

WCLA 3-27-14

- The Five Factors of Section 8.1b
- Thursday March 27, 2014
- 12:00 pm to 1:00 pm
- James R. Thompson Center , Chicago, IL
- 1 Hour General MCLE Credit

Section 8.1b

820 ILCS 305/8.1b

- Sec. 8.1b. Determination of permanent partial disability. For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
- (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Frederick Williams v. Flexible Staffing
11WC046390; 13IWCC0557;13L50595

Facts

- DA 10-7-11
- 45 year old welder grabs for 400 lb rail
- Right distal biceps tendon rupture
- Dr. Aribindi performs surgery
- RTW full duty, despite complaints; no job
- Dr. Mark Levin does AMA impairment rating: 6% UEI; 4% WPI
- Arbitrator's Decision: 30% arm; reduced by IWCC to 25% arm
- Status: Respondent's Circuit Court Review: "Remanding-Ord" (2-13-14 "Re-Arbitration Allowed")

Frederick Williams v. Flexible Staffing 11WC046390; 13IWCC0557;13L50595 Factor (i) Reported Level of Impairment

- Dr. Levin's report admitted; identifies himself as CEDIR (AADEP certification)
- 6% UEI and "**disability**" of WP 4%
- "**Impairment does not equate to PPD**"
- "Does not include loss of range of motion" or "other measurements" (see 8.1b(a))
- DX Elbow Regional Grid, Table 15-4, pg. 399: **CDX 1**; Distal biceps tendon rupture; Residual loss of strength, functional with normal motion; default position C is 5% UEI (3,4,5,6,7)
- Physical Exam **PE grade modifier 2** because "moderate problem" (Table 15-8, pg. 408; range of motion moderate decrease; 12%-23% UEI?); **Arbitrator notes**: "moderate problem"
- Clinical Studies **CS grade modifier NA** because "diagnosis was biceps tendon rupture;" probably meant "If a finding is used for placement of a diagnosis within a specific class in a DBI grid, that same finding cannot be used as a grade modifier." section 15.3c, pg.407; **Arbitrator says** "surgical report could have been used in this way" (Table 15-9, pg. 410; GMCS =2?)
- Table 2-1, Fundamental Principles of the Guides, pg.20, #12: "If the Guides provides more than one method to rate a particular impairment or condition, the method producing the higher rating must be used."
- Functional History **FH grade modifier 1** because Quick DASH score 23, **Arbitrator notes** that it is not included so she cannot "review his findings." (Table 15-7, pg. 406)
- Net Adjustment = (GMPE-CDX) + (GMCS-CDX) + (GMFH-CDX) = (2-1) + NA + (1-1) = 1 + NA + 0 = NetAdjustment +1
- Move one space to right from default C 5% = 6% UEI x 60% = 4%WPI (Table 15-11, pg. 420)

Frederick Williams v. Flexible Staffing
11WC046390; 13IWCC0557;13L50595

Factors (ii) through (iv)

- Factor (ii): Occupation of the injured employee
- “Arbitrator takes judicial notice to be medium to heavy work;” therefore, “PPD will be larger than individual who performs lighter work.”
- Factor (iii): Age of Employee at the Time of Injury
- 44 yo “somewhat younger individual;” therefore, “PPD more extensive than that of an older individual because he will have to live with PPD longer.”
- Factor (iv): Employee’s Future Earning Capacity
- “Appears to be undiminished...returned to full-time duties...told he no longer had a job...may negatively affect Petitioner’s future earning capacity.”

Frederick Williams v. Flexible Staffing
11WC046390; 13IWCC0557;13L50595

Factor (v) Evidence of Disability

- Demonstrated evidence of disability corroborated by his treating medical records
- Credibly testified
- Pain, numbness, tingling and loss of range of motion
- Corroborated by treating medical records of Dr. Aribindi
- Corroborated by “diagnosis; necessity of surgery; course of treatment”
- “Last visit”: loss of range of motion
- “Evidences a disability as indicated by commission decisions regarded as precedent pursuant to section 19(e).”

Frederick Williams v. Flexible Staffing
11WC046390; 13IWCC0557;13L50595

Determination of PPD

- “Not simply a calculation, but an evaluation of all five factors” as stated in 8.1b
- No sole determinant
- “Therefore applying section 8.1b” PPD is 30% loss of use of the right arm.”
- “The Commission modifies the Arbitrator’s decision, decreasing the Petitioner’s permanent partial disability award from 30% to 25% loss of use of the right arm pursuant to Section 8(e) of the Act. All else is affirmed and adopted.”

David Chris Young v. Continental Tire
11WC039821; 13IWCC1086

Facts

- DA 09-16-2011
- 52 year old fork truck driver
- Pulling himself up and twisting into driver's seat feels pain in his back
- L4-5 disc herniation
- Dr. Kovalsky performs hemilaminotomy and discectomy
- Return to work sedentary duty: "good faith offer"
- Dr. David Lange rates AMA Impairment: 11% WPI
- Arbitrator: No accident
- IWCC: 27.5% loss MAW
- Status: CC Summons By Resp (1-21-2014)

David Chris Young v. Continental Tire
11WC039821; 13IWCC1086

Factor (i) Reported Level of Impairment

- The Commission, with the above findings that Petitioner met the burden of proving accident and causal connection, further finds evidence of Petitioner's ongoing condition of ill-being. Petitioner was off a substantial period of time before he opted to take early retirement and apply for Social security disability (SSDI). Petitioner did undergo surgery here but he did not return to his pre-injury state. An award of 27.5% loss of Petitioner's person as a whole for permanent partial disability (PPD) is appropriate in light of Dr. Lange's July 26, 2012 permanent partial impairment estimate of 11% and consistent with prior Commission decisions. With the above finding for Petitioner, the evidence and testimony demonstrates that Petitioner met the burden of proving entitlement to a PPD award as indicated here. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence and, herein, reverses the Arbitrator's decision and awards a loss of 27.5% loss of Petitioner's person as a whole under § 8(d)(2).

