Determining permanent partial disability values in Illinois workers’ compensation cases has always been difficult. However, the Illinois legislature in 2011 amended the Illinois Workers’ Compensation Act to add a new section (Section 8.1b: AMA Guides) specifically to address the issue of permanent partial disability.

The attached article analyzes the statutory change and how the Illinois Workers’ Compensation Commission has interpreted the new statute.

The new statute mandates that the Commission consider impairment ratings based on AMA Guides. This article will not analyze how impairment ratings are assessed pursuant to the AMA Guides. It is important that everyone have a basic understanding of how the AMA Guides work and, more importantly, identify qualified physicians who can perform impairment ratings.

Please use this article in assessing reserves and negotiating settlements. As always, please feel free to contact me.

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INTRODUCTION AND HISTORY

The determination of a permanent partial disability rating has never been an easy matter in the State of Illinois. The Illinois Workers’ Compensation Commission has always jealously protected its right to evaluate and determine the extent of permanent partial disability in every case. Until recently, the Commission did not rely on any written standards or published standards. Many states for years have based their determinations of permanent partial disability on authoritative written guidelines published by the American Medical Association, the American Academy of Orthopedic Surgeons or another generally recognized medical association. The Illinois Workers’ Compensation Commission never used any such guidelines. In fact, prior to 2011 medical opinions based on such guidelines were held inadmissible as evidence in proving the extent of permanent partial disability.

Further, the Commission did not allow testimony or narrative reports from any doctor as to the percent of impairment or disability incurred by the claimant. The Commission regarded such opinions as an invasion of its unique right to determine the extent of permanent partial disability. Consequently, for an individual unfamiliar to the Illinois workers’ compensation system, it was always difficult to accurately estimate the extent of the permanent partial disability award which may be rendered by the Workers’ Compensation Commission. Even for those who have been handling cases for many years, an estimate of permanent partial disability was never precise. This has resulted in extensive litigation over the years because the uncertainty of PPD awards.

There were never books or articles which provided expert guidance in evaluating permanent partial disability. The only reference materials available to the adjuster and practitioner are prior Workers’ Compensation Commission decisions. In 1980, as a result of statutory changes, the Commission was first required to issue written decisions setting forth findings of fact and conclusions of law. Prior to the publication of written decisions, estimates as to permanent disability were based only on experience. The publication of decisions provides an excellent resource tool and made the determination of permanent disability somewhat less of a guessing game. There is no official reporter for Workers’ Compensation Commission decisions. There are companies which publish indexes of Workers’ Compensation Commission decisions. These indexes provide a good reference to identify Commission decisions which may be similar to the case you are handling. However, as with all summaries, there are frequently facts contained in the decision which are not reflected in the summary. Moreover, it must be recognized that the cases that are tried to decision generally involve the more severe injuries and especially those where claimants wish to keep their medical rights open. Consequently, the percentage awards for those types of cases tend to be higher than the settlements reached for similar injuries involving better recoveries.

Recently, the Commission now publishes its decisions and they are available for review on the Illinois Workers’ Compensation Commission website.

Because there were no fixed medical standards upon which the Commission made permanent disability awards, the amounts of the awards and the percentages of disability have changed over the years as the decision-making personnel have changed. Although past decisions are to be precedent for subsequent Commission decisions, each of the commissioners and especially the arbitrators
believed their individual assessment of permanent disability was more accurate than what may have
been previously awarded.

**STATUTORY AUTHORITY FOR
PERMANENT DISABILITY AWARDS**

There are three different sections of the statute which provide for awards of permanent
disability following an accidental injury. This article will analyze only awards for permanent partial
disability, ignoring those cases of permanent total disability under Section 8(f) or wage differential
under Section 8(d)(1).

The sections involved for permanent partial disability are §§8(c), 8(d)(2), and 8(e).

The WC statute was amended effective 2/1/06 and it increased the number of weeks to be
awarded for loss of use of each member for PPD by 7.5% across the board except for awards for loss
of use of the man as a whole. A table setting forth the maximum number of weeks for each member
is attached to the end of this article along with a current Rate Sheet setting for minimum and
maximum PPD rates.

Awards under §8(c) can be made for serious and permanent disfigurement. In order to
qualify for a disfigurement award, the disfigurement must be to the hand, head, face, neck, arm, leg
below the knee, or chest above the axillary line. The maximum disfigurement award for an injury is
162 weeks of permanent partial disability compensation. An award can be made for either
disfigurement or disability, but not both.

Section 8(d) (2) provides for awards of permanent disability to the "man as a whole." The
maximum compensation which can be awarded is 500 weeks. (This figure did not increase in 2006.)
This section normally applies to all neck and back injuries as well as other injuries to the head, ribs,
internal organs, etc. It also covers all alleged psychological or psychiatric injuries. There are no
specific credit provisions in §8(d) (2). Consequently, an employee can receive multiple §8(d)(2)
awards even exceeding 500 weeks of compensation. This is an outrageous and ridiculous result, but
according to our courts, it is legal. *Consolidated Freightways v. Workers’ Compensation

Section 8(e) provides a schedule of benefits for member/extremity injuries. Each extremity is
assigned a specific maximum number of weeks in the event there is a total loss of use or amputation.

There is a specific credit provision that applies to member injuries in §8(e) (17). That
provision states that an employee cannot receive an award in excess of 100% loss of use of a
member. In the event of multiple accidents with injuries to the same member, credit is given in the
amount of the prior award against any subsequent awards or settlements. The amount of credit
which is given is based on the percent of disability, not on the dollar amount of the prior settlement
or award.
RATES

The permanent partial disability rate is calculated by taking 60% of the employee's average weekly wage. The permanent partial disability rate is subject to various minimums and maximums as set forth in the statute. The permanent partial disability rate cannot exceed the employee's average weekly wage.

