

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ARTHUR CANNON,**

5 *Applicant,*

6 **vs.**

7 **CITY OF SACRAMENTO,**

8 *Defendant.*

Case No. ADJ7238353
(Sacramento District Office)

OPINION AND DECISION
AFTER RECONSIDERATION

9
10 On April 13, 2012, we granted reconsideration in this matter to provide an opportunity to further
11 study the legal and factual issues raised by the petition for reconsideration. Having completed our review,
12 we now issue our Decision After Reconsideration.

13 Applicant, Arthur Cannon, filed a petition for reconsideration from the Findings and Award,
14 issued January 23, 2012, in which a workers' compensation administrative law judge (WCJ) found
15 applicant sustained no permanent disability as a result of an admitted industrial injury to his left foot and
16 heel while employed as a police officer by the City of Sacramento on October 21, 2008.

17 Applicant contends the WCJ erred in concluding he did not sustain any permanent disability,
18 arguing that the opinion of the Agreed Medical Examiner (AME) is substantial medical evidence to rebut
19 the scheduled rating in the 2005 Permanent Disability Rating Schedule (PDRS), where the AME
20 concluded applicant sustained 7% Whole Person Impairment (WPI) by using his clinical judgment to
21 analogize to an applicable section of the AMA Guides. Defendant filed an answer contending that the
22 AME's opinion is not sufficient to rebut a strict application of the PDRS where applicant's condition is
23 not complex or extraordinary.

24 Following our review of the record and for the reasons stated herein, we shall rescind the WCJ's
25 Findings and Award and return this matter for a new permanent disability rating following the opinion of
the AME.

1 I.

2 While employed as a police officer, applicant sustained an injury to his left foot and heel while
3 running during a physical fitness test on October 21, 2008, resulting in a diagnosis of left plantar fasciitis.
4 He was provided medical treatment, including physical therapy, three cortisone injections in his heel and
5 an orthotic device for his shoe.

6 The initial report of injury from Dr. Agnew indicates a small bone spur was revealed on x-ray.
7 (Def. Exh. A, 10/23/08, p. 2.) The AME, Dr. Ramsey, noted in his initial report that Dr. Agnew's x-ray
8 report described a plantar calcaneal spur, and also a very small spur at the attachment of the Achilles
9 tendon on the posterior-superior calcaneus. (App. Exh. 1, 10/11/10, p. 4.) The AME also noted that the
10 January 26, 2009 report of podiatrist, Dr. Childers, described a left foot plantar fasciitis, and an acquired
11 equinus or plantar flexion deformity, of the left ankle.

12 Applicant testified at trial on October 17, 2011, that he has had pain in his left heel since his
13 injury in 2008, which causes him to have a noticeable limp when he is not wearing his shoe insert, and
14 pain when he runs for a period of time. Since the date of injury, he gets a sharp pain if he pushes on the
15 side of his heel. Prior to his injury, he had no pain in his heel and he used to run a lot of races, including
16 regularly running half-marathons. Since his injury, he has been limited to running on a treadmill. He is
17 no longer assigned to bicycle patrol, and now drives in a patrol wagon.

18 Applicant's primary treating physician, Dr. Wiggins, found applicant permanent and stationary in
19 her January 27, 2010 report, with no impairment of his activities of daily living and capable of
20 performing his usual occupation. Referring to Table 17-5 of the AMA Guides, page 529, Dr. Wiggins
21 assigned no WPI based upon gait derangement.

22 While continuing to work full duty on bicycle patrol, applicant complained to the AME two years
23 post-injury of persistent pain in the plantar aspect of his left heel:

24 He notes aggravation of this problem by weightbearing activities, also by
25 prolonged immobility, particularly driving, although it even hurts
26 somewhat after simply being immobile sleeping overnight. He gets benefit
from stretching exercise and his orthotic. Anti-inflammatories have been of
minor benefit. (App. Exh. 1, 10/11/10, p. 3.)

27 Noting Dr. Wiggins' assessment of applicant's permanent and stationary status and her finding no

1 impairment rating, Dr. Ramsey concurred that applicant had no impairment as a result of his plantar
2 fasciitis, or of a separate claimed left knee injury (which is not at issue here). However, he placed a work
3 preclusion against prolonged running.