Jeffrey Garwood v. Lake Land College

12WC004194; 14IWCC0068

Facts

- DA 9-12-11
- 54 yo vocational computer instructor
- Left knee arthroscopy medial & lateral meniscus tears (debrided) & chondromalacia (chondroplasty & synovectomy)
- “Petitioner was examined by Dr. Joseph T. Monaco at Respondent’s request on August 3, 2012...provided an impairment rating”
- (i) 8% impairment of lower extremity (Closely deposed: “The Arbitrator notes these concessions by Dr. Monaco”)
- (ii) Now instructor in construction occupations
- (iii) No evidence as to impact of age
- (iv) Could be issues with accommodations if he were to lose job
- (v) Credible testimony as to pain and stiffness; corroborated by diagnoses and need for surgery; objectively corroborated by IME
- Arbitrator’s Award: 20% loss of use of the left leg
- IWCC: Affirmed & adopted
- Status: Commission Decision Rendered (02-03-2014)

Jeffrey Garwood v. Lake Land College
12WC004194; 14IWCC0068

Factor (i) Reported Level of Impairment

- The reported level of impairment under the AMA Guides. With regard to the AMA impairment rating, the Arbitrator takes into account Dr. Monaco's rating of 8% impairment of a lower extremity. In determining that rating, Dr. Monaco acknowledged that he did not use the recommended "outcome measure" for lower extremity ratings and that he did not take into account any aggravation that Petitioner suffered to his pre-existing chondromalacia because he did not believe that condition was related to petitioner's accident. While Petitioner testified that Dr. Norregaard has told him he needs surgery that recommendation is not reflected in the doctor's office records. There is no August 31, 2012 office note setting forth any proposed treatment plan by Dr. Norregaard. The Arbitrator also notes that there were some other discrepancies between Petitioner's testimony and the medical records themselves with regard to Petitioner's care and treatment (for ex., physical therapy) While these discrepancies are not enough to undermine causation they create some "pause" regarding treatment recommendations and prospective care. Furthermore, looking at the "outcome measure" Dr. Monaco did utilize (albeit it was not the recommended one) Dr. Monaco agreed on cross-examination that Petitioner's score on the "PDQ" would place Petitioner in a "moderate" impairment category rather than a "mild" one as he indicated in his report.

Jeffrey Garwood v. Lake Land College

12WC004194; 14IWCC0068

Factors (ii) through (iv)

- The occupation of the injured employee. Petitioner's current occupation is that of an instructor in Construction Occupations, a position he has held for a relatively short period of time. Previously, he was employed as a part-time instructor teaching computer-related courses. Prior to that Petitioner was employed as a dispatcher and he also had work experience in construction. This testimony was not rebutted by Respondent.
- The age of the employee at the time of the injury. At the time of his accident, Petitioner was 53 years old. No evidence was presented as to how Petitioner's age might affect his disability.
- The employee's future earning capacity. Petitioner testified that his current employer allows him to accommodate his ongoing problems in that he can sit and stand as desired and strenuous activity is not required. However, if he were to lose his current employment and be required to seek alternative employment, there could be issues with accommodation. Petitioner's past skills are varied, however, which would theoretically present greater employment opportunities. No evidence was presented to show a diminishment in Petitioner's future earning capacity as a result of his injury.

Jeffrey Garwood v. Lake Land College
12WC004194; 14IWCC0068

Factor (v) Evidence of Disability

- Evidence of disability corroborated by the treating medical records. Petitioner testified credibly to ongoing problems with pain and stiffness in his injured left knee that limit his ability to stand and walk. These complaints are corroborated by medical records showing that he suffered medial and lateral meniscus tears as well as an aggravation of pre-existing chondromalacia, that these conditions were serious enough to require arthroscopic surgery as described above, and by references in Dr. Wheeler's treatment notes that Petitioner has suffered from persistent soreness through his last visit and had demonstrated muscle imbalance during his recovery. Though not a treating record, Petitioner's complaints are also objectively corroborated by Dr. Monaco's findings that Petitioner walked with a limp at the time of his evaluation and had swelling in his left knee, as well as the finding of "moderate" functional impairment on his "PDQ" evaluation.

Jeffrey Garwood v. Lake Land College
12WC004194; 14IWCC0068
Determination of PPD

- Also, the Commission shall base its determination on the following factors:
- (i) the reported level of impairment as assessed pursuant to the current edition of the AMA "Guides to the Evaluation of Permanent Impairment";
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of the injury;
- (iv) the employee's future earning capacity; and
- (v) evidence of disability corroborated by the treating medical records
- The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to these factors, the Arbitrator notes....
- After considering all of these factors, the Arbitrator concludes that Petitioner has sustained permanent partial disability of 20% loss of use of the left leg.

Michael Arscott v. Conway
12WC003876; 14IWCC0018
Facts

- DA 1-10-2012
- 57 year old freight truck driver
- Injured left knee exiting tractor
- Torn meniscus
- Dr. Petsche performed arthroscopic surgery
- RTW full duty
- Dr. Sanjay Patari rates AMA Impairment: 20% LEI; 8%WPI
- Arbitrator's award: 20% loss of Left leg
- IWCC: Modifies award to 25% loss of left leg
- Status: Commission Decision Rendered (1-16-2014)

Michael Arscott v. Conway
12WC003876; 14IWCC0018

Factor (i) Reported Level of Impairment

- The Commission viewed the evidence differently than the Arbitrator and finds Petitioner lost 25% of the use of his left leg under Section 8(e) of the Act.
- (i): Dr. Patari found a PPI rating of 20% of the lower extremity, which translates to 8% person as a whole.

Michael Arscott v. Conway
12WC003876; 14IWCC0018
Factors (ii) through (v)

- (ii): The claimant was employed as a driver sales representative for the respondent since 1987 and has returned to his usual employment as of the trial date.
- (iii): The claimant was 57 years old as of the date of loss.
- (iv): The claimant was released to his regular job by his treating physician and continues to work in that position as before the incident.
- (v): The claimant described some residual symptoms in the knee, which are generally consistent with the surgery performed.

Michael Arscott v. Conway
12WC003876; 14IWCC0018
Determination of PPD

- **Nature and Extent of the Injury**

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per [820 ILCS 305/8.1b\(b\)](#), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this standard to this claim, the Arbitrator notes as follows:

- The claimant has undergone meniscal repair surgery. The evidence adduced substantiates loss to the petitioner's left leg to the extent of 20% thereof; as such, the respondent shall pay the petitioner the sum of \$ 695.78/week for a period of 43 weeks, as provided in Section 8(e) of the Act.

Robert Todd Riley v. Conway
12WC011083; 13IWCC0759
Facts

- DA 12-05-2011
- 46 year old freight truck driver
- Pinned by crate & injured left knee
- Proximal fibular fracture & ACL tear
- Dr. McIntosh performed arthroscopic ACL repair
- RTW full duty
- “(A)t the request of the claimant's attorney, Dr. McIntosh prepared a PPI rating pursuant to the AMA Guidelines”: 7% LEI, 3% WPI
- Arbitrator’s award: 27.5% loss of left leg
- IWCC: Affirmed & adopted
- Status: Commission Decision Rendered (8-27-2013)

Robert Todd Riley v. Conway
12WC011083; 13IWCC0759
Factors (i) through (v)

- (i): Dr. McIntosh found a PPI rating of 7% of the lower extremity, which translates to 3% person as a whole.
- (ii): The claimant was employed as a driver sales representative for the respondent since May 2007 and has returned to his usual employment as of the trial date.
- (iii): The claimant was 46 years old as of the date of loss.
- (iv): The claimant has returned to his pre-injury job and continues to work in that capacity. He is at the same rate of pay as before the incident. No evidence of diminished earning capacity was apparent or introduced.
- (v): The claimant described some stiffness and achiness in the right knee, with some weather sensitivity, and described difficulty with ladders. These complaints are generally consistent with the surgery reflected in the medical records of Dr. McIntosh.

