

PHIL NEAL WALKER
LAW CORPORATION
"WORKERS' COMPENSATION FOR THE WORLD"

TO: MARIA S. E
FROM: PHIL WALKER
RE: R, AGUSTIN
DATE: 4/22/14
EMPLOYER: SP F
CARRIER/TPA: ZURICH AMERICAN INSURANCE COM
CLAIM NO.:

Dear Ms. E:

Thank you for forwarding the report of Chiropractor Douglas J. Curran of 1/21/14 regarding this matter.

RPT. OF CHIROPRACTOR DOUGLAS J. CURRAN OF 1/21/14:

CURRENT RATING UNDER OLD SYSTEM:

**Spinal Disability: Category A: 10% Disability Precluding
Very Heavy Lifting**

12.1 - 10 - 491 H - 13 - 14

14.0% PD = 46.25 weeks x \$185/wk = \$8,556.25

CORRECT RATING UNDER OLD SYSTEM:

**Spinal Disability: Category A: 10% Disability Precluding
Very Heavy Lifting**

12.1 - 10 - 491 H - 13 - 14

14.0% PD = 46.25 weeks x \$185/wk = \$8,556.25

CURRENT RATING UNDER AMA GUIDES:

Thoracic spine: DRE I: 0% WPI CORRECT

0.0% PD

Cervical spine: ROM: 11% WPI

Add-on for pain: 0% WPI CORRECT

TOTAL: 11% WPI

15.01.02.02 - 11 - [5] - 14 - 491 H - 18 - 19

Right elbow: ROM: 1% WPI

16.03.01.00 - 1 - [2] - 1 - 491 G - 2 - 2

Left elbow: ROM: 1% WPI

16.03.01.00 - 1 - [2] - 1 - 491 G - 2 - 2

Right shoulder: ROM: 16% UE = 10% WPI

16.02.01.00 - 10 - [7] - 14 - 491 G - 16 - 17

Left shoulder: ROM: 14% UE = 8% WPI

16.02.01.00 - 8 - [7] - 11 - 491 G - 13 - 14

Right arm peripheral nerve: 3% UE = 2% WPI

16.01.02.01 - 2 - [5] - 3 - 491 G - 4 - 4

Left arm peripheral nerve: 4% UE = 2% WPI

16.01.02.01 - 2 - [5] - 3 - 491 G - 4 - 4

Right arm: Grip Strength: 10% UE = 6% WPI

16.01.04.00 - 6 - [4] - 7 - 491 G - 8 - 9

Left arm: Grip Strength: 20% UE = 12% WPI

16.01.04.00 - 12 - [4] - 15 - 491 G - 17 - 18

USING COMBINED VALUES/MDT: 0 C 19 C 2 C 2 C 17 C 14 C 4 C 4 C 9
C 18 = 61.75% PD

61.75% PD = 362.25 weeks x \$185/wk = \$67,016.25

CORRECT RATING UNDER AMA GUIDES:

Thoracic spine: DRE I: 0% WPI CORRECT

0.0% PD

Cervical spine: ROM: 5% WPI

Add-on for pain: 0% WPI CORRECT

TOTAL: 5% WPI

15.01.02.02 - 5 - [5] - 6 - 491 H - 8 - 9

Right elbow: ROM: 0% WPI

0.0% PD

Left elbow: ROM: 0% WPI

0.0% PD

Right shoulder: ROM: 0% WPI

0.0% PD

Left shoulder: ROM: 0% WPI

0.0% PD

Right arm peripheral nerve: 0% UE = 0% WPI

0.0% PD

Left arm peripheral nerve: 0% UE = 0% WPI

0.0% PD

Right arm: Grip Strength: 0% UE = 0% WPI

0.0% PD

Left arm: Grip Strength: 0% UE = 0% WPI

0.0% PD

**USING COMBINED VALUES/MDT: 0 C 9 C 0 C 0 C 0 C 0 C 0 C 0
C 0 C 0 = 9.0% PD**

9.0% PD @ 2003 rates = 27.0 weeks x \$185/week = \$4,995.00

AMOUNT YOU CAN SAVE BY GETTING REPORT CORRECTED:

\$67,016.25 - 4,995.00 = \$62,021.25

NOTES ON AND ISSUES IN REPORT:

