

ALMARAZ/GUZMAN I (en banc)

1) The American Medical Association (AMA) Guides portion of the 2005 Schedule is rebuttable;
2) The AMA Guides portion of the 2005 Schedule is rebutted by showing that an impairment rating based on the AMA Guides would result in a permanent disability award that would be inequitable, disproportionate, and not a fair and accurate measure of the employee's permanent disability
3) When an impairment rating based on the AMA Guides has been rebutted, the WCAB may make an impairment determination that considers medical opinions that are not based or are only partially based on the AMA Guides.

ALMARAZ/GUZMAN II (en banc) (9/3/09)

1) Permanent disability rating established by the Schedule is rebuttable;
2) The burden of rebutting a scheduled permanent disability rating rests with the party disputing the rating;
3) One method of rebutting a scheduled permanent disability rating is to successfully challenge one of the component elements of that rating, such as the injured employee's whole person impairment (WPI) under the AMA Guides; and
4) When determining an injured employee's WPI, it is not permissible to go outside the four corners of the AMA Guides, however, a physician may utilize any chapter, table, or method in the AMA Guides that most accurately reflects the injured employee's impairment.

LANGUAGE MATTERS
Almaraz/Guzman II (9/3/09)

1) Rejects the inequitable, disproportionate and not fair and accurate standard
2) All WPI evidence must be within four corners of AMA Guides
3) Expert opinion should use “the chapter table or method of assessing impairment of the AMA Guides that most accurately reflects the injured employee’s impairment”

LANGUAGE MATTERS
Almaraz/Guzman II (cont.)

1) Arbitrary assessments not permitted
2) Report should explain impairment conclusions
3) WPI opinion must constitute substantial evidence
4) Chapters 1 and 2 are part of Guides

LANGUAGE MATTERS
Almaraz/Guzman (Court of Appeal)

1) Physicians judgment based on experience, training, skill, thoroughness in clinical evaluation is important to assess clinical impairment
2) Guides cannot anticipate and describe every impairment
3) Guides are “consensus derived estimates” and some percentages supported by limited research data
4) Guides can’t rate syndromes that are “poorly understood“ and “manifested only by subjective symptoms”

LANGUAGE MATTERS
Almaraz/Guzman (Court of Appeal)

1) Guides call for exercise of clinical judgment “even beyond the description’s, tables, and percentages.”
2) Clinical judgment to accommodate “complex or extraordinary cases”
3) Unreasonable departures from a strict application of the Guides can be challenged
4) Opinion that is without facts and reasoning to justify it will not be sufficient
5) Physician must explain why departure from AMA WPI is necessary
6) Physician must explain how arrived at a different rating

LANGUAGE MATTERS
Almaraz/Guzman (Court of Appeal)

1) Extrinsic sources may be used
2) Deviation from strict Guides not automatically insufficient merely because opinion derived from or supported by extrinsic resources
3) Physician free to acknowledge reliance on standard texts or recent research data as basis for conclusions
4) Exercise clinical judgment to evaluate impairment most accurately
5) If explanation fails to convince the WCJ or WCAB, it will properly be rejected.
6) “Complex or extraordinary cases”

LANGUAGE MATTERS
Almaraz/Guzman (Take Aways)

1) Inequitable, disproportionate, fair criteria is rejected.
2) Accuracy is key
3) Clinical judgment is key
4) Extrinsic resources ok, but to support the how and why
5) To successfully rebut, the doctors must explain
6) Complex or extraordinary? What determines this?

MOST COMMON A-G STRATEGIES

- Figure 15-19
-Hernia Table
- Gait derangement Tables 17-5 & 13-15
- Adding impairments vs CVC (*Kite* case)
- ROM vs DRE arguments
- Functional loss arguments
- Table 13-22 for upper extremities
- Grip loss
- Corticospinal
- Analogies to amputations or % thereof
- medication effects

A GRAIN OF SALT…….