The maximum permanent partial disability rate increases annually if the state’s average weekly wages increases. The date of every increase is July 1, although the new rate does not go into effect until it is published. The new rates are not published until the December following the July 1 increase. If a settlement or award is made using the old rate, the claimant is not entitled to an adjustment.

The maximum PPD rates for the last 10 years are as follows:

- 7/1/04 - 6/30/05 ................... 567.87
- 7/1/05 - 6/30/06 ................... 591.77
- 7/1/06 - 6/30/07 ................... 619.97
- 7/1/07 - 6/30/08 ................... 636.15
- 7/1/08 - 6/30/10 ................... 664.72
- 7/1/10 - 6/30/11 ................... 669.64
- 7/1/11 - 6/30/12 ................... 695.78
- 7/1/12 - 6/30/13 ................... 712.55
- 7/1/13 - 6/30/14 ................... 721.66

The 2005 statute imposes new minimum rates effective for dates of accident after 2/1/2006 which are much higher than the old minimums. The new TTD and PPD minimums became:

- Single – $173.33
- Single +1 - $199.32
- Single +2 - $225.32
- Single +3 - $251.32
- Single +4 - $260.00 (Max)

Furthermore, the statute provided for increases in the minimum rates every time the state minimum wage increased. The State minimum wage was increased to $7.50 an hour on July 1, 2007 and the TTD and PPD minimums were further increased to:

- Single - $200.00
- Single +1 - $230.00
- Single +2 - $260.00
- Single +3 - $290.00
- Single +4 - $300.00 (Max)
Again, the State minimum wage was increased to $7.75 an hour on July 1, 2008 and the TTD and PPD minimums were further increased to:

Single - $206.67  
Single +1 - $237.67  
Single +2 - $268.67  
Single +3 - $299.67  
Single +4 - $310.00 (Max)

Again, the State minimum was increased to $8.00 an hour on July 1, 2009 and the TTD and PPD minimums were further increased to:

Single - $213.33  
Single +1 - $245.33  
Single +2 - $277.33  
Single +3 - $309.33  
Single +4 - $320.00 (Max)

Finally, the State minimum wage was increased to $8.25 an hour on July 1, 2010 and the TTD and PPD minimums were further increased to:

Single - $220.00  
Single +1 - $253.00  
Single +2 - $286.00  
Single +3 - $319.00  
Single +4 - $330.00 (Max)

I do expect a further increase in the state minimum wage in the near future. Our current Governor is strongly advocating an increase in the minimum wage to $10.00 an hour which would markedly further increase the minimum TTD and PPD rates. The automatic adjustments in the minimum rates are ridiculously high. They create an incredibly unfair burden on employers, especially employers who hire part-time workers.

2011 AMENDMENTS AND THE INTRODUCTION OF AMA GUIDELINES

A major revision to the statute occurred in June, 2011. One of the significant changes added a completely new section of the Act dealing with the issue of permanent partial disability calculations. This section of the Act applies to accidents on or after September 1, 2011. Prior to the addition of this section of the statute, there was no part of the statute that provided any instruction to the Commission with respect to determining permanent partial disability awards. There were no guidelines for the Commission to follow. Therefore, the Commission could award whatever it wanted as to a percentage loss of use for disability. Awards of permanent partial disability were essentially non-reviewable in the courts since the courts routinely held that the determination of the amount of permanent partial disability by the Commission was uniquely the province of the
Commission and not really reviewable by the courts.

The change in the statute added a new section, 8.1b: AMA Guides

Section 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 include an evaluation of medically defined and professional 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. (Currently the Sixth Edition.)

(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 as assessed pursuant to subsection (a) (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.

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.

ANALYSIS OF STATUTORY CHANGE

The language of the statute appears fairly straight forward. A fair reading of the statute supports a conclusion that in determining permanent partial disability, the Commission should primarily rely on impairment ratings based on AMA guidelines. A fair reading of the statute implies that if the other factors significantly alter the impairment rating, then they should be considered in granting permanent partial disability in excess of the impairment rating. Not surprisingly, there has been significant controversy concerning this section. For the most part, impairment ratings as calculated pursuant to the AMA guidelines are remarkably lower than what the Illinois Workers' Compensation Commission has routinely awarded for permanent partial disability.

This is not surprising since the Commission historically has awarded permanent partial disability based only on historical precedents and not any legitimate, quantifiable medical precedents.
Petitioner’s attorneys argue that there is a vast difference between a permanent partial impairment rating and a permanent partial disability rating. Petitioner’s attorneys argue that impairment does not equal disability. Petitioner’s attorneys argue that even a minor impairment can create significant disability depending on the occupation of the employee.

Petitioner’s attorneys argue that a minor impairment can cause major disability. They point out that while a fractured finger might be rated as a minor impairment pursuant to the guidelines, it could cause a major disability for an individual who is a concert pianist. This argument is a valid one, but it ignores the fact that the vast majority of workers drive trucks and operate machinery and do not make a living as a concert pianist.

The practical application of this section of this statute has been frustrating for employers. The whole purpose of this statutory change was clearly two fold –

1. Lower PPD awards and
2. Make PPD awards more certain and easily ascertainable by basing them on published medical guidelines and not Commission decisions.

Initially, I had expected that both parties would be obtaining IME reports with conflicting impairment ratings. I expected that we would be fighting over the accuracy of the impairment rating of one doctor versus another doctor. However, that has not occurred. There are several reasons why that has not occurred.

First, the proper application of the AMA guidelines really is not subject to that much variation. Most doctors, if they properly apply the AMA guidelines to a claimant will end up with the same or a very similar impairment rating. The guidelines intentionally are not open to that much interpretation, subjectivity and variation. Depending on the evaluator, there could be a variation in impairment ratings between doctors of 1% to 3%, but it is unlikely that there would be a major difference in an impairment rating from petitioner’s expert or respondent’s expert. (This article can’t delve into an analysis of the AMA Guides – but trust me when I say it is an intelligent authoritative text authored by really intelligent physicians).

