

1 **WORKERS' COMPENSATION APPEALS BOARD**  
2 **STATE OF CALIFORNIA**

3  
4 **JAVIER RAMIREZ,**

5 *Applicant,*

6 **vs.**

7 **SPACE LOK, INC.; REPUBLIC**  
8 **UNDERWRITERS INSURANCE,**  
9 **administered by SEDGWICK,**

10 *Defendants.*

**Case No. ADJ8762477**  
**(Van Nuys District Office)**

**OPINION AND ORDER GRANTING**  
**RECONSIDERATION AND DECISION**  
**AFTER RECONSIDERATION**

11 Applicant seeks reconsideration of the November 7, 2014 Findings and Award, wherein the  
12 workers' compensation administrative law judge (WCJ) found that applicant, while employed as a  
13 machine operator on July 23, 2012, sustained an injury arising out of and in the course of his employment  
14 to his left shoulder, left wrist, left thumb, neck and psyche. The WCJ also found that the injury caused  
15 36% permanent disability after apportionment.

16 Applicant contends that the WCJ erred in finding that applicant sustained 36% permanent partial  
17 disability, arguing that the WCJ should have found permanent disability in accordance with the panel  
18 qualified medical evaluator (PQME) Dr. Clive Segil's opinion that applicant's disability to his left thumb  
19 is more accurately described using an *Almaraz/Guzman* rating.

20 We have considered the petition for reconsideration, and we have reviewed the record in this  
21 matter. We have not received an answer from defendant. The WCJ prepared a Report and  
22 Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied.  
23 For the reasons discussed below, we will grant reconsideration and find that applicant sustained 51%  
24 permanent partial disability.

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1 According to the Minutes of Hearing, applicant described the mechanism of his injury as follows:

2 Applicant testified that on that day, he injured the left side of his neck, left  
3 shoulder, arm, and fingers. Regarding the left side of his neck, it started  
4 bothering him starting the day of the accident. The injury occurred when  
5 he was changing a blade and tightening a screw with a wrench, squeezing  
6 and tightening it, and a pipe came down and hit his hand and a piece ended  
7 up in his hand. The neck complaints are because of all the pain in his hand  
8 and arm. His hand gets swollen. He had problems with the tendons in his  
9 neck. He can't handle the pain in his neck, and it affects his ability to do  
10 things as he cannot use his hand. Applicant testified that he had two  
11 surgeries to his hand, one on 7/28/2012 and one on 3/1/2013. The first was  
12 to the left hand (indicating), and he is not sure if it was successful. The  
13 second surgery was for the left thumb (indicating), and it was done  
14 because the thumb was deformed. It helped somewhat, but he doesn't have  
15 strength and has limited movement to his fingers. (October 1, 2014  
16 Minutes of Hearing and Summary of Evidence, p. 5.)

17 In a November 19, 2013 report, Dr. Segil opined that applicant "has a disfigurement of his left  
18 hand, especially at the base of his thumb as it has been described. Based on the AMA Guides to the  
19 Evaluation of Permanent Impairment, Fifth Edition, it is very difficult in the book to find the whole  
20 person impairment for this kind of disfigurement and as a result, the whole person impairment has been  
21 based on his marked limitation of grip strength as noted." (Exh. X2, p. 25.) Dr. Segil also commented:  
22 "The AMA guides did not address the deformity and the surgeries to the left thumb." (*Id.* at p. 26.) At  
23 his deposition, Dr. Segil testified that although he considered the strict AMA Guides rating of 1% whole  
24 person impairment for applicant's thumb, the applicant "has had two operations on that joint. He had a  
25 serious problem with the joints, and just on a common sense evaluation of whole person impairment for  
26 such a serious condition for that thumb, I don't think ... one percent would be a common sense whole  
27 person impairment." (Exh. X1, p 13:2-8.)

28 Pursuant to Labor Code section 4660, the Administrative Director adopted the 2005 Schedule for  
29 Rating Permanent Disabilities, incorporating the AMA Guides. The Appeals Board addressed the  
30 requirements for rebutting the application of the 2005 Schedule in a February 3, 2009 en banc decision,  
31 *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74  
32 Cal.Comp.Cases 201 (Appeals Board en banc) (*Almaraz/Guzman I*). In *Almaraz/Guzman I*, we  
33 considered whether and how the AMA Guides portion of the 2005 Schedule may be rebutted. On

1 April 6, 2009, we granted reconsideration of our decision in *Almaraz/Guunan I.* (*Almaraz v.*  
2 *Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74  
3 Cal.Comp.Cases 470 (Appeals Board en banc).) Our decision after reconsideration in *Almaraz/Guzman I*  
4 issued on September 3, 2009. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified*  
5 *School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) (*Almaraz/Guzman II.*))