Robert Todd Riley v. Conway
12WC011083; 13IWCC0759
Determination of PPD

- **Nature and Extent of the Injury**

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per [820 ILCS 305/8.1b\(b\)](#), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this standard to this claim, the Arbitrator notes as follows:

- Having considered the above factors and reviewed the submitted medical records, the Arbitrator notes that the claimant has undergone right knee surgery to repair the ACL, but has since returned to regular and unrestricted job duties pursuant to the release by his treating physician. The petitioner having reached maximum medical improvement, respondent shall pay the petitioner the sum of \$ 674.26/week for a further period of 59.125 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused permanent loss of use to the petitioner's right leg to the extent of 27.5% thereof.

Curtis Oltmann v. Continental Tire
12WC011777; 13IWCC0744
Facts

- DA 1-31-2012
- 49 year old labor trainer
- Tripped and fell injuring left hand
- Non-displaced fracture
- Dr. David Brown splinted hand
- RTW full duty
- “Dr. Brown prepared an AMA rating report, in which he opined the claimant had a 0% impairment at the level of the left wrist. RX2. Dr. Brown testified in deposition in support of his findings and treatment course, as well as the bases for his impairment rating. See generally RX1.”
- Arbitrator’s award: 5% loss of use of the left hand
- IWCC: Affirmed & adopted
- Status : CC Summons by Resp (9-9-2013)

Curtis Oltmann v. Continental Tire
12WC011777; 13IWCC0744
Factors (i) through (v)

- (i): Dr. Brown found a PPI rating of 0% of the left wrist.
- (ii): The claimant was employed as a labor trainer for the respondent and has continued in his usual and customary employment as of the trial date.
- (iii): The claimant was 49 years old as of the date of loss.
- (iv): The claimant was released to his regular job by his treating physician and continues to work in that position as before the incident.
- (v): The claimant described some minor residual symptoms in the wrist.

Curtis Oltmann v. Continental Tire
12WC011777; 13IWCC0744
Determination of PPD

- Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per [820 ILCS 305/8.1b\(b\)](#), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. The Arbitrator notes the following relevant evidence as to each factor:
- The petitioner had a fracture to the wrist, which was splinted. He worked light duty and engaged in home exercise, and had minimal treatment. He was released from care at MMI thirty days after the injury. Given the above, and considering the totality of the evidence adduced, the respondent shall pay the petitioner the sum of \$ 631.64/week for a further period of 10.25 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused loss of use to the petitioner's left hand to the extent of 5% thereof.

Robert Griffin v. Caterpillar
11WC040321; 14IWCC0062
Facts

- DA 9-30-2011
- 62 year old machinist
- Carrying ladder felt pop in left knee
- Partial tear ACL, MCL injury, medial meniscus tear
- Dr. Kefalas performed knee surgery
- RTW full duty, but no OT
- Dr. Ethiraj “independent medical evaluation and impairment rating”: 2% LEI, 1% WPI
- Arbitrator’s award: 15% loss of use of left leg
- IWCC: affirmed and adopted
- Status: Commission Decision Rendered (1-31-2014)

Robert Griffin v. Caterpillar 11WC040321; 14IWCC0062

Factor (i) Reported Level of Impairment

- **1. In regards to the level of impairment:**

Dr. Ethiraj, Respondent's physician, opined Petitioner sustained a 2% left lower extremity/leg impairment and 1% whole person impairment pursuant to the most current AMA Guides. The Arbitrator notes that the impairment does not equate to permanent partial disability under the Illinois Workers' Compensation Act. Dr. Ethiraj acknowledged in his deposition that his "impairment (rating) is not directly correlated to disability because there were many other factors that would lead to disability." (Rx3 @ Page 37). Dr. Ethiraj found no atrophy or loss of motion in the knee but noted mild tenderness to palpation around the medial joint line. (Rx3 @ Pages 26, 27, 55). The doctor admitted that he could have used the operative report as a grade modifier to increase the impairment rating, but used the MRI which revealed an MCL sprain and not the actual surgical report that revealed the medial meniscus tear. (Rx3, Pages 56, 57, 58, 59). The doctor acknowledged that the AMA Sixth Edition clearly states that the doctor should use the most significant injury in the diagnosis for the impairment rating but the doctor instead used the MRI which revealed an MCL sprain. (Rx3 @ Page 62). The doctor acknowledged that when a patient undergoes a meniscus surgery, "they are at more risks [*10] to develop arthritis". (Rx3 @ Page 48). Dr. Ethiraj also testified that Petitioner continues to perform his home exercise program. (Rx3 @ Page 51).

Robert Griffin v. Caterpillar
11WC040321; 14IWCC0062
Factors (ii) & (iii)

- **2. In regards to occupation:**

Petitioner's occupation is machinist/factory worker. Prior to working at Caterpillar, Petitioner testified he worked in general construction as a scheduler, Mitsubishi Motor Manufacturing Company as a supervisor and although he did some office work, he basically is a "blue collar physical" worker. (T. 14, 15). The Arbitrator notes that the Petitioner's permanent partial disability is greater based on the fact that his occupation and past occupations required physical, strenuous labor, with significant leg/knee activities.

- **3. In regards to age:**

Petitioner at the time of the injury was 62 years of age. The Arbitrator acknowledges the Petitioner's age and the limitations and residual that come with this type of injury as a result of his age.

Robert Griffin v. Caterpillar
11WC040321; 14IWCC0062
Factor (iv) Future Earning Capacity

- **4. In regards to future earning capacity:**

Petitioner's future earning capacity has been limited as a result of the injury. After the surgery, Petitioner returned to work but testified that he chose not to transfer or bid to more physically demanding, higher paying jobs in the plant because of the knee injury. Also, after he returned to work, Petitioner testified that he did not work a lot of voluntary overtime because his left knee continued to bother him and at that time he was taking pain medication two to four times per day. (T. 24). Petitioner testified that after he returned to work for approximately four months, following his surgery, he was terminated and has been looking for work unsuccessfully since and recently began drawing his Social Security early retirement at a reduced rate. (T. 27, 29). Petitioner testified that he has decided not to apply for employment in factories or foundries performing the kind of work he previously performed in his occupation, "because there's just too much walking and bending." (T. 28). Petitioner testified that he continues to look for part-time or full-time work and the jobs are in the range of \$ 10.00 to \$ 15.00 per hour, significantly less than how much he was making at the time of the injury. The Arbitrator concludes that this injury has negatively impacted on the Petitioner's future earning capacity.