Secondly, and as previously indicated, the impairment ratings pursuant to the AMA Guides are remarkably lower than prior Commission decisions. Therefore, virtually no petitioner’s attorney ever arranges for an IME to obtain an impairment rating. If a petitioner’s attorney obtained a rating report, that rating report would tend to decrease a petitioner’s PPD award.

Instead, Respondents arrange for an impairment rating and seek an award equal to the impairment rating. The majority of petitioner's attorneys routinely object to the admission of the impairment rating report and demand the right to cross-examine the IME Doctor. Therefore, we are taking numerous depositions of IME Doctors who perform impairment ratings. The primary focus of the cross-examination of the impairment rating doctor is to get the doctor to admit that impairment does not equal disability.
IMPACT OF IMPAIRMENT RATINGS ON COMMISSION DECISIONS

Despite the fact that this statutory change went into effect September 1, 2011, there have been remarkably few arbitration and Commission decisions on these issues. Petitioner’s attorneys were initially reluctant to try cases involving impairment ratings. It is only more now that the statute has been in effect for over two and a half years that we are finally starting to see a body of Commission decisions addressing AMA guidelines. The results so far have been disappointing.

There is no question that impairment ratings have had an effect and they are lowering Arbitration and Commission PPD decisions. Clearly, arbitrators and commissioners are awarding less PPD than they have in the past for similar injuries. The Commission has not given any specific general direction to the arbitrators on what they should award for PPD. However, so far we are seeing that current PPD awards are being reduced by approximately 20% to 30% from where they used to be in similar situations prior to September 1, 2011.

That is helpful for employers and we should take advantage of the Commission’s willingness to reduce PPD awards, but we simply cannot be satisfied by a 20% to 30% reduction in PPD awards when taking into consideration the significant change in the statute.

The statutory change adopting AMA Guides to determine PPD was a dramatic one. An entirely new Section of the Act was inserted and for the first time the Commission was given specific direction as to how to determine PPD. The new statute merits more consideration than simply a partial reduction in PPD awards. The Commission should not simply decrease PPD awards based on a comparison to prior Commission decisions. Instead, the Commission should be relying primarily on the percentages of impairment created by the AMA Guides. The AMA Guides should serve as the primary basis for the percentage award of permanent partial disability. Some increase in the percentage award of permanent partial disability should be considered in the event that the other four factors set forth in the statute create a basis for a finding of disability in excess of the impairment rating.

The Commission should recognize/must recognize that the impairment ratings are based on objective, scientific evidence and well reasoned medical opinions. The Guides attempt to truly reflect scientific conclusions as to levels of impairment. If the Commission doesn’t rely on them as the basis for its decisions, then the statutory change is meaningless. Employers are just left with non-scientific decisions based on the whims of the hearing officers rather than an authoritative medical text.

One of the things that the AMA Guides defines is the difference between the concept of medical causation and legal causation. The guidelines state that for a doctor medical causation is based on a concept of 90% certainty. Legal causation, however, is based on an assumption of greater than 50% certainty. The percent of disability set forth in guidelines are based on really intelligent medical doctors who have fairly analyzed an individual’s actual impairment as a result of an injury. The Guides analysis is significantly different than the Commission simply assigning a disability percentage based on historic precedents.
As an example of a radical difference in concepts, impairment ratings pursuant to the guidelines ignore whether or not the claimant has undergone surgery. Conversely, the Commission has always awarded higher percentages of permanent partial disability depending on whether or not an individual has undergone a surgical procedure. This concept has never made any sense since many surgical procedures solve problems, not create them.

**HISTORIC FACTORS USED IN EVALUATING PERMANENT DISABILITY**

Historically, there have always been a number of factors which go into the determination of a permanent partial disability award. Although the final medical evaluation is important, it is neither the only nor even the most important factor. The various factors the Commission has historically considered are as follows:

1. **Nature of accident.** The Commission will tend to award higher percentages of permanent disability to accidents which are more severe. A significant accident with minimal actual disability may be treated the same as a rather minor accident which causes more significant disability.

2. **Nature of initial injury.** The nature of the initial injury is the most significant factor in the determination of permanent partial disability. Irrespective of final results, the fact that an accident caused a fracture or torn meniscus or herniated disc or carpal tunnel syndrome will be the most significant determining factor in the percentage of permanent disability awarded. To a great degree this becomes a necessity for the Commission. With the volume of cases handled, the Commission's job becomes much easier if certain types of injuries have recognized values. It is quicker and easier to evaluate a case based on the nature of the injury rather than review extensive medical records and a final medical report which doesn't include a permanent disability rating.

3. **Amount of lost time.** The Commission views the amount of lost time as a significant factor in evaluating permanent disability. The Commission awards a higher percentage of permanent disability to those claimants who are off work the longest especially in soft tissue injury cases. The greater the period of TTD results in a greater award of PPD.

4. **Current physical objective findings.** An individual's current physical objective findings after he reaches MMI are critical in an assessment of permanent partial disability. The Commission is specifically looking for findings concerning range of motion, strength, and neurologic function. It is critical in obtaining an evaluation report that a physician provide you with detailed objective findings, both positive and negative. The Commission places greatest reliance on reports of quality treating physicians as compared to independent medical examiners. The Commission places greater emphasis on the reports of those physicians who are specialists rather then generalists.