ALMARAZ-GUZMAN decisions can seem inconsistent

- panel decisions indicate WCAB thinking but aren't binding precedent
- WCAB commissioners rotate panels
- Lack of post-Guzman court decisions until Cannon
- recent turnover at WCAB
- many panel decisions not widely circulated
- panel decisions often written in ways that don't explain underlying facts well
- whether a particular rebuttal method was allowed may depend on quality of doctor's analysis

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T

SPINE

Figure 15-19

The whole spine divided into regions indicating maximum WPI represented by total impairment of one region of the spine. Lumbar 90%, thoracic 40%, cervical 80%

Almaraz/Guzman use of Figure 15-19 upheld:

Donald Laury v. R&W Concrete (2011)

(2-1 panel decision) (AME successfully rebutted strict ROM rating by finding 60% loss of use of spine so that 60% x 90% = 54% WPI; worker had failed back after 5 surgeries)

See also: Jamie Mallin v. California Department of Correction

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

SPINE

Figure 15-19 disallowed

Robert Leon v. R.F. Development (2011) (2-1 panel)

(Figure 15-19 rejected where worker had multilevel bulges but minimal pathology & no surgery; "This impairment rating method should be limited to circumstances where there is significant disability due to surgery, extensive pathology & multilevel involvement")

Bagdasaryan v. .County of LA (2013)

use of 15-19 rejected where AME failed to explain how he arrived at 25% loss of ADLs and where complaints only subjective)

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WHAT WORKS? WHAT DOESN'T cont.

SPINE

Figure 15-19 disallowed:

Davis v. Walt Disney (2014)

(use of 15-19 rejected where doctor failed to provide sufficient explanation of why)

Hobbs v. County of LA (2015)

(attempt to rebut DRE IV with 15-19 rejected; the Panel questions use of 15-19 as a rating mechanism)

Constantino v. Queenscard (2016)

(use of 15-19 rejected where AME appeared to argue with the Guides themselves)

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WHAT WORKS? WHAT DOESN'T cont.

SPINE

Hernia Table 6-9 (p136) – allowed

Use of Table 6-9 to rebut DRE III was allowed

(Graham v. Pepsi) (2011)

See also: Nickell v. PKB Investments (2013) Table 6-9 allowed as rebuttal; applicant used a cane & ambulated with a limp due to spine injury

Cortez v. State of California (2014)

(well reasoned report discussing functional capacity loss & affects on ADLs)

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WHAT WORKS? WHAT DOESN'T cont.

SPINE

Hernia Table 6-9 (p136) – disallowed

Table 6-9 disallowed where PQME failed to explain why & seemed to use old schedule reasoning.
(Tordini v. James Diedrich) (2011)

Disallowed where PQME appeared to use 6-9 on basis it was closest to old schedule rating.
(Rockford v. Long Beach) (2012)

Rejected adding Table 6-9 to DRE WPI because DRE method "already implicitly takes into account the effects of a spinal disability in lifting ability"
(Johnson v. Caltrans) (2013)

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WHAT WORKS? WHAT DOESN'T

OTHER APPROACHES THAT FAILED

- AME failed to present supporting evidence of impaired ADLs

  Rozenoff v. CHP (2011)

- AME report used functional loss percentages that didn't add up

  Rene Garcia v. WCAB (2013)

- AME based rebuttal on analogy justified by possible future need for surgery

  Walton v. WCAB (2013)

- AME's use of Fig 15-19 appeared to be based on design to obtain an intended result

  Bailey v. Iron Mountain (2013)

- In spinal case QME used Table 3-1 p. 26 to assign category 2 cardiovascular impairment based on deconditioning theory

  Reese v. Microdental Labs (2014)

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WHAT WORKS? WHAT DOESN'T

APPROACHES THAT FAILED

- WCAB rejected formulation based on limited activities "in open labor market," an incorrect standard

  Wood v. U-Haul (2010)

- A-G foundation using pre-2005 schedule factors of disability

  Hajdukiewicz v. DMV (2011)

  Asim v. EMMUD (2013)

- Assigning 3% add-on for pain where all findings were normal & PQME gave 0% for DRE I

  Felix v. Sea Dwelling Creatures (2011)

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WHAT WORKS? WHAT DOESN'T cont.