Robert Griffin v. Caterpillar
11WC040321; 14IWCC0062
Factor (v) Evidence of Disability

- **5. In regards to evidence of disability corroborated in the treating records:**

Petitioner has demonstrated evidence of disability. Petitioner credibly testified that he currently experiences pain, stiffness, swelling and locking in his left knee. Petitioner's complaints regarding his left leg are corroborated in the treating medical records of Dr. Kefalas as well as the Caterpillar Plant medical records. (Px1, Px2, Rx1, Rx2). Dr. Kefalas' treating records demonstrated a loss of motion that required surgery and improvement following surgery. (Px2, Rx2). On January 18, 2012, Dr. Kefalas noted that his knee condition had stabilized and released him from his care. (Px2, Rx2). Dr. Kefalas encouraged him to continue using the patella femoral brace whenever he was active and to return if there were any "further problems or concerns". (Px2, Rx2). Petitioner's complaints, supported by the treating medical records, evidences a disability as indicated by the Commission decisions regarded as precedent pursuant to Section 8(e).

Robert Griffin v. Caterpillar

11WC040321; 14IWCC0062

Determination of PPD

- For accidental injuries occurring on or after September 1, 2011, Section 8.1b of the Act lists the following criteria to be weighed in determining the level of permanent partial disability:
- No single enumerated factor shall be the sole determinant of disability.
- The determination of permanent partial disability ("PPD") is an evaluation of all five factors as stated in the Act. In making this determination of PPD, no single enumerated factor is deemed the sole determinant. Rather, the Arbitrator, after weighing all five factors, notes that his advanced age, physical occupation, credible complaints, loss of earning capacity, all support a permanent partial disability award of 15% loss of use of his left leg. The Arbitrator specifically acknowledges the 2% impairment rating and included this rating in his analysis. However, Dr. Ethiraj admitted that the rating could have been computed in a different manner to obtain a higher percentage and the Arbitrator concludes that impairment does not equate to disability in this case. Therefore, applying Section 8.1b of the Act, [820 ILCS 305/8.1b](#), Petitioner has sustained an accidental injury that resulted in a 15% permanent partial disability/loss of use to his left leg. The Arbitrator further finds the Respondent shall pay the Petitioner the sum of \$ 530.78 a week for a further period of 32.25 weeks, as provided in Section 8(e) of the Act.

Robert Liazuk v. Bolingbrook Police
12WC011804; 13IWCC0934
Facts

- DA 9-6-2011
- 40 year old police canine officer
- Acting as training decoy, pulled to the ground by police dog
- Disc protrusions L3-4 & L4-5
- Treated by Dr. Zindruck and Dr. Banfield with ESI's
- RTW full duty
- Dr. Klaud Miller examined Petitioner at the request of Respondent: lumbar sprain was a work related condition; AMA Impairment 0%
- Arbitrator's award: 5% loss MAW
- IWCC: Affirmed & adopted (N&E Disc/No Hearing)
- Status: Commission Decision Rendered (11-4-2013)

Robert Liazuk v. Bolingbrook Police

12WC011804; 13IWCC0934

Determination of PPD

- **L. Nature and Extent of the Injury.**

The Respondent submitted into evidence the impairment rating of Dr. Miller according to the AMA Guides Sixth Edition. (RX1). Dr. Miller opined that the AMA Guides state that Petitioner had a zero percent impairment rating because the left sided herniation at L4-5 seen on the pre-accident MRI of September 29, 2009 was not seen on the post-accident MRI of September 30, 2011.

The AMA impairment rating given by Dr. Miller does not address the disk at L3-4. Dr. Miller stated that he "agreed" with the radiologist that Petitioner had "a mild bulging disc at L3-4" (p. 5 of report). Dr. Miller apparently confused the two MRI reports which were taken exactly two years apart. The "mild bulging disc at L3-4" appears on the earlier pre-accident MRI of September 29, 2009. The post-accident MRI of September 30, 2011 does not describe the bulge as "mild" but rather as a "protrusion at L3-4 centrally extending to the right of midline associated with deformity of the thecal sac. The bulging disc seen on the earlier MRI did not contact or deform the thecal sac. The Arbitrator does not find the AMA guidelines helpful in this matter as Dr. Miller did not properly address the new findings at the disc at L3-4.

Petitioner has a right sided disc protrusion which deforms the thecal sac. Such finding is consistent with his complaints of a right sided low back pain with occasional radiation into his right buttock. Petitioner underwent physical therapy and two epidural steroid injections at L3-4. Petitioner has been able to work through the pain without losing time from work. However he has not worn the "bite suit" since the accident and he was unable to complete defensive skills training due to an onset of stiffness in his low back. Petitioner has also curtailed his personal recreational activities.

Based on the above the Arbitrator finds that Petitioner has sustained a 5% loss of use of the man as a whole.

Jeff Wessel v. Village of Millstadt
12WC030259; 13IWCC1029
Facts

- DA 11-29-2011
- 51 year old laborer
- Climbing down from truck, sustained twisting injury to left knee
- ACL tear, lateral meniscus tear
- Dr. George Paletta performed arthroscopic ACL reconstruction, partial lateral meniscectomy & debridement
- RTW full duty
- At Respondent's direction: Dr. Richard Rende rated AMA Impairment: 8% LEI
- Arbitrator's award: 30% loss of left leg
- IWCC: affirmed 30%, but does it's own analysis
- Status: Commission Decision Rendered (12-6-2013)

Jeff Wessel v. Village of Millstadt
12WC030259; 13IWCC1029
Factor (i) Reported Level of Impairment

Arbitrator

- Dr. Rende opined as to an impairment rating of eight percent (8%) impairment to the left lower extremity. Dr. Rende's medical report does not specifically state that the impairment rating is, in fact, based on the current edition of the AMA's "Guides to the Evaluation of Permanent Impairment,"; however, various page references contained in Dr. Rende's report do correspond with the pages in the AMA "Guides to the Evaluation of Permanent Impairment" Sixth Edition.