5. **Petitioner's ability to return to regular work.** If a claimant is able to return to his regular job and earn his regular wages that fact will tend to lessen the Commission's PPD award. If petitioner is only allowed to return to limited work and/or may have reduced wages that factor will
significantly increase a permanent partial disability award. Even if the Commission ignores any wage differential consideration, they will render a higher permanent disability award in an effort to make up for the wage loss. The Commission will likely convert an extremity award under Section 8 (e) to a man as a whole award for loss of profession under Section 8 (d) (2) if petitioner does not return to his regular work duties.

6. **Description of job.** Claimants who have heavier, more strenuous jobs tend to get higher awards of permanent disability. The Commission will generally take into account how much more difficult an injury makes an employee's ability to perform his job. Claimants with lighter, less physically demanding jobs tend to obtain lower awards.

7. **Amount of average weekly wage.** The permanent disability system in Illinois is skewed in favor of high wage earners. Claimants earning high wages receive much higher dollar awards of permanent disability than do their lower wage counterparts. To a certain extent the Commission takes this into consideration and awards higher percentages of disability to lower wage claimants to make up for the disparity in the dollar amount of the award created by the low wage. The reverse scenario is not true. The Commission will not reduce the percentage of PPD given to high wage earners.

8. **Current subjective complaints.** Claimants who complain more and better get higher awards. Despite minimal physical findings, a claimant who testifies extensively and well as to numerous subjective problems is much more likely to obtain a higher award than a similar claimant with the same physical findings and reports more limited subjective complaints.

**SECTION 8.1B V. HISTORIC FACTORS**

Clearly, there are similarities between the historic factors and the factors to be considered pursuant to the new statute. It is for this reason that the Commission has been relying on its past decisions still in current awards of PPD.

More litigation is need on this issue as to how the Commission should be interpreting the new statute as I don’t believe that current Commission decisions are correct. We need some cases involving Section 8.1b to be appealed to the Appellate Court in an effort to get the Appellate Court to tell the Commission they are not properly interpreting the statute.

Alternatively, we need to get a new Governor who will appoint Commissioners who are instructed to and willing to interpret the statute consistent with direction of the legislature to make the impairment rating the primary factor in the PPD award. The last alternative option would be a statutory change requiring the Commission to award PPD based on the impairment rating as set forth in the AMA Guides. Many states require this and they are far less litigious than Illinois.
PPD AWARDS GENERALLY - EVALUATING BODY PARTS

These general rules are used by the Commission in making awards and many of these of these concepts are also factors which tend to affect the impairment ratings in the AMA Guides.

1. Distal injuries are worth less than proximal injuries.
2. Medial injuries are worth more than lateral injuries.
3. Weight bearing joints are compensated more that non-weight bearing joints.
4. Multiple injuries to multiple body parts result in discounts.
5. If surgery is performed, the award is higher even if the problem is solved
6. Arthroscopic surgery cases result in a lower award than an open surgery.
7. Cases involving hardware generally result in higher awards.
8. Cases involving the prospect of future medical tend to result in higher awards.

SPECIFIC CASE SITUATIONS – PERMANENT PARTIAL DISABILITY

I want to provide some guidance in setting reserves and settling cases based on current 2011 to 2014 decisions. I am going to analyze the most common injuries and estimate the % ranges of impairment based on AMA Guides and they estimate the % of PPD currently being awarded at the Commission at trial.

IMPORTANT FACT

We contend that in most cases the % impairment rating pursuant to the Guides should be equal to the % PPD rating awarded by the Commission. We are settling cases frequently with pro se claimants for the exact amount of the % impairment found by a rating physician. Many of the Arbitrators and Commissioners have been approving settlements at those percentages.

Even though case decisions have been at levels higher than impairment ratings, settlements are being approved at or near impairment rating levels.

Hands and Feet Injuries

The Commission generally treats injuries to the hands and feet in a similar manner when awarding permanent partial disability. The maximum number of weeks for these members is approximately the same. The nature of the internal structures in the hands and feet are somewhat similar.

<table>
<thead>
<tr>
<th>Injury</th>
<th>Impairment Rating</th>
<th>Permanent Partial Disability Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple lacerations, contusions, sprains/strains</td>
<td>0%-1%</td>
<td>0%-2.5%</td>
</tr>
<tr>
<td>Injury Description</td>
<td>0%-4%</td>
<td>5%-10%</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>-------</td>
<td>--------</td>
</tr>
<tr>
<td>Fracture to the distal phalanx of a finger or toe</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fracture of the proximal or middle phalanx</td>
<td>0%-6%</td>
<td>10%-15%</td>
</tr>
<tr>
<td>Fracture of the metacarpal phalangeal or proximal phalanx</td>
<td>0%-8%</td>
<td>15%-17.5%</td>
</tr>
<tr>
<td>Finger or thumb dislocation</td>
<td>0%-5%</td>
<td>5%-10%</td>
</tr>
<tr>
<td>Finger and toe amputations – special rules per statute</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Amputation involving bone loss involving the distal phalanx – 50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amputation involving bone loss beyond the distal phalanx – 100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Digital stenosing tenosynovitis – trigger finger</td>
<td>0%-6%</td>
<td>10%-15%</td>
</tr>
<tr>
<td>Extensor tendon rupture or flexor tendon rupture</td>
<td>0%-6%</td>
<td>10%-15%</td>
</tr>
<tr>
<td>Fractures of the metatarsals or metacarpals</td>
<td>0%</td>
<td>5%-10%</td>
</tr>
<tr>
<td>Fractures of the distal radius or ulna uncomplicated nonarticular</td>
<td>0%</td>
<td>5%-10% of the hand</td>
</tr>
<tr>
<td>Colles fracture – fractures to both distal radius and ulna</td>
<td>0%-5%</td>
<td>15%-20%</td>
</tr>
<tr>
<td>Triangular fibrocartilage complex tear</td>
<td>0%-8%</td>
<td>15%-20%</td>
</tr>
<tr>
<td>Ankle fracture- tibia or fibula</td>
<td>0%-5%</td>
<td>5%-10%</td>
</tr>
<tr>
<td>Bimalleolar fracture – trimalleolar fracture</td>
<td>0%-10%</td>
<td>20%-25%</td>
</tr>
<tr>
<td>Wrist or ankle arthrodesis with good results</td>
<td>15%-20%</td>
<td>40%-50%</td>
</tr>
<tr>
<td>Fractures of the talus or calcaneus</td>
<td>0%-5%</td>
<td>15%-20%</td>
</tr>
<tr>
<td>Carpal tunnel syndrome (repetitive trauma carpal tunnel – 190 weeks max)</td>
<td>2%-5%</td>
<td>7%-15%</td>
</tr>
</tbody>
</table>