APPROACHES THAT FAILED

- Assigning an arbitrary loss of function percentage

Johnson v. The Grand Bouquet (2009)

Oliva v. Paso Robles (2009)

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WHAT WORKS? WHAT DOESN'T cont.

A-G ALLOWED

- Analogy to Table 13-15 (station & gait) & Table 6-9 (hernia) rather than DRE lumbar II

Fitzsimmons v. Scotts (2011)

- PQME found DRE III but also used Table 17-5 p.529 because of drop foot gait

Pfaeffle v. San Mateo (2011)

- PQME rebutted strict DRE III by adding Table 13-15 Class 3 (p.336) where cane used

Peiper v. FPI (2013)

- In addition to DRE III (cervical) AME utilized Table 16-35 for shoulder deficit where neck manifested shoulder motion & strength loss

Reinus v. Temple Etz Chaim (2010)

THE CANNON CASE
WHAT DOES IT TEACH?

City of Sacramento v. WCAB (CANNON) (2013)

California Court of Appeal 3rd District

- Cannon had work-related plantar fasciitis
- No objectives but subjectives affected weight bearing
- AME gave A-G rating of 7% using Table 17-5 p.259
- Trial Judge disallowed A-G rebuttal
- WCAB panel upheld A-G formulation
- On appeal, employer argued rating was improper because
  - a) based on subjective complaints only
  - b) plantar fasciitis not complex or extraordinary

CANNON 3rd DCA's RULING:

- Plantar fasciitis is subjective
- But in Guzman the 6th DCA

  "was using the term "complex or extraordinary cases" to describe "syndromes that are poorly understood and manifested only by subjective symptoms…"
- Cannon court upholds use of Guzman to assign 7% WPI
- Is "complex or extraordinary" an easy standard to meet?

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WHAT WORKS? WHAT DOESN'T cont.

SHOULDERS

Examples of A-G that were upheld:

Where strict AMA rating was 5% WPI under figure 16-43 and 16-40 AME offered Almaraz analogy to 30% amputation for 11% WPI

MacNeil v. Petaluma (2010)

AMA strict rating was 5%. The QME considered , but did not use Chapter 13.8 p.343 Table 13-22 (neurological deficit) and ultimately used hernia Table in Chapter 6 to give 19% WPI

Oliveira v. River Front (2011)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

SHOULDERS

Examples of A-G that were upheld:

PQME used grip loss under Tables 16-31 and 16-32 in addition to shoulder range of motion loss

Ibarra v. C.W. Brower (2015)

Treater's use of figure 16-40 (p.476) combined with Table 16-15 (p.492), combined with Table 16-10 (p.482), combined with Table 16-27 (p.506)

Daniels v. Ford (2011)

AME used Table 16-3 p.439 in assigning 30% WPI for each torn rotator cuff based on loss of 50% of ability to use each of upper limbs

Mary Smith v. County of Sacramento (2015)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

SHOULDERS

Examples of A-G that were upheld:

A-G rebuttal that used grip loss under Chapter 16 p.507-508 in case involving AC joint, rotator cuff & labral tear

Medina v. Salinas Valley (2010)

PQME's effort to make wage loss a Guzman analysis factor was rejected.

Daniels v. Ford Store (2011)

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WHAT WORKS? WHAT DOESN'T cont.

SHOULDERS

Examples of A-G that were rejected:

AME used incorrect "fair and inequitable" language

Bargas v. Fresno Unified (2010)

Where worker had rotator cuff tear but returned to usual work, the PQME offered A-G analysis by analogy to shoulder arthroplasty (24% UE = 13% WPI) strict AMA was 1% on motion loss. Judge & WCAB panel rejected A-G analysis

Chavez v. International Paper (2011)

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WHAT WORKS? WHAT DOESN'T cont.

SHOULDERS

Other examples of A-G that were rejected:

AME rated motion loss at 11% WPI but also grip at 18% WPI.

