#### LOWER EXTREMITY IMPAIRMENTS

According to the AMA Guides, Lower Extremity Impairment is determined based upon:

|  |  |
| --- | --- |
| **AMA GUIDES** | **LOWER EXTREMITY IMPAIRMENTS** |
| ANATOMIC CHANGES |  |
| Limb Length Discrepancy | Does not apply to Mr. Smith |
| Muscle Atrophy | Does not apply to Mr. Smith |
| Ankylosis | Does not apply to Mr. Smith |
| Amputation | Applies to Mr. Smith as follows:* Amputation:

Right Foot:* Mr. Smith has a right foot transmetatarsal amputation. According to Table 17-32, this qualifies for 40% Lower Extremity Impairment.
 |
| Arthritis of Joints | Does not apply to Mr. Smith |
| Skin Loss | Does not apply to Mr. Smith |
| Peripheral Nerve Injury | Does not apply to Mr. Smith |
| Vascular | Does not apply to Mr. Smith |
| Reflex Sympathetic | Does not apply to Mr. Smith |
| FUNCTIONAL CHANGES |  |
| Loss of Range of Motion | Applies to Mr. Smith as follows:* Abnormal Motion:

Right Ankle:* Mr. Smith has 14°/20° right ankle plantar flexion. According to Table 17-11, this qualifies for 4% Lower Extremity Impairment.
* Mr. Smith has 4°/10° right ankle dorsiflexion. According to Table 17-11, this qualifies for 3% Lower Extremity Impairment.

Right Hindfoot:* Mr. Smith has 12°/20° right hindfoot inversion. According to Table 17-12, this qualifies for 3% Lower Extremity Impairment.
* Mr. Smith has 8°/10° right hindfoot eversion. According to Table 17-12, this qualifies for 1% Lower Extremity Impairment.

Total Impairment: Adding Impairments due to “abnormal motion” - 4%, plus 3%, plus 3%, plus 1%, equals 11% Lower Extremity Impairment. |
| Gait Derangement | Applies to Mr. Smith as follows:* Gait Derangement: Mr. Smith requires routine use of a cane for ambulation. According to the Table 17-5, “Routine use of cane, crutch, or long leg brace (knee-ankle-foot orthosis (KAFO) qualities for 20% Whole Person Impairment.
 |
| Loss of Muscle Strength | Applies to Mr. Smith as follows:* Loss of Strength:
* Mr. Smith has Grade 4 muscle strength for resisted right ankle plantar flexion. According to Table 17-8, this qualifies for 17% Lower Extremity Impairment.
* Mr. Smith has Grade 4 muscle strength for resisted right ankle dorsiflexion. According to Table 17-8, this qualifies for 12% Lower Extremity Impairment.
* Mr. Smith has Grade 4 muscle strength for resisted right ankle inversion. According to Table 17-8, this qualifies for 5% Lower Extremity Impairment.
* Mr. Smith has Grade 4 muscle strength for resisted right ankle eversion. According to Table 17-8, this qualifies for 5% Lower Extremity Impairment.
* Total Impairment: *Adding* Impairments due to “loss of strength” - 17%, plus 12%, plus 5%, plus 5% equals 39% Lower Extremity Impairment.
 |
| DIAGNOSIS BASED CONDITIONS |  |
| Fractures | Does not apply to Mr. Smith |
| Ligament Injuries | Does not apply to Mr. Smith |
| Meniscectomies | Does not apply to Mr. Smith |
| Foot Deformities | Does not apply to Mr. Smith |
| Hip and Pelvic Bursitis | Does not apply to Mr. Smith |
| Joint Replacements | Does not apply to Mr. Smith |
| **TOTAL IMPAIRMENT** | Under the “strict” application of the AMA Guides, Mr. Smith qualifies for:* Amputation – Right Foot: 40% Lower Extremity Impairment
* Gait Derangement: 20% Whole Person Impairment
* Abnormal Motion – Right Ankle: 11% Lower Extremity Impairment
* Loss of Strength – Right Ankle: 15% Lower Extremity Impairment

However, according to the AMA Guides:* Cross Usage Chart, Table 17-2, pg. 526: Gait Derangement *cannot* be combined with either Abnormal Motion or Loss of Muscle Strength.
* Pg. 508, “decreased strength *cannot* be rated in the presence of decreased motion, painful conditions…”.

Thus, my Permanent Impairment for Mr. Smith is as follows:* Amputation: 40% Lower Extremity Impairment

Abnormal Motion: 11 % Lower Extremity Impairment |

## APPORTIONMENT

The 10/2/23 Cover Letter from Attorney Borrelli of Llarena Murdock, Lopez, & Azizad, APC requests:

* What is the percentage of whole person impairment apportioned to each alleged work injury, as well as all other factors, including prior injuries, prior work history, age, weight, and pre-existing conditions. Please refer to *Labor Code* Sections 4663 and 4664.

My formulation of the Apportionment of the Permanent Impairment follows:

Right Ankle/Foot:

First Impairment: My Impairment rating is 40% Lower Extremity Impairment. According to Table 17-3, this converts to 16% Whole Person Impairment due to “Transmetatarsal Amputation – right.”