1. Chiropractor Curran diagnoses the following:
 - a. Probable tear of superior labrum, right
 - b. Biceps tendon rupture, right, post surgical repair
 - c. Cervical segmental dysfunction
 - d. Tenosynovitis, right hand, post surgical repair
 - e. Insomnia, unspecified
 - f. Cervical radiculitis
 - g. Myalgia/myositis
 - h. Neuropathy of upper limb (unspecified)
 - i. Biceps and Triceps sprain/strain, left
2. Allegedly, the Applicant suffered an injury on 2/27/03.
3. Chiropractor Curran reported on industrial causation of the following:

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- a. Right shoulder pain: Industrial. Due to injury of 2/27/13.
 - b. Right arm pain: Industrial. Due to injury of 2/27/13.
 - c. Right hand/finger pain: **Non-industrial**
 - d. Right foot pain: **Non-industrial**
 - e. Left arm (biceps and triceps) pain: Industrial. Due to injury of 2/27/13.
 - f. Heartburn: Outside scope of practice
 - g. Insomnia: **Non-industrial**
 - h. Cervical spine: Industrial. Ratable based on radiculopathy as shown by EMG/NCV of 5/16/12 and significant muscular guarding in the lower cervical spine
4. Chiropractor Curran found the Applicant mmi as of 1/21/14.
5. Chiropractor Curran notes that Dr. J. Philip Maloney found the Applicant permanent and stationary on 5/5/04 and that, as a result, the old PD rating system would apply. **That is correct.**
6. Chiropractor Curran then provided a rating under the Old System:
- a. Spinal Disability: Category A: 10% Disability Precluding Very Heavy Lifting
 - b. This appears to relate to the cervical spine, right shoulder and arm, left shoulder and arm, and right grip strength and left grip strength. (However, it does not appear that the right shoulder or right arm became permanent and stationary until after 1/1/05 and

would, therefore, be rated under the new system. The same would apply for right grip strength. The medical reports after 1/1/05 appear to relate to the right shoulder, right biceps, and right arm with infrequent reference to some pain in the left shoulder, neck pain, and mid-back pain.)

7. Chiropractor Curran also provide ratings under the *AMA Guides* at the request of the attorneys.

a. **Thoracic spine: DRE I: 0% WPI. CORRECT.**

b. **Cervical spine: ROM: 11% WPI. INCORRECT.**

- 1) The ROM method was used based upon radiculopathy at C7 and 8 per the EMG report of 5/16/12.
 - a) On p. 34 of the report, Chiro. Curran notes that the EMG/NCV of 5/16/12 of the upper extremity was interpreted as showing Right C7(8) radiculopathy, very chronic, very active with notable subacute paraspinal changes, axonal, motor.
 - b) Chiro. Curran noted significant muscle guarding in the lower cervical spine paraspinal musculature bilaterally more so on the right on p. 34 of the report and at p. 16 of the report under physical examination.
 - c) The Range of Motion is correct. P. 380, lower right paragraph 4 indicates that the Range of Motion method should be used when the patient has radiculopathy at more than 1 level in the same spinal region. This patient allegedly has radiculopathy at 2 levels in the cervical spine region.

2) Range of Motion rating:

a) **Disorder:** IIB, p. 404: **7% WPI**

- (1) This is based upon intervertebral disc or other soft-tissue lesion with none to minimal degenerative changes on structural tests
- (2) Cervical is 4% WPI
- (3) For each additional level, add 1% per level: He claims this is an addition of 2 levels = additional 4% WPI.
This is incorrect. As the only levels involved are C7 and C8, the C7 level is already incorporated in the 4% WPI. Adding 1 level totals 5% WPI.
- (4) Chiropractor Curran claims the 4% WPI is combined with an additional 4% WPI for the additional levels. 4 C 4 = **7% WPI**.
This is incorrect. Even if these were combined, 4 C 4 = 8% WPI per the Combining table at the end of the AMA Guides.
- (5) *As noted above, this is incorrect. The correct Disorder figure is 4% WPI + 1% WPI for a second level = 5% WPI.*

b) **Motion:** **7% WPI**

- (1) He gets the following measurements:
(Impairments are per pp. 417-21)