**Arm and Shoulder Injuries**

Cases involving the distal arm at the level of the wrist are generally compensated based on loss of use of the hand. Permanent impairment ratings are based on loss of use of the hand.
However, for any injury proximal to the wrist including the elbow, the award of disability is for loss of use of the arm.

Cases involving injuries to the shoulder were always compensated based on loss of use of the arm until recently. As a result of a relatively recent appellate court case decision, *Forest Preserve District of Will County v. Illinois Workers' Compensation Commission*, 2012 IL App (3d) 110077WC, cases involving shoulder injuries are no longer compensated based on loss of use of the arm, but instead based on loss of use of the man as a whole. According to the Appellate Court, the shoulder is not a part of the arm, but instead it is a part of the body. Interestingly, according to the AMA Guides, the shoulder is part of the arm and it is rated based on loss of use of the upper extremity.

<table>
<thead>
<tr>
<th>Injury</th>
<th>Impairment Rating</th>
<th>Permanent Partial Disability Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contusions, sprains/strains, pain</td>
<td>0%-1%</td>
<td>0%-2.5%</td>
</tr>
<tr>
<td>Fractures</td>
<td>0%-3%</td>
<td>5%-15%</td>
</tr>
<tr>
<td>Fractures more complex such as intraarticular at the elbow or humeral head</td>
<td>3%-5%</td>
<td>15%-25%</td>
</tr>
<tr>
<td>Distal biceps rupture</td>
<td>0%-5%</td>
<td>20%-25%</td>
</tr>
<tr>
<td>Epicondylitis with surgical repair</td>
<td>3%-7%</td>
<td>12.5%-17.5%</td>
</tr>
<tr>
<td>Collateral ligament injury - medial, ulnar or lateral</td>
<td>0%-5%</td>
<td>12.5%-15%</td>
</tr>
<tr>
<td>Total elbow arthroplasty</td>
<td>26%-34%</td>
<td>40%-50%</td>
</tr>
<tr>
<td>Ulnar nerve entrapment – cubital tunnel syndrome – surgical repair</td>
<td>2%-5%</td>
<td>10%-15%</td>
</tr>
<tr>
<td>Rotator cuff tear – partial or full thickness, impingement syndrome – surgical repair</td>
<td>3%-6% loss of use of the upper extremity</td>
<td>7.5%-12.5% loss of use of the MAW</td>
</tr>
<tr>
<td>Acromioclavicular joint injury or disease with distal clavicle recision or significant AC joint separation</td>
<td>3%-10% loss of use of the upper extremity</td>
<td>7.5%-10% loss of use of the MAW</td>
</tr>
<tr>
<td>Labral lesions including SLAP tears, biceps tendon dislocation/subluxation – surgical repair including labral repair and/or biceps tenodesis</td>
<td>1%-5% loss of use of the upper extremity</td>
<td>7.5%-10% MAW</td>
</tr>
<tr>
<td>Shoulder dislocation</td>
<td>0%-10% upper extremity</td>
<td>5%-10% MAW</td>
</tr>
</tbody>
</table>
Injuries to the leg are treated similarly to injuries to the arm. Injuries to the distal leg at the ankle or below are compensated based on loss of use of the foot. Injuries above the ankle are compensated based on loss of use of the leg.

Hip injuries are compensated based on loss of use of the leg for now. I certainly anticipate that based on the Appellate Court’s decision with respect to the shoulder that claimants will try to allege hip injuries should be compensated based on loss of use of the man as a whole.

<table>
<thead>
<tr>
<th>Injury</th>
<th>Impairment Rating</th>
<th>Permanent Partial Disability Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fractures – tibial plateau fracture; proximal tibial shaft fracture</td>
<td>3%-7%</td>
<td>10%-20% loss of use of the leg</td>
</tr>
<tr>
<td>Fractured patella</td>
<td>5%-9%</td>
<td>15%-20%</td>
</tr>
<tr>
<td>Patellar subluxation or dislocation</td>
<td>0%-9%</td>
<td>10%-15%</td>
</tr>
<tr>
<td>Contusions, sprains/strains, leg pain</td>
<td>0%-1%</td>
<td>0%-5%</td>
</tr>
<tr>
<td>Meniscal tear injuries – partial medial or lateral meniscectomy or meniscal repair</td>
<td>1%-3%</td>
<td>10%-15%</td>
</tr>
<tr>
<td>Meniscal injury – partial medial and lateral meniscectomy</td>
<td>7%-13%</td>
<td>15%-20%</td>
</tr>
<tr>
<td>Meniscal injury – total medial or lateral meniscectomy</td>
<td>5%-9%</td>
<td>15%-25%</td>
</tr>
<tr>
<td>Ruptured tendon</td>
<td>2%-7%</td>
<td>15%-20%</td>
</tr>
<tr>
<td>Ligament injury – cruciate or collateral ligament injury</td>
<td>0%-10%</td>
<td>20%-25%</td>
</tr>
<tr>
<td>Total knee replacement</td>
<td>21%-25%</td>
<td>40%-50%</td>
</tr>
</tbody>
</table>