AME failed to explain why impairment was so involved that Sec. 16.8(a) of Guides doesn't apply

Aoki v. City of Torrance (2012)

WCJ found worker not credible and rejected AMEs A-G formulation of 50% loss of use = 30% WPI

Velasco v. County of Santa Barbara (2012)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

SHOULDERS

Treater found strict AMA WPI of 2% for post surgery labral tear using Tables 16-3, 16-40, 16-43, & 16-46. Treater's A-G analysis used class III-17% WPI at p.503-505 of Guides Table 16-26. A-G rejected due to conflict between reports & deposition testimony

Rubio v. General Atomics (2013)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

KNEES/ANKLE/FOOT

Examples of A-G that were upheld:

Post medial & lateral meniscectomy was rated under Table 17-33 & Table 17-31, but under Almaraz the AME used Table 17-6 to reflect atrophy

Large v. Klein Plastering (2009)

In evaluating ankle PQME used Tables 17-12, 17-13 and 17-37, providing reasoning therefore

Gonzalez v. Rangel (2010)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

KNEES/ANKLE/FOOT

Examples of A-G that were upheld:

AME rebutted strict meniscus rating under Table 17-33 (p.546) and Table 17-31 (p.544) by using Table 13-15 (p.336) gait derangement

Rodgers v. County of Sacramento (2011)

Remand to consider A-G consideration of cane usage under AMA Section 17.2c

Gomez v. County of Fresno (2010)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

KNEES/ANKLE/FOOT

Examples of A-G that were upheld:

In metatarsal injury, AME used Table 17-13 p.547 for fracture but also under A-G Table 8-2 p.178 for transverse scar (Section 8.7 rather than scar Sections 8.3)

Valdes v. Louis Vuitton (2014)

WCAB upheld combination of gait derangement with range of motion, ankle strength & sensory loss ratings despite Table 17-2 p.526 prohibition

Greene v. Central Parking (2015) (2-1 panel)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

KNEES/ANKLE/FOOT

Examples of A-G that were upheld

AME successfully rebutted strict Table 17-10 p. 537 4% WPI by using Table 17-5 p. 529 moderate limp between Cat E&F for 25% WPI even though worker used no cane

Melesio v. Hambro (2010)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

KNEES/ANKLE/FOOT

Examples of A-G that were rejected:

AME did not even discuss why he combined factors not otherwise combinable

Aranton v. Monterey (2012)

AME phrased A-G effort to use Table 15-6 (station and gait as an "alternative rating method" and gave no analysis

Flores v. City of Stockton (2013)

See also: Perez v. Coachella (2015

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WHAT WORKS? WHAT DOESN'T cont.

KNEES/ANKLE/FOOT

Examples of A-G that were rejected:

AME's A-G rebuttal using a percentage fractional loss multiplied by Table 17-32 amputation values lacked sufficient reasoning "Why"

Beck v. National Messenger (2010)

Where strict AMA rating used Table 17-31 (arthritis), Table 17-8 (muscle weakness) & Table 17-5 (gait derangement) but Table 17-2 disallowed combining all three, AME proposed under A-G to combine all three. AME's formulation improperly based on reference to ability to compete in labor market.

Hansen-Dillard v. SaveMart (2010)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.
KNEES/ANKLE/FOOT

Examples of A-G that were rejected:

Reverse A-G where applicant had almost no complaints despite surgical history normally rated for arthritis and atrophy

Riley v. City of Pasadena (2011)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

FIBROMYALGIA

Panel noted Guides provide no fibromyalgia rating and upholds A-G foundation by AME using Table 13-4 and Table 13-8

Mrozek-Payne v. Spectre (2012)

Panel accepted QME's A-G rating for fibromyalgia that used tables for sleep disorder, sex disorder, irritable bowel syndrome & headaches

Southern California Edison v. WCAB (Martinez) (2013)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G Allowed:

Applicant had 2 elbow surgeries with hardware after radial heal fracture AME used p.472 Figure 16-34 & p.439 Table 16-3 & p.499 (distribution of prox radial underjoint) 12% & 6% = 17%