4 I further agree that no impairment is determinable for either area. This
5 includes the absence of any detectable gait derangement for either side.
6 However, because of reported difficulties with aggravated or recurrent pain
7 from the left heel area with certain activities, I would recommend that he
8 be precluded from such things as prolonged running.

9 The AME prepared two supplemental reports in response to a request that he address applicant's
10 impairment status in light of *Almaraz/Guzman II* issues¹. In his February 10, 2011 report, Dr. Ramsey
11 revised his determination, concluding applicant's condition should be assigned a 7% WPI, referencing
12 Table 17-5 of the AME Guides.

13 Painful problems in the lower extremity can produce difficulties with
14 weightbearing or gait problems, similar to what one might expect from
15 other causes of gait derangement. Therefore, by analogy, using
16 *Almaraz/Guzman II* as a basis, characterizing a residual condition such as
17 this using a gait derangement abnormality is acceptable. This particular
18 individual's problem is relatively mild, the knee not being disabling at all,
19 but the left heel causing weightbearing problems and would likely be
20 aggravated appreciably by running activity on other than a short-term basis.
21 Therefore, referencing Table 17-5, page 529, I would recommend
22 characterizing him in Section A, a limp, despite the absence of any arthritic
23 changes about adjacent joints, equivalent to 7% whole person impairment.
24 I feel this fairly characterizes his residual problem.
25 (App. Exh. 1, 2/10/11, p. 2.)

26 The AME responded in a June 7, 2011 supplemental report to further queries concerning his
27 change in his impairment rating. Noting that a strict application of the AMA Guides "does not always
appropriately characterize an injured worker's problems," Dr. Ramsey explained the basis for his use by
analogy to gait derangement in Table 17-5 to more accurately provide a rating commensurate with
applicant's limitations

As pointed out in the referral letter from Ms. Breakey, I did characterize
applicant's lower extremity problems as relatively mild, although this
reflects more the knee than the actual foot or heel problem, which is the
real basis for my recommending some impairment. Unfortunately, heel
pain, or for that matter, other aspects of pain that do not have any
accompanying objective measurement abnormalities, do not rate anything

¹ (*Mario Almaraz v. Environmental Recovery Service; Joyce Guzman v. Milpitas Unified School District II* (2009) 74 Cal.Comp.Cases 1084 [en banc]; affirmed *Milpitas Unified School District v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 808.)

1 in the AMA Guides, whether or not these problems interfere with one's
2 activities. Thus, a strict interpretation of the Guides does not always
appropriately characterize an injured worker's problems.

3 This particular individual has a problem with pain in the heel of his foot
4 that interferes with weightbearing activities, particularly running, and I
5 thought that by analogy, it would be similar to an individual with a limp
6 and arthritis, resulting in the 7% impairment recommended. I continue to
feel that this is a reasonable reflection of the applicant's residual problems,
despite the fact that using the strict Guidelines, no impairment would
result.

(App. Exh. 1, 6/7/11, p. 2.)

7 II.

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9 The WCJ rejected the AME's conclusion that applicant's impairment could be rated by analogy
10 to gait derangement, as provided in Table 17-5 with a 7% WPI. As explained in his Opinion on Decision,
11 the WCJ found the AME failed to justify his use of gait derangement by analogy since applicant's
12 medical condition did not meet the requirement in *Almaraz/Guzman* that it be "complex or
13 extraordinary."

14 Applicant contends that the WCJ mis-read the requirements for a departure from the strict
15 application of the AMA Guides to rate applicant's impairment, and argues that Dr. Ramsey's opinion is
16 substantial medical evidence to justify a 7% WPI.

17 In determining an impairment rating, Labor Code section 4660(b)(1) provides that:

18 . . . the nature of the physical injury or disfigurement' shall incorporate the
19 descriptions and measurements of physical impairments and the
20 corresponding percentages of impairments published in the American
Medical Association (AMA) Guides to the Evaluation of Permanent
Impairment (5th Edition.).

21 The AMA Guides are not strict texts to be literally and mechanically applied. Instead, the
22 evaluating physician may use his experience and expertise to interpret and apply any portion of the entire
23 AMA Guides. The standard for calculating WPI is determining the most accurate reflection of
24 impairment as measured by any chart, table, or methodology contained within the entire AMA Guides.
25 The burden of rebutting a scheduled permanent disability rating rests with the party disputing it. Any
26 rebuttal rating must constitute substantial evidence by being medically reasonable and explained.