6 In affirming *Almaraz/Guzman II*, the Court of Appeal stated that departure from a strict  
7 application of the Guides is appropriate “for cases that do not fit neatly into the diagnostic criteria and  
8 descriptions” and that the AMA Guides call for a physician to use clinical judgment to evaluate the  
9 impairment most accurately, even if that is possible only by resorting to comparable conditions described  
10 in the AMA Guides. (*Milpitas Unified School District v. Workers' Comp. Appeals Bd.* (2010) 75  
11 Cal.Comp.Cases 837, 839.) Both *Almaraz/Guzman II* and the Court of Appeal decision emphasized that a  
12 physician’s ability to depart from a strict application of the Guides is not without limit and that the  
13 physician’s opinion must constitute substantial evidence. (See *Escobedo v. Marshalls* (2005) 70  
14 Cal.Comp.Cases 604, 621 (en banc)).

15 In *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc), we  
16 addressed what constitutes substantial medical evidence of whole person impairment under the AMA  
17 Guides and *Almaraz/Guzman*.

18 Under the AMA Guides, a physician performs an evaluation to determine  
19 the WPI(s) for the injured employee's medical condition(s), expressed as  
20 a percentage. (AMA Guides, § 2.1, at p. 18.) The impairment evaluation  
21 includes a discussion of the employee's history and symptoms, the results  
22 of the physician's examination, the results of various tests and diagnostic  
23 procedures, the diagnosis, the anticipated clinical course, the need for  
24 further treatment, and the residual functional capacity and ability to  
25 perform activities of daily living (ADLs). (*Id.*, §§ 2.6a.1-2.6a.8, at pp.  
26 21-22; Sample Report, at pp. 23-24.) After considering all of these  
27 factors, the physician compares the medical findings for each condition  
with the impairment criteria listed within the Guides and then calculates  
the appropriate impairment rating(s) for the condition(s). (*Id.*, § 2.6b, at  
p. 22; see also §§ 2.5, 2.6c.1, 2.6c.2, at pp. 19-20, 22.) The physician's  
report should include a summary list of the impairments and impairment  
ratings by percentage, together with a calculation of the final WPI, and a  
statement of the rationale underlying the WPI opinion. (*Id.*, § 2.6c.2, at  
p. 22; Sample Report, at p. 24 ["Impairment Rating and Rationale"]

1 section].)

2 If a condition is not covered by the Guides, the physician compares  
3 measurable impairment resulting from the non-covered condition to the  
4 measurable impairment resulting from other conditions with similar  
5 impairment of function in performing ADLs. (AMA Guides, § 1.5, at p.  
6 11.) Accordingly, for both these reasons, the WPI percentage to be  
7 assigned to a condition is dependent, to some extent, on the physician's  
8 judgment, training and experience. (AMA Guides, §§ 1.2a, 1.2b, 1.5, 2.3,  
9 2.5c, at pp. 5, 8, 11, 18, 19.

10 The expert opinion of a single physician may establish an injured  
11 employee's WPI, provided that the opinion constitutes substantial  
12 evidence. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372,  
13 378-379 [475 P.2d 656, 90 Cal. Rptr. 424] [35 Cal.Comp.Cases 525, 529-  
14 530].) Among other things, to constitute substantial evidence regarding  
15 WPI a physician's opinion must comport with the AMA Guides,  
16 including as applied and interpreted in published appellate opinions and  
17 en banc decisions of the Appeals Board. [footnote omitted.] (*Heggin v.*  
18 *Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [480 P.2d 967,  
19 93 Cal. Rptr. 15] [36 Cal.Comp.Cases 93, 97] (*Heggin*) ("Medical  
20 reports and opinions are not substantial evidence . . . if they are based . . .  
21 on incorrect legal theories"); *Zemke v. Workmen's Comp. Appeals Bd.*  
22 (1968) 68 Cal.2d 794, 799 [441 P.2d 928, 69 Cal. Rptr. 88] [33  
23 Cal.Comp.Cases 358, 360] (*Zemke*) ("an expert's opinion which . . .  
24 assumes an incorrect legal theory cannot constitute substantial  
25 evidence").) [Footnote omitted.]

26 Also, a physician's opinion regarding WPI must set forth the physician's  
27 reasoning, not merely his or her conclusions. (*Granado v. Workers'*  
*Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal.  
Rptr. 678] [33 Cal.Comp.Cases 647, 653] (a physician's "mere legal  
conclusion" not sufficient); *Zemke*, 68 Cal.2d at pp. 799, 800-801 [33  
Cal.Comp.Cases at pp. 361, 363] (an opinion that fails to disclose its  
underlying basis and gives a bare legal conclusion does not constitute  
substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122,  
141, 144 [443 P.2d 777, 70 Cal. Rptr. 193] (the chief value of an expert's  
testimony rests upon the material from which his or her opinion is  
fashioned and the reasoning by which he or she progresses from the  
material to the conclusion, and it does not lie in the mere expression of  
the conclusion; thus, the opinion of an expert is no better than the reasons  
upon which it is based).)