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*[Correct impairment values per pp. 417-21
in italics.]*

<u>Motion</u>	<u>Measure</u>	<u>He gets</u>	<u>Correct Imp</u>
Flex	37	0	<i>1% WPI</i>
Ext	24	2	<i>4% WPI</i>
Right lat	18	1	<i>2% WPI</i>
Left lat	21	1	<i>2% WPI</i>
Right Rot	40	2	<i>2% WPI</i>
Left Rot	44	<u>1</u>	<i><u>2% WPI</u></i>
TOTAL:		7% WPI	<i>13% WPI</i>

- (2) However, none of these values is correct. P. 417, para. 5, p. 419, paragraph 5, and p. 420, paragraph 5, specify that the measurements must be done at least 3 times to obtain a valid set of 3 measurements, must fall within 5 degrees or 10% of the mean of a valid set, whichever is greater. And then the impairment rating is based on the greatest angle of a valid set.
- (30) Per Chiropractor Curran, the measurements were only done once. Therefore, the correct measurements per pp. 417-21 of the *AMA Guides* were not done and, as a result, there

are no valid measurements to use for rating.

As a result, the **correct** number for "motion" is **0% WPI**.

c) **Nerve: 0% WPI**

(1) As Chiro. Curran contends that there is radiculopathy at C7 and C8, this number would be based on sensory and motor deficits at C7 and C8, per p. 424, Table 15-17. No impairment was given under this table.

d) **TOTAL:**

COMBINE 7 C 7 C 0 = **14% WPI**

Chiro Curran gets 11% WPI. He appears to be combining 4% WPI C 7% WPI C 0% WPI = 11% WPI.

Using his calculations, the only valid impairment would be, as follows:

Disorder: 4 + 1 = 5% WPI

Motion: 0% WPI

Nerve: 0% WPI

TOTAL: 5 C 0 C 0 = 5% WPI

Therefore, the correct ROM rating is

5% WPI.

c. Right Elbow: ROM: 1% UE = 1% WPI. INCORRECT

1) He got the following measurements:
(Imp. values are at pp. 472-74):

<u>Motion</u>	<u>Right</u>	<u>Imp</u>	<u>Corr.</u>	<u>Left</u>	<u>Imp</u>	<u>Corr.</u>
Flex	150	0		153	0	
Ext	-9	0	<i>1</i>	-11	1	
Pronat	63	1		72	0	<i>1</i>
Supin	69	0		81	0	
TOTAL:		1% UE		1% UE		
		<i>CORR: 2% UE</i>		<i>CORR. 2% UE</i>		

2) His totals come out to:

Right elbow: 1% UE = 1% WPI per p. 439

Left elbow: 1% UE = 1% WPI per p. 439

3) Correct totals are:

Right elbow: *2% UE = 1% WPI*

Left elbow: *2% UE = 1% WPI*

- 4) However, these results are incorrect because p. 20 specifies that measurements must be consistent, reproducible, and reliable. That means they must be done at least 2 times and fall within 10% of each other. In this case, the measurements were not done 2 times and the 2 measurements did not fall within 10% of each other. The highest of the 2 would be used for rating per pp. 472-74.

As the measurements did not meet the criteria of p. 20, there are no correct measurements per the *AMA Guides*. As a result, the correct rating for the elbows is:

Right elbow: 0% UE = 0% WPI

Left elbow: 0% UE = 0% WPI

d. Left Elbow: ROM: 1% UE = 1% WPI. INCORRECT.

- 1) See comments about Right Elbow above. Same comments apply to left elbow.

e. Right Shoulder: ROM: 16% UE = 10% WPI. INCORRECT

- 1) He got the following measurements:
(Imp. values are at pp. 472-74):

<u>Motion</u>	<u>Right</u>	<u>Imp</u>	<u>Corr.</u>	<u>Left</u>	<u>Imp</u>	<u>Corr.</u>
Flex	80	7% UE		105	5% UE	

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Ext	49	0% UE	43	0% UE 1%
Abd	116	3% UE	92	4% UE
Add	9	1% UE	14	1% UE
Int. Rot.	26	4% UE	48	2% UE
Ext.Rot.	48	<u>1% UE</u>	45	<u>1% UE</u>
	TOTAL:	16% UE		14% UE