27 Moreover, while the AMA Guides often sets forth an analytical framework
and methods for a physician in assessing WPI, the Guides does not relegate
a physician to the role of taking a few objective measurements and then

1 mechanically and uncritically assigning a WPI that is based on a rigid and
2 standardized protocol and that is devoid of any clinical judgment. Instead,
3 the AMA Guides expressly contemplates that a physician will use his or
4 her judgment, experience, training, and skill in assessing WPI.
(*Almaraz/Guzman II* 74 Cal.Comp.Cases at 1103-1104; affirmed *Milpitas
Unified School District v. Workers' Comp. Appeals Bd.* (2010) 187
5 Cal.App.4th 808 [75 Cal.Comp.Cases 837].)

6 An issue arises here from the language in *Milpitas Unified School District v. Workers' Comp.
7 Appeals Bd.* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases at 849], where the court noted that a
8 physician's exercise of clinical judgment when applying the Guides is necessary to most accurately
9 assess an injured workers' impairment. The court was distinguishing the argument that the language of
10 section 4660(b)(1) requires an evaluating physician to apply the Guides "as written" and "as intended,"
11 and prohibits a physician from "applying 'any chapter, table or method' he/she deems more appropriate."
12 (75 Cal.Comp.Cases at 849.)

13 The court cited the Guides where it expressly noted that a physician's judgment based upon
14 factors including her or her experience, training and thoroughness in clinical evaluation "will enable an
15 appropriate and reproducible assessment to be made of clinical impairment." The court further noted that
16 the Guides, while providing a framework for evaluating new or complex conditions, do not provide a
17 rating for every impairment and "cannot rate syndromes that are 'poorly understood and are manifested
18 only by subjective symptoms.'"

19 The *Guides* itself recognizes that it cannot anticipate and describe every
20 impairment that may be experienced by injured employees. To
21 accommodate those complex or extraordinary cases, it calls for the
22 physician's exercise of clinical judgment to evaluate the impairment most
23 accurately., even if that is possible only by resorting to comparable
24 conditions described in the *Guides*.
(75 Cal.Comp.Cases at 855.)

25 As argued by applicant here, the language cited by the WCJ to limit a rating by analogy only to
26 cases with "complex or extraordinary" medical conditions does not support his interpretation. Rather
27 than further restrict a physician's expertise, this language should be read to reflect the ability of a
physician to rate an impairment by analogy, within the four corners of the Guides, where a strict
application of the Guides does not accurately reflect the impairment being assessed.

1 In this case, Dr. Ramsey used to Table 17-5 under gait derangement on page 529, to assess the
2 limited extent of applicant's impairment. This section notes that gait derangement "is present with many
3 different types of lower extremity impairments *and is always secondary to another condition*. An
4 impairment rating due to a gait derangement should be supported by pathologic findings, such as x-rays."
5 (Emphasis added.) Table 17-5 assigns a 7% WPI for mild gait derangement where there is the presence
6 of "Antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes
7 of hip, knee or ankle."

8 It must be emphasized that applicant's condition, plantar fasciitis, does not have a standard rating,
9 with no specifically applicable "chapter, table or method" provided in the AMA Guides, and thus can
10 only be rated by analogy to other impairments, and/or by analysis of the injury's impact on activities of
11 daily living. Dr. Wiggins also saw the connection to gait derangement in applicant's impairment, but
12 found his ability to perform his usual occupation as evidence of an absence of impairment. Dr. Ramsey,
13 in contrast, concluded that applicant did have a functional impairment in his limitation from prolonged
14 running, based upon what he described as applicant's "difficulties with aggravated or recurrent pain from
15 the left heel area" from prolonged running.

16 Where a condition, such as applicant's plantar fasciitis, is not covered by the AMA Guides,
17 recourse to a strict application of the Guides is not feasible. As the Court noted in *Milpitas Unified*
18 *School District*, the Guides "cannot rate syndromes that are 'poorly understood and are manifested only
19 by subjective symptoms.'" The AME here has provided by analogy an accurate assessment of applicant's
20 medical condition that meets the requirements of *Almaraz/Guzman*, for a condition that is not covered by
21 the AMA Guides.

22 Accordingly, we shall rescind the WCJ's Findings and Award and return this matter to the WCJ
23 for a new permanent disability rating based upon the findings of the AME, Dr. Ramsey.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that, as our Decision After Reconsideration, the January 23, 2012 Findings
3 and Award is **RESCINDED**, and the matter shall be **RETURNED** to the trial level for a new permanent
4 disability rating based upon the whole person impairment rating of the AME, Dr. Ramsey, and for a new
5 final decision.