Spinal Injuries

Cases involving injuries to the neck and back are both the most common before the Illinois Workers' Compensation Commission and are the most difficult to evaluate. They are also the most significant in terms of cost in part because the man as a whole is valued at 500 weeks. That means that every percent of additional PPD awarded is extremely costly. Now, with the maximum PPD rate at over $700.00 a week, every extra percent of PPD awarded can be more than $3,500.00. Cases involving injuries to the neck and back are compensated very similarly for the same types of injuries. Cases involving injuries to the thoracic spine are less common.
<table>
<thead>
<tr>
<th>Injury</th>
<th>Impairment Rating</th>
<th>Permanent Partial Disability Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contusions, sprains/strains, chronic pain</td>
<td>0%-2%</td>
<td>0%-3%</td>
</tr>
<tr>
<td>Degenerative disc disease, disc bulging associated with pain</td>
<td>0%-2%</td>
<td>2%-5%</td>
</tr>
<tr>
<td>Intervertebral disc herniation – nonsurgical</td>
<td>0%-6%</td>
<td>4%-10%</td>
</tr>
<tr>
<td>Intervertebral disc herniation with surgery</td>
<td>0%-6%</td>
<td>15%-20%</td>
</tr>
<tr>
<td>Compression fractures of vertebral bodies</td>
<td>0%-4% with less than 25% compression 9%-14% with 20%-25% compression</td>
<td>5%-10% MAW</td>
</tr>
<tr>
<td>Disc herniation, spinal stenosis, arthritis resulting in spinal fusion</td>
<td>4%-8%</td>
<td>15%-25% PPD increases if multiple levels are involved</td>
</tr>
</tbody>
</table>

**Miscellaneous Injuries**

There are many different miscellaneous injuries which can occur. As a general rule, pursuant to the AMA Guides, cases involving complaints of pain, strains/sprains, contusions generally result in impairment rating of 0%. PPD exposure in those types of cases can result in an award generally in the range of 0%-3% loss of use of the member/man as a whole.

Employers have complained for years about awards of PPD in minor injury cases. When the rate for PPD was $80.00 a week and the Commission was giving out small 2% awards, it was annoying. However, now with the maximum rate at $721.66 per week, if a minor sprain/strain injury gets an award of 3% loss of use of the man as a whole, that award totals $10,824.90. Moreover, the employer gets no credit as against any future MAW awards.

**Head Injuries**

Skull fractures without significant neurologic symptoms were to result in a zero impairment rating by statute a minimum of 6 weeks is awarded. Generally, PPD awards are in the range of 4%-10% man as a whole. Cases involving diagnosed postconcussion syndrome without significant findings, but complaints of headaches would be rated in the range of 0%-2% impairment rating. The PPD exposure would likely be in the range of 3%-5% man as a whole.

Cases involving inguinal strains would be given an impairment rating at zero. The PPD exposure would be 0%-2%. Cases involving hernias with successful repair are given an impairment rating at zero. The exposure for permanent impairment for a simple hernia would be 0%-2%.
There have been no reported cases involving eye injuries yet. The guides are very specific in terms of rating eye injuries. As a general rule, it is important whether or not the claimant wore corrective lenses prior to the accident. If petitioner did not wear corrective lenses before the accident, the Commission generally evaluates disability comparing uncorrected vision before the accident to uncorrected vision after the accident. However, if the claimant wore corrective lenses at the time of the accident, the Commission will generally evaluate permanent disability based on corrected vision before the accident compared to corrected vision after the accident. Prior to the change in the statute, the Commission generally awarded permanent disability for vision loss in conformance with the Wisconsin Eye Chart. That meant that if a claimant’s vision was 20/20 postinjury, he received zero permanent partial disability. A loss of vision to 20/200 resulted in an award of 100% loss of use of the eye. The Commission also awarded permanent partial disability without loss of visual acuity if the injury resulted in other eye problems such as light sensitivity, tearing, scarring, etc.

According to the AMA Guides a loss in vision at 20/200 is rating at 50% loss. Total blindness is rated at 100% loss. Obviously, this is a remarkable difference and we don’t know yet how the Commission will rule.

Ear injuries should be the easiest to evaluate. Even though AMA Guides apply, hearing loss injuries are still based on the statutory standard contained in §8(e)(16) of the Act. In evaluating a loss of hearing claim, an audiogram is necessary. The audiogram must reflect hearing levels at the 1000, 2000 and 3000 cycles per section levels. To determine whether there is any hearing loss, the average in decibels is calculated in the three different frequencies. If the average hearing loss is 30 decibels or less, no permanent disability is awarded. If the average exceeds 30 decibels, then the amount in excess of 30 decibels is multiplied by 1.82% to determine the percent loss of hearing in each ear. For example, if the average of the three frequencies is 40 decibels, to determine the percentage loss of hearing you would subtract 30 from 40, which equals 10, and then multiply 10 by 1.82% to arrive at a percentage hearing loss of 18.2%.

CONCLUSION

The determination of permanent partial disability by the Illinois Workers' Compensation Commission should have changed drastically in 2011. Instead of awards of permanent partial disability being extremely subjective based on the opinions of the Commission, permanent partial disability should now be based primarily on the opinions of medical professionals based on objective medical evidence and the AMA Guides. The statute does not state that the Commission must award permanent partial disability equal to the impairment rating. Obviously, the legislature wanted to give the Commission some discretion. Nevertheless, a simple reading of the statute clearly demonstrates that the legislature intended that the Commission use the impairment rating as the primary factor in evaluating permanent partial disability. A fair reading of the statute means that the Commission’s discretion is limited.