CORR. 15% UE

2) His totals come out to:

Right shoulder: 16% UE = 10% WPI per p. 439

Left shoulder: 14% UE = 8% WPI per p. 439

Correct: 15% UE = 9% WPI per p. 439

3) Correct totals are:

Right shoulder: 16% UE = 01% WPI

Left shoulder: 15% UE = 9% WPI

4) However, these results are incorrect because p. 20 specifies that measurements must be consistent, reproducible, and reliable. That means they must be done at least 2 times and fall within 10% of each other. In this case, the measurements were not done 2 times and the 2 measurements did

not fall within 10% of each other. The highest of the 2 would be used for rating per pp. 476-79.

As the measurements did not meet the criteria of p. 20, there are no correct measurements per the *AMA Guides*. As a result, the correct rating for the elbows is:

Right shoulder: 0% UE = 0% WPI

Left shoulder: 0% UE = 0% WPI

f. **Left Shoulder: ROM: 14% UE = 8% WPI. INCORRECT**

- 1) See comments under Right Shoulder. Same comments apply here.

g. **Right arm: Peripheral Nerve (Brachial Plexus): 3% UE = 2% WPI. INCORRECT.**

- 1) He reported decreased tactile sensation in the following at p. 39 of rpt:
 - a) Right middle finger: C7
 - b) Right Small finger: C8
- 2) He estimated the Sensory Deficit as Grade 4, 25% per p. 482.
- 3) He then uses Table 16-13 to get values for the nerves of:

a) C7: $25\% \times 5\% \text{ UE} = 1.25\% \text{ UE}$

b) C8: $25\% \times 5\% \text{ UE} = 1.25\% \text{ UE}$

TOTAL: $2.5\% \text{ UE}$ rounds up to $3.0\% \text{ UE}$

$3.0\% \text{ UE} = 2\% \text{ WPI}$ per p. 439.

4) This is incorrect for the following reasons:

a) Per p. 482, Table 16-10, sensory deficit must be evaluated using light touch/monofilament testing AND two-point discrimination.

If a patient has impaired light touch/monofilaments but normal 2-point discrimination, he is Grade 4, 1 - 25% sensory deficit.

b) According to the physical examination at pp. 15 -17, neither of these tests was done.

c) In the absence of these tests, the correct sensory deficit is 0% sens def.

d) C7: $0\% \times 5\% \text{ UE} = 0\% \text{ UE}$

b) C8: $0\% \times 5\% \text{ UE} = 0\% \text{ UE}$

TOTAL: $0\% \text{ UE} = 0\% \text{ WPI}$

h. Left arm: Peripheral Nerve (Brachial Plexus): 2% WPI

INCORRECT.

- 1) He reported decreased tactile sensation in the following at p. 39 of rpt:
 - a) Upper lateral left arm: C5
 - b) Left middle finger: C7
 - c) Upper medial left arm: T1
- 2) He estimated the Sensory Deficit as Grade 4, 25% per p. 482.
- 3) He then uses Table 16-13 to get values for the nerves of:
 - a) C5: $25\% \times 5\% \text{ UE} = 1.25\% \text{ UE}$
 - b) C7: $25\% \times 5\% \text{ UE} = 1.25\% \text{ UE}$
 - c) T1: $25\% \times 5\% \text{ UE} = 1.25\% \text{ UE}$

TOTAL: $3.75\% \text{ UE}$ rounds up to $4.0\% \text{ UE}$

$4.0\% \text{ UE} = 2\% \text{ WPI}$ per p. 439.
- 4) This is incorrect for the following reasons:
 - a) Per p. 482, Table 16-10, sensory deficit must be evaluated using light touch/monofilament testing AND two-point discrimination.

If a patient has impaired light touch/

monofilaments but normal 2-point discrimination, he is Grade 4, 1 - 25% sensory deficit.

b) According to the physical examination at pp. 15 -17, neither of these tests was done.

c) In the absence of these tests, the correct sensory deficit is 0% sens def.