? Used Table 16-18 by analogy

Menes v. UCB Pharma (2009)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.
UPPER EXTREMITIES

A-G attempt allowed:

In ulnar nerve entrapment case A-G rebuttal using Table 16-3 (p.439) of Guides to derive 30% WPI for each extremity was allowed

Quinn v. Macy's West (2010)

AME noted that for epicondylitis/ulnar nerve there is 0% WPI "unless there is some other factor to be considered." A-G rebuttal using Table 13-22 Class I was upheld

Lobdell v. Calif. Dept. of Corrections (2014)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.
UPPER EXTREMITIES

Examples of where A-G allowed

Worker had CTS & post traumatic tenosynovitis panel upheld combined use of grip strength with loss of motion under 16.7d & 16-34

Cassiano v. Waste Management (2010)

PQME rebuttal the 0% WPI strict AMA by logic of 25% loss of capacity for each upper extremity (i.e. 25% x 60% total UE value = 15% WPI, using analogy to Table 16-3

Orozco v. Barbosa (2010)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G allowed:

Examples where A-G was allowed in wrist/hand claim, AME determined ROM and grip strength not adequate description & analogized to Table 16-18 p.499

Jose Maldonado v. FCI (2010)

5% WPI assigned for post-surgical carpal tunnel where AME explained 0% did not accurately reflect impairment

McKenna v. City of San Carlos (2010)

AME added 3% WPI to each arm by documenting a percentage loss of the upper extremity

Rivera V. Costco (2011) (2-1 decision)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G was allowed:

Strict AMA rating of wrist based on motion loss was 6% under Figure 16-28 & Figure 16-31, but AME under A-G used grip under Table 16-34 & Table 16-3 to rebut. Panel noted maximal grip effort removed case from 16-8 limitations on combining grip with motion loss

Barajas v. Fresno Unified (2012)

Malhotra v. State of California (2012)

See also Sandoval v. Murphy Chiropractic (2012)

Li v. County of LA (2012)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G allowed:

Strict AMA rating used on sensory/motion deficit and motion loss was 8% WPI but doctor gave A-G rebuttal using functional loss Table 16-3 or alternatively Table 13-17

Hundemer v. County of Santa Cruz (2011)

AME's use of grip strength as A-G rebuttal allowed when there was no evidence of a painful condition which would prevent maximal force in grip tests

Tarasenko v.Northrop Grumman (2014)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.
UPPER EXTREMITIES

Examples where A-G allowed:

AME's use of loss of motion & loss of strength was permitted under Section 16.8(a) p.508 of Guides

Wright v. City of Los Angeles (2012)

AME's A-G rebuttal in wrists/hands case which used Table 13-16 p.338 class 3 (use of involved extremities but difficulty with self-care activities)

Sanchez v. Washington Mutual (2012)

AME successfully rebutted 1% for thumb based on grip loss

Ramirez v. Space Lok (2015)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G allowed:

Grip strength rated under Section 16.8 where grip loss not considered adequately under other methods

Rodriguez v Roto Rooter (2015)

In post surgical carpal tunnel case, strict AMA rating was 0% WPI, but AME used grip Tables 16-34 & 16-3. The panel allowed this A-G formulation, distinguishing the result in_ Kendrick McGee v. State and Llanez v. Diamond Holdings

Hager v. County of Santa Clara (2015)

See also Skibbe v. Sonoma State (2015)

AND Urbano v. County of San Diego (2015)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G allowed:

A-G based on % loss of an amputation was upheld as a valid rebuttal to strict AMA

Villalobos v. State of CA (2014)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G not allowed:

PQME gave 6% WPI for wrist, but attempted A-G rebuttal using Table 6-9 hernia chart to give 13% WPI, AME did not sufficiently justify

Gomez v. Unified Pallet Services (2015)

AME did not provide sufficient analysis of use of grip strength in post carpal tunnel surgery to rebut 16.8 p.508