Clearly, the Commission is considering the impairment rating in awarding PPD, but they are not using the impairment rating as they should, in my opinion. The Commission should be using the impairment rating as the starting point for its consideration of the percentage of permanent partial
disability award. The Commission should not simply be assigning a percentage of disability for permanent partial disability without the impairment rating serving as the basis for its starting point.

The Commission is currently not doing that right now. The Commission is approving settlements at or near the impairment rating and employers should continue to try to negotiate and settle cases at those levels. We should continue to fight PPD awards at levels above the impairment rating especially for claimants who have returned to work at full duty without wage loss. This is an issue certainly worth litigating. We should challenge unfavorable decisions from the Commission up to the Appellate Court to see if they will try to force the Commission to more properly use the impairment ratings. We can’t demand legislative change unless Appellate Court decisions rule that the Commission still has unlimited discretion in making PPD awards. Alternatively, the statutory language has to be strengthened so that the Commission simply cannot ignore the mandate of the legislature to make permanent disability awards based on objective scientific facts rather than personal opinion.
STATE OF ILLINOIS
TABLE OF RATES
WORKERS' COMPENSATION

Temporary Total Disability (TTD) and Death Benefit Rates
TTD and Death Rate = AWW x 66 2/3 %

<table>
<thead>
<tr>
<th>Minimum TTD Rates*</th>
<th>Before 2/1/06</th>
<th>2/1/06 – 6/30/07</th>
<th>7/1/07 – 6/30/08</th>
<th>7/1/08 – 6/30/09</th>
<th>7/1/09 – 7/15/10</th>
<th>7/15/10 – 7/14/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>100.90</td>
<td>173.32</td>
<td>200.00</td>
<td>206.67</td>
<td>213.33</td>
<td>220.00</td>
</tr>
<tr>
<td>Married, 0 children or Single with 1 child</td>
<td>105.50</td>
<td>199.32</td>
<td>230.00</td>
<td>237.67</td>
<td>245.33</td>
<td>253.00</td>
</tr>
<tr>
<td>M w/ 1 or S w/ 2</td>
<td>108.30</td>
<td>225.32</td>
<td>260.00</td>
<td>268.67</td>
<td>277.33</td>
<td>286.00</td>
</tr>
<tr>
<td>M w/ 2 or S w/ 3</td>
<td>113.40</td>
<td>251.32</td>
<td>290.00</td>
<td>299.67</td>
<td>309.33</td>
<td>319.00</td>
</tr>
<tr>
<td>M w/ 3 or S w/ 4</td>
<td>117.40</td>
<td>260.00 (max)</td>
<td>300.00 (max)</td>
<td>310.00 (max)</td>
<td>320.00 (max)</td>
<td>330.00</td>
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<tr>
<td>M w/ 4 or S w/ 5</td>
<td>124.30</td>
<td>260.00</td>
<td>300.00</td>
<td>310.00</td>
<td>320.00</td>
<td>330.00</td>
</tr>
</tbody>
</table>

* The TTD rate shall not exceed an employee's average weekly wage. The TTD compensation rate is to be 100% of employee’s AWW or the above minimum, whichever is less.

Maximums for TTD, Death and Member Amputations ---- Minimums for Death, PTD and Member Amputations
The TTD, death benefit and member amputation maximum is set at 133 1/3 % of the state's average weekly wage. The death benefit, permanent total disability (PTD) and member amputation rate minimum is set at 50% of the state average weekly wage. The maximum and the minimum rates change two times a year on January 15 and July 15. The member amputation minimum applies to accident dates after 2/1/06.

Wage Differential Claims
The Max Wage Differential Rate for dates of accident after 2/1/06 is the State AWW in effect on the date of accident. Wage Differential Benefits for dates of accident on and after 9/1/11 end at age 67 or last a maximum of five years from the date of a final decision.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Maximum TTD, Death &amp; Amputation Rate</th>
<th>Minimum Death, PTD &amp; Amputation Rate</th>
<th>State AWW</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/15/04 to 7/14/04</td>
<td>1019.73</td>
<td>382.40</td>
<td>764.80</td>
</tr>
<tr>
<td>7/15/04 to 1/14/05</td>
<td>1034.56</td>
<td>387.96</td>
<td>775.92</td>
</tr>
<tr>
<td>1/15/05 to 7/14/05</td>
<td>1051.99</td>
<td>394.50</td>
<td>788.99</td>
</tr>
<tr>
<td>7/15/05 to 1/14/06</td>
<td>1078.31</td>
<td>404.37</td>
<td>808.73</td>
</tr>
<tr>
<td>1/15/06 to 7/14/06</td>
<td>1096.27</td>
<td>411.10</td>
<td>822.20</td>
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<tr>
<td>7/15/06 to 1/14/07</td>
<td>1120.87</td>
<td>420.33</td>
<td>840.65</td>
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<tr>
<td>1/15/07 to 7/14/07</td>
<td>1148.51</td>
<td>430.69</td>
<td>861.38</td>
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<tr>
<td>7/15/07 to 1/14/08</td>
<td>1164.37</td>
<td>436.64</td>
<td>873.28</td>
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<tr>
<td>1/15/08 to 7/14/08</td>
<td>1178.49</td>
<td>441.93</td>
<td>883.86</td>
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<tr>
<td>7/15/08 to 1/14/09</td>
<td>1216.75</td>
<td>456.28</td>
<td>912.56</td>
</tr>
<tr>
<td>1/15/09 to 7/14/09</td>
<td>1231.41</td>
<td>461.78</td>
<td>923.56</td>
</tr>
<tr>
<td>7/15/09 to 1/14/10</td>
<td>1243.00</td>
<td>466.13</td>
<td>932.25</td>
</tr>
<tr>
<td>1/15/10 to 7/14/10</td>
<td>1243.00</td>
<td>466.13</td>
<td>922.45</td>
</tr>
<tr>
<td>7/15/10 to 1/14/11</td>
<td>1243.00</td>
<td>466.13</td>
<td>925.08</td>
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<tr>
<td>1/10/11 to 7/14/11</td>
<td>1243.00</td>
<td>466.13</td>
<td>930.39</td>
</tr>
<tr>
<td>7/15/11 to 1/14/12</td>
<td>1261.41</td>
<td>473.03</td>
<td>946.06</td>
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<tr>
<td>1/15/12 to 7/14/12</td>
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<td>483.36</td>
<td>966.72</td>
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<tr>
<td>7/15/12 to 1/14/13</td>
<td>1295.47</td>
<td>485.80</td>
<td>971.60</td>
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<td>1/15/13 to 7/14/13</td>
<td>1320.03</td>
<td>495.01</td>
<td>990.02</td>
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<tr>
<td>7/15/13 to 1/14/14</td>
<td>1331.20</td>
<td>499.20</td>
<td>998.40</td>
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<tr>
<td>1/15/14 to 7/14/14</td>
<td>1336.91</td>
<td>501.34</td>
<td>1002.68</td>
</tr>
</tbody>
</table>
Permanent Partial Disability
PPD rate = AWW x 60% - Applies to all PPD claims including amputations