Accordingly, when a physician evaluates an injured employee's WPI(s),  
the physician must explain how he or she arrived at the WPI(s) so that the  
parties and the WCAB can determine whether the WPI(s) are consistent  
with the AMA Guides. (*Id.* at pp. 619-621.)

1 In this case, although Dr. Segil opined that the applicant's whole person impairment related to his  
2 thumb injury was 18%, the WCJ issued rating instructions based on 1% whole person impairment  
3 because Dr. Segil did not initially provide a strict AMA Guides rating and because the doctor's rating is  
4 based on "common sense." (Report, p. 4.) "With respect to matters requiring scientific medical  
5 knowledge, the WCJ cannot disregard a medical expert's conclusion when the conclusion is based on  
6 expertise in evaluating the significance of medical facts. (*E.L. Yeager Construction v. Workers' Comp.*  
7 *Appeals Bd. (Gatten)* (2006)145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687].) Given that the PQME  
8 opined that applicant had 18% whole person impairment, utilizing the four corners of the AMA Guides, it  
9 was error for the WCJ to instruct the rater to use a 1% whole person impairment. Furthermore, Dr. Segil  
10 adequately explained that applicant's two surgeries and thumb deformity supported his opinion that  
11 applicant's disability is best described by grip loss rather than a strict application of the AMA Guides.

12 Using 18% whole person impairment for the injury to applicant's thumb, applicant's permanent  
13 disability rates as follows:

14 16.02.01.00-1-[7]1-330F-1-1  
15 16.04.01.00-2-[4]2-330F-2-3  
16 16.06.01.01-18-[1]20-330G-22-26  
17 80% (15.01.01.00-8-[5]10-330F-10-12) 10  
18 90% (14.01.00.00-15-[8]21-330F-21-25-23

19 Combined Value=51% Final Permanent Disability

20 Accordingly, we will amend the WCJ's decision to find that applicant sustained 51% permanent  
21 disability, and increase applicant's attorney fee to \$9,630.00.

22 For the forgoing reasons,

23 IT IS ORDERED that applicant's petition for reconsideration is GRANTED.

24 IT IS FURTHER ORDERED as the Decision After Reconsideration that the November 7, 2014  
25 Findings, Award and Order is **AFFIRMED, EXCEPT** Findings of Fact numbers 2 and 6 and the Award  
26 are **AMENDED** as follows:

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1 **FINDINGS AND AWARD**

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3 2. Said injury caused permanent partial disability, after adjustment for age  
4 and occupation, of 51%, equivalent to 279.25 weeks of indemnity payable  
5 at the rate of \$230.00 per week, in the sum total of \$64,227.50,  
6 commencing 11/20/2013.

7 6. The reasonable value for the services of applicant's attorney is  
8 \$9,630.00 payable to the Law Offices of Daniel V. Anaya, and shall be  
9 deducted from the far end of the permanent disability award to the extent  
10 necessary to pay the fees in one lump sum.

11 **AWARD**

12 Award is made in favor of JAVIER RAMIREZ and against SPACE LOK  
13 INC. and REPUBLIC UNDERWRITERS INSURANCE administered by  
14 SEDGWICK CMS as follows:

15 (a) All further medical treatment reasonably required to cure or relieve  
16 from the effects of the injury herein.

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1 (b) Permanent disability indemnity in the total amount of \$64,227.50  
2 payable (forthwith) at the rate of \$230.00 per week beginning November  
3 20, 2013 and continuing for 279.25 weeks or until the total amount  
4 thereof shall have been paid, less credit for any sums heretofore paid on  
5 account thereof, and less attorney fees in the amount of \$9,630.00  
6 payable to Daniel V. Anaya whose lien is hereby allowed and less a  
7 credit for overpayment of temporary disability in accordance with finding  
8 of fact number 5.

9 **WORKERS' COMPENSATION APPEALS BOARD**

10 *Rick Dietrich* **DEPUTY**  
11 \_\_\_\_\_  
12 **RICK DIETRICH**

13 **I CONCUR,**

14 *Frank M. Brass*  
15 \_\_\_\_\_  
16 **FRANK M. BRASS**

17 **CONCURRING, BUT NOT SIGNING**  
18 **KATHERINE ZALEWSKI**



19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
21 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

22 **DANIEL V. ANAYA**  
23 **JAVIER RAMIREZ**  
24 **SAMUELSEN, GONZALEZ, VALENZUELA & BROWN, LLP**

25 **MWH/ebc**  
26 *[Handwritten signature]*  
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