IWCC

- Dr. Rende did not state whether he relied on the AMA's Guides to the Evaluation of Permanent Impairment, but cited to various tables and charts throughout his report. Dr. Rende opined: "The first diagnosis is a partial lateral meniscectomy. Referring to Table 16.3 on page 509 and taking into consideration the fact that the patient is suffering from mild problems with pain, this would place him in a Class 1. Class 1 for lateral meniscectomy places him in a range of one to three percent (1 to 3%). I would default to Grade C since he is not having any other significant factors suggesting that this must be higher or lower. His impairment rating for his lateral meniscectomy thus is two percent (2%) of his lower extremity. As far as the ACL tear and reconstruction please refer to Table 16.3 page 510. As noted previously the patient reports mild problems with occasional pain but no episodes of giving way. This would once again place him in a Class 1. The range would be seven to thirteen percent (7 to 13%) impairment of his lower extremity. Since the patient is having no laxity and no instability his grade becomes an A which translates to seven percent (7%) impairment of the lower extremity. Referring to the combined values chart on page 604 please note that comb[ining] seven percent (7%) and two percent (2%) results in an eight (8%) percent lower extremity impairment as a result of his partial lateral meniscectomy and ACL reconstruction."

Jeff Wessel v. Village of Millstadt
12WC030259; 13IWCC1029
Factor (ii) Occupation

Arbitrator

- Petitioner is a heavy equipment operator and was 51 years of age at the time of the accident.

IWCC

- In addition, Petitioner's job requires significant use of the left knee to perform heavy physical labor and activities such as squatting and climbing in and out of equipment. Petitioner testified that climbing in and out of the equipment at work causes increased left knee tenderness, and he continues to experience popping and residual weakness in the left knee.

Jeff Wessel v. Village of Millstadt
12WC030259; 13IWCC1029
Factor (iii) Age

Arbitrator

- Given Petitioner's age, his knee symptoms may increase as he grows older. Further, Petitioner will have to live with these symptoms for the remainder of both his working and natural lives.

IWCC

- Hereby affirmed as stated herein

Jeff Wessel v. Village of Millstadt
12WC030259; 13IWCC1029
Factor (iv) Future Earning Capacity

Arbitrator

- There was no evidence that the injury will have any effect on Petitioner's future earning capacity.

IWCC

- Hereby affirmed as stated herein

Jeff Wessel v. Village of Millstadt
12WC030259; 13IWCC1029
Factor (v) Evidence of Disability

Arbitrator

- At trial, Petitioner testified that he still has tenderness and discomfort in the left knee, less flexibility in the knee joint, that he experiences popping of the knee at least once a day, that he has weakness/lack of strength in the knee, stiffness in the knee and that he does experience some difficulties when he has to take big steps on the heavy equipment that he operates at work. Petitioner did agree that he was able to return to work to his regular job and is able to perform all of his job duties...The medical treatment records clearly indicate that Petitioner sustained a serious injury to his left knee which required surgery including an ACL reconstruction using tendon grafts, a partial lateral meniscectomy and a debridement and chondroplasty of the medial femoral condyle.

IWCC

- Currently, Petitioner continues to experience tenderness and discomfort in the medial area of his left knee and notices less flexibility in his left leg. Petitioner also has left knee popping approximately once a day, residual weakness, and tenderness in the front of the left knee when climbing in and out of work equipment. Petitioner takes Ibuprofen for his symptoms. On cross examination, Petitioner acknowledged that he had begun riding his bicycle again.

Jeff Wessel v. Village of Millstadt

12WC030259; 13IWCC1029

Determination of PPD

Arbitrator

- Conclusions of Law
- In support of this conclusion the Arbitrator notes the following:
- Dr. Rende opined that there was an impairment rating of 8% to the left lower extremity which does appear to be based on the AMA "Guides to the Evaluation of Permanent Impairment."
- Petitioner is a heavy equipment operator and was 51 years of age at the time of the accident. While Petitioner was able to return to work to his normal occupation, he does continue to experience knee symptoms on a daily basis. Given Petitioner's age, his knee symptoms may increase as he grows older. Further, Petitioner will have to live with these symptoms for the remainder of both his working and natural lives. There was no evidence that the injury will have any effect on Petitioner's future earning capacity.
- The medical treatment records clearly indicate that Petitioner sustained a serious injury to his left knee which required surgery including an ACL reconstruction using tendon grafts, a partial lateral meniscectomy and a debridement and chondroplasty of the medial femoral condyle.

IWCC

- In consideration of the five factors listed in section 8.1(b) of the Act, the Commission finds: (1) Dr. Rende gave Petitioner a total impairment rating of eight percent; (2) Petitioner works as a laborer and heavy equipment operator; (3) the parties stipulated that Petitioner was 51 years old at the time of the undisputed accident although the evidence shows that he was 50 years old; (4) Petitioner has worked full duty for Respondent since June 21, 2012; and (5) the medical records show Petitioner continued to have residual left leg symptoms after being released from Dr. Paletta's care.
- The Commission finds that factors two, three and five should be given more weight than factors one and four. The record shows that the undisputed work accident caused Petitioner to sustain a complete ACL tear and an associated longitudinal lateral meniscus tear. As a result, Petitioner underwent a left knee diagnostic arthroscopy, arthroscopy with debridement and chondroplasty, partial lateral meniscectomy and ACL reconstruction. While Petitioner returned to full duty work, Dr. Rende's report and Petitioner's credible testimony show that he continued to experience left knee pain and tenderness after undergoing extensive left knee surgery and five months of physical therapy. In addition, Petitioner's job requires significant use of the left knee to perform heavy physical labor and activities such as squatting and climbing in and out of equipment. Petitioner testified that climbing in and out of the equipment at work causes increased left knee tenderness, and he continues to experience popping and residual weakness in the left knee.

Rick Fassero v. UPS
12WC017291; 13IWCC0858
Facts

- DA 3-13-2012
- 44 year old delivery truck driver
- Climbing stairs felt pop in right knee
- Medial meniscus tear
- Dr. Ronald Romanelli did arthroscopic meniscectomy & debridement
- RTW full duty
- Respondent sent Petitioner for examination pursuant to Section 12: Dr. Lawrence Li rated AMA Impairment: 1% LEI; 1% WPI
- Arbitrator's Award: 15% loss of right leg
- IWCC: affirmed & adopted
- Status: Commission Decision Rendered (10-7-2013)

Rick Fassero v. UPS
12WC017291; 13IWCC0858
Factors (i),(ii),(iii) & (iv)

- With regard to Section 8.1b(b)(i) of the Act, Respondent provided an impairment rating given by Dr. Lawrence Li. Dr. Li's finding was a "lower extremity impairment of 1%, which translates to a whole personal impairment of 1%." This impairment rating was un-rebutted by Petitioner. Accordingly, the Arbitrator gives weight to the foregoing factor.
- With regard to Section 8.1b(b)(ii) of the Act, very little evidence was presented regarding Petitioner's occupation, other than he makes deliveries for Respondent. Given the mechanism of injury, it is apparent that Petitioner must walk to make his required deliveries. However, no evidence was presented as to Petitioner's detailed job requirements or whether his job is a "light," "medium" or "heavy" physical demand level position. In light of the foregoing, the Arbitrator gives only some weight to this factor.
- With regard to Section 8.1b(b)(iii) of the Act, Petitioner was 44 years old at the time of his injury. (See Arbitrator's Exhibit 1). The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability (PPD) will be moderately greater than that of an older individual because Petitioner will have to live with the consequences of the injury for a longer period of time. The Arbitrator places some weight on this factor.
- Concerning Section 8.1b(b)(iv) of the Act, no evidence of future earning capacity was presented, and therefore no weight is given in this regard.