(1) C5: 0% x 5% UE = 0% UE

(2) C7: 0% x 5% UE = 0% UE

(3) T1: 0% x 5% UE = 0% UE

TOTAL: 0% UE = 0% WPI per p. 439

i. **Right arm: Grip Strength: 10% UE = 6% WPI
INCORRECT.**

1) He concludes this is due to radiculopathy or and/or decrease in use. If so, then it should be rated under the "Nerve" component in the Range of Motion rating.

2) Grip strength is only used for rating in 2 situations under the *AMA Guides*:

a) When the patient has a tear of a muscle in the arm (such as a biceps tendon rupture) leaving a palpable muscle defect per p. 508. **PRESENT
HERE.**

- (1) Per p. 18 of report, the patient had a biceps tendon rupture and underwent surgery for this in May, 2003.
- (2) Per p. 19, entry 15), the patient had undergone right shoulder manipulation under anesthesia and right long head of the biceps tenodesis.

OR

- b) After surgery for lateral or medial epicondylitis per p. 507, Section 16.7d for Tendonitis.
NOT PRESENT HERE.
- 3) Per p. 508, if you do not have one of the 2 situations above, then the impairment ratings based on objective anatomic findings take precedence. That would be the range of motion measurements based on anatomic findings.

Therefore, grip strength cannot be used here as the patient does not qualify for a grip strength rating under the AMA *Guides*.

The correct grip strength rating is:

Right grip: 0% UE = 0% WPI

Left grip strength: 0% UE = 0% WPI

- 4) P. 508 indicates that grip strength measures power weaknesses relating to the structures in the hand, wrist, or forearm.

- 5) Per p. 8 of the report, the patient reports right arm pain 100% of the time. The patient indicates the pain is located in the biceps and triceps muscles of the right arm.
- 6) Per p. 8 of the report, the patient reports pain in the right hand 100% of the time.

j. **Left arm: Grip Strength: 20% UE = 12% WPI
INCORRECT**

- 1) He concludes this is due to radiculopathy or and/or decrease in use. If so, then it should be rated under the "Nerve" component in the Range of Motion rating.
- 2) Per p. 508, if you do not have one of the 2 situations above--biceps tendon rupture or surgery for lateral or medial epicondylitis-- then the impairment ratings based on objective anatomic findings take precedence. That would be the range of motion measurements based on anatomic findings. **NEITHER PRESENT HERE FOR LEFT ARM.**

Therefore, grip strength cannot be used here as the patient does not qualify for a grip strength rating under the AMA Guides.

The correct grip strength rating is:

Left grip strength: 0% UE = 0% WPI

- 4) P. 508 indicates that grip strength measures power weaknesses relating to the structures in the hand, wrist, or forearm.

- 5) Per p. 8 of the report, the patient reports pain in the left arm 100% of the time. Per p. 508, grip strength cannot be used when patients have painful conditions which prevents the effective application of maximal force.
- 6) Therefore, in light of the patient's complaints of pain 100% of the time in the left arm, grip strength cannot be used for rating per p 508.

k. Add-on for pain: 0% WPI **CORRECT**

8. On p. 43 of the report, Chiropractor Curran finds a 6/28/07 industrial CT claim to the right hand and finger.

a. At p. 38, he provided an AMA rating of the right hand:

- 1) Right ring finger: MP Joint, short of full extension by 3 degrees. Per p. 464, Figure 16-25 = 0% UE.
 - a) This correct.

COMMENTS AND RECOMMENDATIONS:

1. It clearly appears that the problems in the right shoulder, right arm, right arm peripheral nerve, right elbow, and right grip strength did not become P+S/mmi until after 1/1/05. Therefore, I believe a strong argument can be made that these should be rated under the new system.

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2. The only information I have on left shoulder, left elbow, left hand, left arm peripheral nerves, and left grip strength issues appear to have become P+S after 1/1/05 and, therefore, should be rated under the new system.
3. According to Chiropractor Curran, Dr. J. Philip Maloney found the Applicant permanent and stationary on 5/5/04. If so, then the Applicant could be rated under the Old System for those conditions which were found P+S prior to 1/1/05. As I do not have Dr. Maloney's report, I am unable to tell which conditions he found permanent and stationary on 5/5/04.
4. Attached, please find a letter to send to Chiropractor Curran in an effort to get him to correct his ratings.

After you have had an opportunity to review the comments and recommendations, please let me know if you have any further questions.

Cordially,



Phil Walker