Kendrick-McGee v. WCAB (2013)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G not allowed:

Where worker had 4 wrist & thumb surgeries, AME noted strict AMA of 12% WPI for each hand but based A-G on 50% loss of use. (i.e. 50% of 60% - 30% WPI). Panel rejected this, noting there was absence of evidence of loss of use of entire upper extremities

Weaver v. LA Unified (2015)

AME's attempt to rebut 0% WPI for hand/wrist with analogy based on loss of capacity was not adequately explained, and AME questioned worker credibility anyway

Calvillo v. State of CA (2015)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Example where A-G not allowed:

Where strict rating for elbow & shoulder was 0% WPI and PQME used Table 16-3 p.439 to give 18% WPI based on 30% functional loss, PQME did not adequately explain and merely said 30% functional loss is reasonable

Killebrew v. James Shirley (2010)

AME did not clarify the diagnosis & did not provide strict AMA rating before giving an A-G rating

Cortes v. Southwest Airlines (2011)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G not allowed:

AME's attempt to do A-G based on grip strength under Table 16-34 disallowed where there were no ADL effects and worker continued at usual job

Kay Rodriguez v. WCAB (2013)

PQME's attempted use of Table 4-4 p.74 & table 16-3 p. 439 was rejected where insufficiently explained

Valdivieso v. Harman (2013)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples of where A-G not allowed

Use of p. 342 Table 13-22 to give 22% (rebutting 16% WPI) (15-29% for individual who can use the involved extremity but has difficulty with self-care activities) rejected where doctor didn't explain how & why & record limitations to self care activities

Matta v. NUMMI (2009)

QME's attempt to rebut 1% AMA rating by using Table 16-3 p.439 (25% functional loss of 60% value of UE) focused too much on work restrictions rather than ADLs

Olguin v. ESIS (2012)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

UPPER EXTREMITIES

Examples where A-G not allowed:

AME didn't explain why grip loss Table 16-34 should be used instead of anatomic findings per Sec. 16.8a p.508

Llanez v. Diamond Holdings (2012) (2-1)

AME simply chose a contrary WPI number

Swarts v. Cadenice (2012)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

HIP

AME noted that strict WPI for hip labral tear/post traumatic chondromalacia was 4% WPI under Table 17-2, but successfully rebutted by combining Table 17-5

Eagle v. State of CA (2016)

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

COMBINED VALUES CHART (CVC)

Kite case (EBMUD v. WCAB) (*Kite*) (2013)

- QME noted synergistic effect of injury to same body parts (hips) bilaterally
- Best way to combine would be to add them, not use CVC
- 20 +20 = 40 if added
- 20 c 20 = 36 if CVC used

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

COMBINED VALUES CHART (CVC)

Cases where *Kite* followed:

AME's adding of orthopedic impairments rather than using

CVC was allowed

LA County v. WCAB (Armand La Count) (2015)

See also: Eagle v. State of CA (2016

ALMARAZ/GUZMAN
WHAT WORKS? WHAT DOESN'T cont.

COMBINED VALUES CHART (CVC)

Cases where *Kite* not followed:

Where AME did not address whether it would be more accurate to add impairments rather than use the CVC, it was error for WCJ to order a *Kite* approach

Borela v. State of California (2014)

Case remanded for AME to address whether impairments should be added or whether CVC used

Lotspike v. J Jill (2013)

OTHER ISSUES YOU MAY BE ASKED TO ADDRESS

- Impaired amenability to rehabilitation

  Ogilvie v. City & County of SF (2011)

  Contra Costa County v. WCAB (*Dahl*) (2015)

  LeBoeuf v. WCAB (1983)

- effect of medications

  Barrett Business Services v. WCAB (*Gallagher*) (2013)--

- need for FCE (functional capacity evaluation)

- Ask to fill out an RFC form so that a vocational expert can review for testimony on Ogilvie/LeBoeuf/Labor Code 4662 issues

THE END

Questions?

Contact Julius Young

jyoung@boxerlaw.com

510-286-2932

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