Rick Fassero v. UPS
12WC017291; 13IWCC0858
Factor (v) Evidence of Disability

- With regard to Section 8.1b(b)(v) of the Act, evidence of disability in Petitioner's treating medical records indicates that Petitioner's right knee injury was treated surgically on May 24, 2012, with positive results. That surgery consisted of a right knee arthroscopy with posterior horn medial meniscectomy and arthroscopic debridement of the patellofemoral joint. The post-operative diagnosis was internal derangement of the right knee with a posterior horn medial meniscus tear, with chondromalacia of the medial facet of the patellofemoral joint. Petitioner underwent a course of physical therapy, and was released to return to work with no restrictions effective July 9, 2012. Petitioner has not returned to a physician concerning his right knee injury since his last visit with Dr. Romanelli on June 27, 2012. The Arbitrator notes that Section 8.1b(b)(v) of the Act requires determination of evidence of disability corroborated by the **treating** medical records. [820 ILCS 305/8.1b\(b\)\(v\)](#). (Emphasis added). Very little treating medical records exist besides Petitioner's March 24, 2012 surgical report. Petitioner testified that his right knee currently feels like there is "bone-on-bone" with everyday activities. He currently wears a knee brace, although it was not prescribed by a physician. Petitioner further testified that he currently has no problems performing his job duties, which involves making deliveries.

Regarding Section 8.1b(b)(v) of the Act, the Arbitrator finds that Petitioner's testimony regarding his current condition of disability, *i.e.*, his feeling of "bone-on-bone" in the knee that does not negatively affect his employment duties, is reasonably corroborated by the medical records given that Petitioner suffered an internal derangement of the right knee with a posterior horn medial meniscus tear with chondromalacia of the medial facet of the patellofemoral joint that necessitated arthroscopic surgery involving a meniscectomy and debridement. The Arbitrator finds that Petitioner was a credible witness at trial, and said credibility was evidenced by Petitioner testifying in an open and forthcoming manner. The Arbitrator places great weight on the foregoing factor (Section 8.1b(b)(v)) when making the permanency determination.

Rick Fassero v. UPS
12WC017291; 13IWCC0858
Determination of PPD

- Pursuant to Section 8.1b of the Act, for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
- The determination of PPD is not simply a calculation, but an evaluation of all five factors as stated in Section 8.1b of the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section 8.1b of the Act, Petitioner has sustained accidental injuries that caused the 15% loss of use of the right leg/knee. The Arbitrator accordingly finds that Respondent shall pay Petitioner the sum of \$ 695.78 per week for a further period of 32.25 weeks, as provided in Section 8(e)(12) of the Act.

Steven Thomas v. Peoples Gas
12WC018268; 13IWCC1001
Facts

- DA 10-26-2011
- 43 year old foreman and crew leader
- Pulling roll 300 ft. roll of plastic, felt pop in right shoulder
- Partial thickness rotator cuff tear
- Dr. Goldberg performed shoulder arthroscopy
- RTW full duty
- Petitioner saw Dr. Mash at Respondent's request for purpose of rendering AMA Impairment: 5% UEI; 3% WPI
- Arbitrator's Award: 7.5% loss MAW (14.82% loss of arm)
- IWCC: modified up to 12.65% loss MAW (25% loss of arm)
- Status: settled for 12.65% loss MAW (1-9-2014)

Steven Thomas v. Peoples Gas
12WC018268; 13IWCC1001
Factor (i) Reported Level of Impairment

- Dr. Mash utilized Table 15.5 at page 403 identifying a full thickness rotator cuff tear as the impairment descriptor. *Id.* He noted that this resulted in a Class 1 impairment and that Petitioner was "considered to have a rotator cuff injury, full-thickness tear with residual loss, being functional with normal motion." *Id.* Dr. Mash calculated Petitioner's QuickDASH score to total 31.82 utilizing Table 15.7 at page 406, which identified Petitioner as having a "Grade Modifier 1 for a functional history." *Id.* Based on Petitioner's physical examination, Dr. Mash utilized Table 15.7 and 15.8 at page 406, which identified Petitioner as having a "less than 12% upper extremity loss in range of motion, which translated to a Grade Modifier 1." *Id.* Dr. Mash noted that a clinical studies modifier was not applicable as the MRI study was used to place Petitioner in an impairment class. *Id.* He further utilized Table 15.5 at page 403 to determine that Petitioner was a Class 1 Grade C impairment translating to a 5% upper extremity impairment, which turning to page 420 of the AMA Guides, equaled a 3% impairment of the whole person. *Id.*
- First, only one 8.1b subsection (a) report was submitted into evidence; that of Dr. Mash at Respondent's request. Dr. Mash utilized the AMA Guides Sixth Edition and specifically delineated his evaluation process in determining Petitioner's impairment rating at a level of 5% upper extremity impairment, which is equivalent to a 3% impairment of the whole person. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Steven Thomas v. Peoples Gas
12WC018268; 13IWCC1001
Factors (ii), (iii) & (iv)

- Second, the evidence established that Petitioner was a foreman/crew leader performing construction laborer duties and supervising other employees. Petitioner's testimony regarding his position at work on the date of accident and his duties is uncontroverted and corroborated in treating medical records and Dr. Mash's report. Thus, the Arbitrator assigns it significant weight.
- Third, the parties stipulated that Petitioner was 42 years old on the date of accident. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.
- Fourth, no evidence was introduced by either party regarding Petitioner's future earning capacity. However, Petitioner testified that he returned to his prior position after being released to full duty work by Dr. Goldberg. Thus, no weight is assigned to this factor as there is no evidence of any impact whatsoever on Petitioner's future earning capacity.

Steven Thomas v. Peoples Gas
12WC018268; 13IWCC1001
Factor (v) Evidence of Disability

- Finally, the treating medical records reflect that Petitioner underwent conservative medical treatment prior to right shoulder arthroscopic surgery including a subacromial decompression, biceps tenodesis, and open subscapularis repair. Thereafter, Petitioner's right shoulder condition gradually improved through July 20, 2012 when he was released to full duty work by Dr. Goldberg. At that last visit, Dr. Goldberg noted approximately 180 degrees of forward flexion, which was the same on the left side, 80 degrees of external rotation with his shoulder abducted, and 5/5 subscapularis strength. Petitioner has worked his full duty position since his release and has had no further medical care.

