Interesting Panel Decision

NOTE – This decision is not designated a “significant panel decision” by the WCAB. While the decision is citable, caution should be exercised and any subsequent history should be verified. WCAB panel decisions are not binding.

Gurdev Malhotra, Applicant v. State of California, Department of Developmental Services, Legally Uninsured, State Compensation Insurance Fund, Defendants

2012 Cal. Wrk. Comp. P.D. LEXIS 143

The WCJ issued a F&A based on loss of grip strength leading to 20% PD based on a laceration to the right little finger. The QME did document grip strength measurements and noted the claimant did put forth an honest effort. However impairment was determined using loss of motion and digital nerve lesion.

The Panel determined the WCJ was taking the role of the physician in determining impairment should be rated using grip loss. Reconsideration was granted, F&A was rescinded, and the matter was returned to trial level for a new PD rating.

Rating of Extremities

There is one thing that is not mentioned in the above decision, and it is very important when rating extremities – especially fingers.

The 2005 PDRS states (page 1-11):

The composite rating for an extremity (after adjustments) may not exceed the amputation value of the extremity adjusted for earning capacity, occupation and age.

In other words, an injury to the little finger cannot exceed the permanent disability calculated using 5% WPI, the value for 100% amputation of the little finger.◆
A Case Study

Putting your rating analysis to work.

FACTS – A 53 year old machine operator suffered an industrial injury to the right upper extremity in 2006.

Medical Report

The Doctor finds the injured worker to be P&S. Impairment is provided for grip loss using Almaraz/Guzman, shoulder loss of motion, wrist loss of motion, thumb loss of motion, middle finger nerve lesion and pain.

After adjustment and combining, the impairment provided by the doctor resulted in 31% Permanent Disability.

B & B Ratings Analysis

We found the use of grip loss impairment to be invalid, and the explanation provided by the doctor would not be sufficient substantial evidence to rebut the ‘standard’ AMA Guides impairment.

The doctor had also miscalculated the impairment for the thumb and wrist.

Using the loss of motion for the shoulder and wrist and the digital sensory loss we determined there was 10% Permanent Disability.
A Case Study (continued from page 2)...

Possible Actions

1. Attempt to settle case using findings of B & B Analysis.
2. Send a note to doctor; copy and paste sections from B & B Analysis.
3. Depose the doctor.
4. Ignore the B & B Analysis and settle for the doctor’s original value.
5. Send to the DEU for rating.

The Actual Story

The Defense Attorney (from Bradford & Barthel) shared our analysis with the Applicant Attorney.

Result

The case was settled for $20,000, resulting in a savings of $11,740.00 (maximum earner at 31% PD without +/- 15% adjustment).

Phil’s Blackboard Lessons

1. Our analyses provide you (or your attorney) with a ‘tool’ for negotiation. You may not always be able to settle based on strict application of the AMA Guides.
2. Almaraz/Guzman provides a means for disputing the Permanent Disability derived from a ‘standard’ interpretation of the AMA Guides. If the doctor incorrectly determines the ‘standard’ impairment would this not automatically bring into question his/her rebuttal?

“CORRECTING PD...ONE REPORT AT A TIME”