

AMA 6th Considered Rebuttable by California WC Appeals Board

The State of California Workers' Compensation Appeals Board (WCAB) February 3, 2009 decision in the consolidated cases of Almaraz v. SCIF et al. and Guzman v. Milpitas Unified School District (Almaraz/Guzman) concluded that the AMA *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*) portion of the 2005 Permanent Disability Rating Schedule is rebuttable. The impact of this decision is significant for California and it has the potential of being used as a catalyst for challenges on the use of the *Guides* in other jurisdictions. It also exemplifies some of the challenges involved in rating impairment and rating disability and the role of the AMA *Guides* in workers' compensation.

I have the decision available as a PDF document should anyone wish to review it. I think it is a worthy read for anyone looking for the many discrepancies in the 5th edition as well as understanding the courts analysis of the case. Much of the same critical analysis can be applied to the use of the 6th edition of the guides as well. If I was asked to sum up the decision in a sentence or two here is what I would say. A physicians impairment and disability opinions should be based upon experience and science with consideration of the AMA Guides rather than a strict interpretation of the Guides. This is an extremely oversimplified summary but adds to the understanding that the AMA Guides are just a Guide to impairment and not the word of G-d.

The WCAB held in the Almaraz v. SCIF et al. and Guzman v. Milpitas Unified School that:

1. The 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.

I suggest reading the decision and keeping it on file. Here are some examples of the points considered in the decision. All of these observations are supported by multiple page and paragraph references directly from the AMA Guides:

1. The AMA Guides Itself Recognizes Its Limitations, Indicates That It Should Not Necessarily Be The Sole Determinant Of Work Impairment, And Allows Other Factors To Be Considered.
2. The AMA Guides Does Not Measure *Work* Impairment



A MEDICAL-LEGAL NEWSLETTER FOR PERSONAL INJURY ATTORNEYS BY DR. STEVEN W. SHAW

3. The AMA Guides Recognizes That It Is Merely A First Step For Measuring Work Impairment; Therefore, Factors Outside The Guides May Be Considered, Including The Impact Of The Injury On The Employee's Ability To Perform Work Activities.
4. The AMA Guides Allow An Evaluating Physician, Through The Exercise Of His Or Her Judgment, To Modify An Impairment Rating.
5. The AMA Guides Acknowledges Its Inherent Limitations.
6. The Case Law Of Other Jurisdictions Recognizes That The AMA Guides Need Not Always Be Followed. They cite case law from Arizona, Florida, New Hampshire, Hawaii, New Mexico and South Dakota with extensive review of the decisions from those states.

I expect that I will be getting some calls asking why I feel this is such an important topic if we are now using the 6th edition of the guides. Well, first of all, I know of no one that is presently using the 6th edition of the guides even though they were released 18 months ago. The community I deal with in Connecticut feels that the 6th edition guides are very poorly done, despite the best efforts of the authors. We still use the 5th edition as a reference book and generate our opinions using the 5th edition as a starting point. Also, eventually, the 6th edition will become a factor as workers compensation commissioners, claims adjusters, judges, plaintiff and defense council demand evaluations using the new guides. When that happens, we will need to be prepared to explain our deviation from the guide's determinations that poorly represent the extent of injuries sustained by injured parties. I am in the process of going through the 6th edition page by page and identifying conflicting statements and errors. The 1st erratum was 54 pages long and I suspect future errata will be forthcoming as the errors and omissions are still abundant.

To get your copy of the errata and the California decision please contact me by email at Dr.Shaw@ShawChiropractic.com

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