Notwithstanding, Petitioner testified that he experiences some pain, soreness, and difficulty using the right shoulder in performing certain activities at work that sometimes requires assistance from co-workers and that he is now unable to engage in golfing or playing baseball/catch with his nephew. Petitioner's testimony at trial is uncontroverted and the Arbitrator finds Petitioner to be credible given the consistency of his testimony with his contemporaneous reports of symptomatology made to both his treating physician, Dr. Goldberg, and Respondent's Section 8.1b physician, Dr. Mash. Thus, the Arbitrator finds that there is credible evidence of some ongoing disability which is corroborated by the treating medical records and assigns it significant weight

Steven Thomas v. Peoples Gas
12WC018268; 13IWCC1001
Determination of PPD

- The Commission views the evidence in a slightly different light than does the Arbitrator, and thus modifies the Arbitrator's ruling regarding nature and extent. The Commission awards Petitioner 12.65% loss of use of his person as a whole.
- Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. [820 ILCS 305/8.1b](#). Specifically, Section 8.1b states that permanent partial disability shall be established using the following criteria:
- In considering the factors set forth in the Act, the Arbitrator finds the following facts to be relevant and assigns weight to these facts.
- Based on the record as a whole and in consideration of the factors enumerated in Section 8.1b--which does not simply require a calculation, but rather a measured evaluation of all five factors of which no single factor is conclusive on the issue of permanency--the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the person as a whole pursuant to Section 8(d)(2) of the Act.

Hosam Salama v. UPS
12WC019435; 13IWCC1058
Facts

- DA 5-14-2012
- 44 year old package handler
- Struck in right hand by heavy package
- Displaced comminuted transverse fracture of the fifth metacarpal
- Dr. John Fernandez did ORIF
- RTW full duty
- Petitioner presented to Dr. Michael Lewis at the behest of Respondent for an impairment rating. Dr. Lewis opined Petitioner had sustained zero impairment for his right hand as a result of his industrial accident.
- Arbitrator's Award: 17% loss of right hand
- IWCC: affirmed & adopted
- Status: Commission Decision Rendered (12-11-2013)

Hosam Salama v. UPS

12WC019435; 13IWCC1058

Factors (i) through (v)

- (i) Dr. Lewis opined Petitioner sustained 0% impairment. The Arbitrator notes that impairment and permanent partial disability (PPD) are not the same. Impairment is only one factor dispositive on the issue of PPD.
- (ii) His job duties included loading package as they came down a conveyor belt. These packages varied in weight from two (2) to one hundred (100) pounds... The Arbitrator notes that 300 pieces per hour results Petitioner handling is a package every five seconds.
- (iii)
- (iv)
- (v) Petitioner testified he is right hand dominant and uses his right hand to lift and carry every package.... Petitioner testified that currently, he notices right hand pain and tingling into the fifth and fourth digits while working full duty. These symptoms were not present prior to the industrial accident. Further, Petitioner testified he experiences pain when waking up from sleeping and decreased grip strength compared to the contra-lateral hand and that these symptoms were not present prior to the industrial accident. Petitioner takes over the counter medication as needed a few times a week. With regards to his hobbies, Petitioner can no longer engage in playing tennis or golf because of the injury to his right hand. Since his discharge from Dr. Fernandez Petitioner, has attempted to play both sports and he testified that the pain he experiences is too great to continue.

Bill Zettler v. American Coal
12WC020486; 13IWCC1124
Facts

- DA 4-18-2012
- 55 year old mechanic
- Repetitive trauma CTS (hand tools)
- Dr. Steven Young did right carpal tunnel release
- RTW full duty
- Petitioner was examined by board certified orthopedic surgeon Mitchell Rotman pursuant to Section 8.1b of the Act... Dr. Rotman opined that, according to the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (6th Edition) that Petitioner sustained permanent partial disability impairment to the extent of 5% of the right hand.
- Arbitrator's Award: 10% loss of the right hand (based on 190 weeks under Section 8(e)9)
- IWCC: affirmed & adopted
- Status: Commission Decision Rendered (12-30-2013)

Bill Zettler v. American Coal
12WC020486; 13IWCC1124
Factors (i) through (v)

- (i) The Arbitrator first notes that Respondent provided a report of impairment from Dr. Rotman in which he opines the Petitioner sustained a 5% impairment of the right hand. Conversely, Petitioner did not offer a permanent partial disability impairment report or any medical opinion which controverted Dr. Rotman's findings.
- (ii) The evidence does not indicate that Petitioner would be unable, either at present or in the future, to return to work as a coal miner due to the carpal tunnel syndrome.
- (iii) Although Petitioner was 55 years old at the time of his injury, there was no evidence that Petitioner's age in conjunction with the residual disability from the carpal tunnel syndrome would affect Petitioner's ability to work as a coal miner.
- (iv) No evidence was submitted regarding the effect of the carpal tunnel syndrome on Petitioner's future earning capacity.
- (v) Petitioner testified consistently with Dr. Young's final office note of October 3, 2012 regarding his symptoms. The Arbitrator notes, however, that despite Petitioner's testimony as to his diminished grip strength and other symptoms, he has not received any medical treatment subsequent to October 3, 2012 nor did he offer any evidence that he was contemplating same.

Bill Zettler v. American Coal
12WC020486; 13IWCC1124
Determination of PPD

- Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per [820 ILCS 305/8.1b\(b\)](#), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a)(AMA "Guides to the Evaluation of Permanent Impairment"); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.
- Applying this standard to this claim, the Arbitrator first notes that...
- In addition to Dr. Rotman's opinion, the Arbitrator has also considered the factors set forth in Section 8.1b(b) of the Act.

Nancy Watkins v. Masterbrand Cabinets
12WC017286; 14IWCC0035
Facts

- DA 5-15-2013
- 46 year old auditor
- Repetitive trauma bilateral CTS (hand drill, screw gun etc.)
- Dr. Naam did bilateral carpal tunnel releases
- RTW full duty
- Petitioner was evaluated by Dr. Benson on November 28, 2012 for the assignment of an AMA permanent partial impairment rating pursuant to the 6th Edition of the AMA Guides to Impairment... Dr. Benson issued a 1% upper extremity rating which he converted to a 1% whole person impairment based on the Guides.
- Arbitrator's award: 7.5% of each hand (based on 190 weeks)
- IWCC: modified up to 12% of each hand (2-1 decision)
- Status: Commission Decision Rendered (1-23-2014)

Nancy Watkins v. Masterbrand

12WC017286; 14IWCC0035

Factor (i) Reported Level of Impairment

Arbitrator

- On examination, Dr. Benson found no evidence of weakness in her hands or thenar atrophy. Petitioner's neurovascular function was intact. Petitioner had well-healed scars of approximately 1.5" in length on the palms of her hands. She complained of some occasional soreness in that area. Petitioner displayed normal digit motion and normal wrist motion bilaterally. Based on the Petitioner's responses to the QuickDash report and her examination, Dr. Benson issued a 1% upper extremity rating which he converted to a 1% whole person impairment based on the Guides. (RX C)

In the QuickDash Report, Petitioner indicated that at the time of evaluation, and within the previous week, her hand problem had not interfered at all with her social activities, sleeping, or work or regular daily activities. (RX B) B) She noted moderate difficulty opening a jar, and mild difficulty in a few activities such as recreational activities requiring impact or force in the hands, pain, and using a knife to cut food. (RX B)

- 1. The reported level of impairment under the AMA Guides.