<table>
<thead>
<tr>
<th>Minimum PPD Rates*</th>
<th>Before 2/1/06</th>
<th>2/1/06 - 6/30/07</th>
<th>7/1/07 - 6/30/08</th>
<th>7/1/08 - 6/30/09</th>
<th>7/1/09 - 7/15/10</th>
<th>7/15/10 - 7/14/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>80.90</td>
<td>173.32</td>
<td>200.00</td>
<td>206.67</td>
<td>213.33</td>
<td>220.00</td>
</tr>
<tr>
<td>Married, 0 children or Single with 1 child</td>
<td>83.20</td>
<td>199.32</td>
<td>230.00</td>
<td>237.67</td>
<td>245.33</td>
<td>253.00</td>
</tr>
<tr>
<td>M w/ 1 or S w/ 2</td>
<td>86.10</td>
<td>225.32</td>
<td>260.00</td>
<td>268.67</td>
<td>277.33</td>
<td>286.00</td>
</tr>
<tr>
<td>M w/ 2 or S w/ 3</td>
<td>88.90</td>
<td>251.32</td>
<td>290.00</td>
<td>299.67</td>
<td>309.33</td>
<td>319.00</td>
</tr>
<tr>
<td>M w/ 3 or S w/ 4</td>
<td>91.80</td>
<td>260.00 (max)</td>
<td>300.00 (max)</td>
<td>310.00 (max)</td>
<td>320.00 (max)</td>
<td>330.00 (max)</td>
</tr>
<tr>
<td>M w/ 4 or S w/ 5</td>
<td>96.90</td>
<td>260.00</td>
<td>300.00</td>
<td>310.00</td>
<td>320.00</td>
<td>330.00</td>
</tr>
</tbody>
</table>

* The PPD rate shall not exceed an employee's average weekly wage. The compensation rate is to be 100% of employee's average weekly wage or the above minimum, whichever is less.

Maximum PPD rates**
The PPD maximum increases annually effective July 1 in the same proportionate increase as the state average weekly wage. Although by statute, the PPD maximum increases on 7/1, the new rate does not go into effect until published by the Commission in the following December.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Rate</th>
<th>Time Period</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/91 - 6/30/92</td>
<td>353.88</td>
<td>7/1/02 - 6/30/03</td>
<td>542.17</td>
</tr>
<tr>
<td>7/1/92 - 6/30/93</td>
<td>371.36</td>
<td>7/1/03 - 6/30/04</td>
<td>550.47</td>
</tr>
<tr>
<td>7/1/93 - 6/30/94</td>
<td>384.73</td>
<td>7/1/04 - 6/30/05</td>
<td>567.87</td>
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<tr>
<td>7/1/94 - 6/30/95</td>
<td>396.89</td>
<td>7/1/05 - 6/30/06</td>
<td>591.77</td>
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<tr>
<td>7/1/95 - 6/30/96</td>
<td>410.43</td>
<td>7/1/06 - 6/30/07</td>
<td>619.97</td>
</tr>
<tr>
<td>7/1/96 - 6/30/97</td>
<td>421.59</td>
<td>7/1/07 - 6/30/08</td>
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<tr>
<td>7/1/97 - 6/30/98</td>
<td>439.89</td>
<td>7/1/08 - 6/30/10</td>
<td>664.72</td>
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<tr>
<td>7/1/98 - 6/30/99</td>
<td>465.67</td>
<td>7/1/10 - 6/30/11</td>
<td>696.64</td>
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<tr>
<td>7/1/99 - 6/30/00</td>
<td>485.65</td>
<td>7/1/11 - 6/30/12</td>
<td>695.78</td>
</tr>
<tr>
<td>7/1/00 - 6/30/01</td>
<td>516.15</td>
<td>7/1/12 - 6/30/13</td>
<td>712.55</td>
</tr>
<tr>
<td>7/1/01 - 6/30/02</td>
<td>534.16</td>
<td>7/1/13 - 6/30/14</td>
<td>721.66</td>
</tr>
</tbody>
</table>

* The PPD maximum for cases involving amputation of a member or enucleation of an eye is increased to the TTD maximum, however; the PPD rate in such cases is still calculated as 60% of the employee's AWW.

Fingers and Toes - Loss of all or part of distal phalanx (bony loss) equals 50% loss. Loss beyond distal phalanx equals 100% loss. Amputation of or loss of use of 4 fingers equals 100% loss of hand.

Drafted by Michael E. Rusin – merusin@rusinlaw.com – 312-454-5119
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