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7 **WORKERS' COMPENSATION APPEALS BOARD**

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10 **I CONCUR,**

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14 **MARGUERITE SWEENEY**

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18 **FRANK M. BRASS**

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21 **I DISSENT (See Dissenting Opinion),**

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23 
24 **DEIDRA E. LOWE**



25 **DATED AND FILED IN SAN FRANCISCO, CALIFORNIA**

26 **DEC 10 2012**

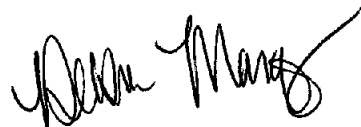
27 **SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR
ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:**

**ARTHUR CANNON
LAUGHLIN, FALBO, LEVY & MORESI
MASTAGNI, HOLSTEDT, AMICK, MILLER & JOHNSEN**

SV/jp

CANNON, Arthur

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1 **DISSENTING OPINION**

2 I dissent. I would affirm the determination of the workers' compensation administrative law judge
3 (WCJ) that applicant, Arthur Cannon, did not sustain permanent disability as a result of an admitted
4 industrial injury to his left foot and heel while employed on October 21, 2008, as a police officer by the
5 City of Sacramento.

6 The evidence here establishes applicant did not sustain any ratable permanent disability, which
7 has been defined as a disability that "causes impairment of earning capacity, impairment of the normal
8 use of a member, or a competitive handicap in the open labor market." (*Milpitas Unified School District*
9 *v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837, 845], citing *Brodie*
10 *v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565].) The "nature of
11 the physical injury" discussed in Labor Code section 4600 "refers to impairment, which is expressed as a
12 percentage reflecting the 'severity of the medical condition and the degree to which the impairment
13 decreases an individual's ability to perform common activities of daily living (ADL), excluding work.'" (*Ibid.*, p. 846.) Here, it does not appear applicant has suffered any impairment of earning capacity, as he
14 is back to his usual and customary occupation and there is no evidence of loss of earning capacity.
15 Additionally, Dr. Ramsey, the Agreed Medical Examiner, found no impairment of the normal use of a
16 member, as he said there is "no impairment [] detectable for either area" and indicated there are no
17 abnormal findings on examination (See October 11, 2010 Report, p. 4 and 7, see report of February 10,
18 2011, p. 2). There is also no evidence that applicant has suffered a competitive handicap in the open labor
19 market. Finally, Dr. Ramsey has provided no discussion of applicant's activities of daily living (ADL)
20 and has not indicated that there are any problems with any ADLs because of the injury to applicant's heel
21 or foot.

22
23 "The PDRS itself instructs physicians that if a particular impairment is not addressed by the AMA
24 Guides, they 'should use clinical judgment, comparing *measureable impairment* resulting from the
25 unlisted objective medical condition to *measureable impairment* resulting from similar objective medical
26 conditions with *similar impairment of function in performing activities of daily living.*'" (*Milpitas*
27 *Unified School District*, 75 Cal.Comp.Cases at 849. [emphasis added] Here, there are absolutely no

1 measureable impairments and no impairments in the ADL's, so there is no justifiable basis for the use of
2 Table 17-5.

3 The AME also does not justify using Table 17-5(a) for the further reason that there is no antalgic
4 limp documented, no arthritis, and no measureable impairments of the foot. The AME says that "the left
5 heel . . . would likely be aggravated appreciably by running activity . . ." (Report of February 10, 2011,
6 p. 2) and similar equivocal words. Thus, the AME is basically speculating as to the existence of objective
7 evidence of measurable impairment, and this by itself is not enough to justify the AME's impairment
8 rating. Therefore, I would affirm the WCJ's determination that applicant did not sustain any rating
9 permanent disability.



WORKERS' COMPENSATION APPEALS BOARD

Deidra E. Lowe

DEIDRA E. LOWE, COMMISSIONER

16 **DATED AND FILED IN SAN FRANCISCO, CALIFORNIA**

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18 **DEC 10 2012**

19 **SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
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23 **MASTAGNI, HOLSTEDT, AMICK, MILLER & JOHNSEN**

24 *SV/jp*

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27 **CANNON, Arthur**

Arthur Cannon