With regard to the AMA impairment rating, the Arbitrator takes into account Dr. Benson's impairment rating of 1 % total body impairment. When evaluated by Dr. Benson, Petitioner was one and one-half months post MMI. She reported no difficulty in the majority of all activities and no difficulty in sleeping, working or social activities of daily living. Moderate difficulty opening a jar was noted as well as mild difficulty with using a knife to cut food and certain recreational activities. Dr. Benson was also aware of Petitioner's occasional soreness in the palm of her hand. Petitioner reported mild difficulty using her "usual technique" at work and performing her usual work activities.

IWCC

- The first factor is the AMA impairment rating. Respondent sent Petitioner to be evaluated by Dr. Benson for an impairment rating. Overall, Dr. Benson found Petitioner's impairment to be only 1% of the arm and person as a whole, after rounding up. Dr. Benson considered that Petitioner had to slightly modify her usual work technique because of the injury to her hands. He also noted Petitioner only has minor or mild issues with daily living activities, such as opening a tight jar or cutting food with a knife. Based on Petitioner's minor ongoing issues and the impairment rating, Dr. Benson found Petitioner's impairment to be 1% of the arm and the person as a whole.

Nancy Watkins v. Masterbrand
12WC017286; 14IWCC0035
Factor (ii)Occupation

Arbitrator

- Petitioner's current occupation is that of an auditor in a manufacturing environment. Petitioner returned to that position and has continued performing it full-time and full duty. Petitioner also works/worked as a part-time cashier for a convenience store. No evidence was presented indicating any problems performing cashier duties or that Petitioner may have quit that job due to her injuries. She uses her upper extremities in both occupations. Petitioner repairs and inspects cabinets before they are shipped. She uses hand tools. As a cashier she stocked, swiped, and mopped. Petitioner has returned to her usual and customary occupation, albeit she notices some occasional soreness when working.

IWCC

- The second factor is the employee's occupation. Petitioner works as an auditor for a cabinet manufacturer. She is required to use her hands to lift cabinets and make any necessary repairs to the cabinets, which involves using tools. Petitioner has returned to work full time and full duty for Respondent and appears to no longer be working a second job at a convenience store, per her testimony. Petitioner's occupation requires her to use her hands for fine manipulation on a regular basis throughout the work day. Petitioner also testified she notices some soreness in her palms after work.

Nancy Watkins v. Masterbrand
12WC017286; 14IWCC0035
Factor (iii) Age

Arbitrator

- At the time of her accident, Petitioner was 46 years old. No evidence was presented as to how Petitioner's age might affect her disability.

IWCC

- The third factor is the employee's age at the time of the injury. Petitioner was 46 years old and no evidence was presented about how her age might affect her disability

Nancy Watkins v. Masterbrand
12WC017286; 14IWCC0035
Factor (iv) Future Earning Capacity

Arbitrator

- No evidence regarding Petitioner's earning capacity was presented by Petitioner. Respondent produced evidence indicating Petitioner's injury has not adversely impacted her current wage rate with Respondent nor does it appear that it will impact her future earning capacity. No evidence suggests a diminishment in Petitioner's future earning capacity as a result of her injury.

IWCC

- The fourth factor is the employee's future earning capacity. Petitioner returned to her employment full time and full duty at Respondent. She makes the same rate of pay or more as she did before the injury. She did not present evidence as to how her injury may affect her future earning capacity and it does not appear it will have an impact.

Nancy Watkins v. Masterbrand 12WC017286; 14IWCC0035 Factor (v) Evidence of Disability

Arbitrator

- Petitioner developed bilateral carpal tunnel syndrome due to her work activities with Respondent. She underwent surgical carpal tunnel releases to repair her injuries. Petitioner testified she continues to experience tenderness to both hands with some activities. Petitioner was prescribed "gel shells" bilaterally to wear as needed during functional activities, including work. (PX 7) While the shells have helped decrease tenderness during hand usage, she reported "crampiness" and aching in the ulnar aspect of her palm as well as her ring and small fingers after use. The Arbitrator recalls no testimony being elicited at arbitration to indicate if she continues to use the shells and, therefore, draws no inferences therefrom. Petitioner takes no medications. She has no permanent restrictions.

Petitioner's medical records note active range of motion and strength within functional limits and complete healing over the incision sites. Petitioner's complaints are corroborated by Dr. Naam's records and the therapy records. Petitioner's testimony was credible and forthright.

IWCC

- The final factor is the evidence of disability corroborated by treating medical records. Petitioner's records are clear that she developed bilateral carpal tunnel syndrome through repetitive use of her hands at work. Petitioner sought appropriate treatment for her symptoms, including an EMG which showed evidence of carpal tunnel syndrome. She eventually underwent bilateral carpal tunnel release, followed by a course of therapy. Petitioner's treatment appears appropriate and the medical records support her complaints.

Nancy Watkins v. Masterbrand 12WC017286; 14IWCC0035 Determination of PPD

Arbitrator

- Pursuant to Section 8.1b of the Workers' Compensation Act, the following criteria and factors must be considered in assessing permanent partial disability:
- The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to these factors, the Arbitrator notes:
- Overall, the evidence supports an award of permanent partial disability.
- Petitioner had surgery and her strength and range of motion, while in the functional range, have been diminished. After considering all of the above factors, the Arbitrator concludes that Petitioner has sustained permanent partial disability of 7.5% of each hand ((190 weeks x 7.5% x 2) x \$ 406.31).

IWCC

- Otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.
- The Arbitrator awarded Petitioner 7.5% loss of use of each hand. We modify the Arbitrator's decision to award Petitioner 12% loss of use of each hand.
- After considering the five factors as required by the Act, the Commission increases the Petitioner's permanent partial disability award to 12% loss of use of the right hand and 12% loss of use of the left hand. The five factors we considered are: (1) the reported level of impairment as assessed pursuant to the current edition of the AMA "Guides to the Evaluation of Permanent Impairment"; (2) the occupation of the injured employee; (3) the age of the employee at the time of the injury; (4) the employee's future earning capacity; and (5) evidence of disability corroborated by the treating medical records.