* LC 4663: In my opinion, all (100%) of the resulting Permanent Impairment is due to the industrial injury, and none (0%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, all (100%) of the resulting Permanent Impairment is due to the transmetarsal amputation of his right foot, secondary to the industrial injury, 02/04/2022, and none (0%) of the resulting Permanent Impairment is due to “Other Factors,”  that support my apportionment of none (0%) of the Permanent Impairment to the industrial injury include:
		- Fact:
			* + Pre-Existing Condition(s): Mr. Viera denied any pre-existing conditions and I was unable to find anything in the medical records that would indicate a pre-existing condition. Therefore, I concluded that there is no apportionment to pre-existing conditions.
				+ Prior Industrial Injury: Mr. Viera denied any previous industrial injuries. Therefore, I concluded that there is no apportionment to pre-existing conditions.
	+ In this case, Other Factors include:
		- * + Disability caused by the natural progression of pre-existing disease or conditions: Mr. Viera denied any pre-existing disease or conditions.
				+ NOTE: Mr. Viera does have Diabetes Type II, and as a result, he suffered complications in his right foot that necessitated the transmetatarsal amputation. However,, Mr. Viera’s orthopedic impairment is due to the transmetatarsal amputation, not the Diabetes, though the Diabetes contributed to the need for the transmetatarsal amputation. *(Wiest vs. CA Department of Corrections and Rehabilitation, 2015).*
* Adequate History: I took an adequate history from Mr. Viera and concluded that he did suffer an industrial injury to his right great toe, and experienced medical complications the resulted in the transmetatarsal amputation of his right foot.
* Adequate Examination: I provided adequate physical examination of Mr. Viera and found positive objective findings in his right foot/ankle that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for his right foot/ankle.

Right Ankle/Foot:

My formulation of the Apportionment of the Permanent Impairment follows:

Second Impairment: My Impairment rating is 11% Lower Extremity Impairment due to Abnormal Motion: Mr. Viera’s Right Ankle/Foot has abnormal motion in plantar flexion, 14°/20° = (4% LE Impairment), dorsiflexion, 4°/10° = (3% LE Impairment), hindfoot inversion, 12°/20° = (3% LE Impairment), hindfoot eversion, 8°/10° = (1% LE Impairment), equaling **11% Lower Extremity Impairment. According to Table 17-3, this converts to 4% Whole Person Impairment.**

* LC 4663: In my opinion, Mr. Viera suffered a “severe” mechanism of injury, and, because of the severe degree of the injury, I conclude that all (100%) of the resulting Permanent Impairment is due to the industrial injury, and none (0%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, all (100%) of the resulting Permanent Impairment is due to the transmetarsal amputation of his right foot, secondary to the industrial injury, 02/04/2022, and none (0%) of the resulting Permanent Impairment is due to “Other Factors,”  that support my apportionment of none (0%) of the Permanent Impairment to the industrial injury include:
		- Fact:
			* + Pre-Existing Condition(s): Mr. Viera denied any pre-existing conditions and I was unable to find anything in the medical records that would indicate a pre-existing condition. Therefore, I concluded that there is no apportionment to pre-existing conditions.
				+ Prior Industrial Injury: Mr. Viera denied any previous industrial injuries. Therefore, I concluded that there is no apportionment to pre-existing conditions.
	+ In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions: Mr. Viera denied any pre-existing disease or conditions.
				+ NOTE: Mr. Viera does have Diabetes Type II, and as a result, he suffered complications in his right foot that necessitated the transmetatarsal amputation. However, Mr. Viera’s orthopedic impairment was due to the transmetatarsal amputation, not the Diabetes, though the Diabetes contributed to the need for the transmetatarsal amputation. *(Wiest vs. CA Department of Corrections and Rehabilitation, 2015).*
* Adequate History: I took an adequate history from Mr. Viera and concluded that he did suffer an industrial injury to his right great toe, and experienced medical complications the resulted in the transmetatarsal amputation of his right foot.
* Adequate Examination: I provided adequate physical examination of Mr. Viera and found positive objective findings in his right foot/ankle that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for his right foot/ankle.

# STATEMENT OF SUBSTANTIAL MEDICAL EVIDENCE

The above opinions on Permanent Impairment, and Causation/Apportionment of the Permanent Impairment are based on:

1. Reasonable medical probability and my professional experience.
2. An adequate History as provided in the medical records and as clarified by Mr. Smith.
3. My Physical Examination of Mr. Smith as the Qualified Medical Evaluator.
4. Is based on reasonable medical probability and does not rely on speculation or conjecture.

EXAMPLE #2

SURGICAL PLATING OF RIBS

RIGHT CHEST-THORAX-RIBS

With the industrial injury of 01/27/22, Mr. Guzman suffered multiple fractures of his right sided ribs. Some of the fractures healed without intervention, and some of the fractures required surgical plating. As of the date of this evaluation, the surgical plating is still in place and there are no plans to remove the hardware plating. As a result of the combination of the injury, and the surgical plating, Mr. Guzman has permanent symptoms and activity limitations. His condition is not a listed condition within the four corners of the AMA Guides. Mr. Guzman reports limitations with 1) walking , 2) lifting, 3) sitting , 4) climbing stairs, 5) running, and 6) sleeping. In my opinion these are limitations similar and analogous to a person with an Impairment of the thoracic spine under the DRE Category.

In my opinion, Mr. Guzman’s Impairment of the right chest-thorax-ribs is analogous to DRE Thoracic Category IV due to “alteration of motion segment integrity with multilevel radiculopathy.” While Mr. Guzman does not have a spinal fusion as described under the strict application of the DRE Thoracic Category IV, he does have fusion of at least 3 ribs. And, although the operative report is not clear on whether the surgical procedure involved external plating of the ribs, or intramedullary fixation, it is clear by his description of loss of function for activities of daily living that his Impairment is analogous to loss of motion between the individual spinal segments described by the DRE Thoracic Category IV. Additionally, Mr. Guzman describes pain and loss of sensation at each of the plated ribs and along the distribution of the ribs analogous to “radiculopathy” of the thoracic spine nerve roots. For these reasons, it is my opinion that his Impairment is equivalent – by analogy – to DRE Thoracic Category IV. According to Table 15-4, this qualifies for 20-23% Whole Person Impairment.

In addition to the above Impairments due to 1) alteration of motion segment integrity”, and 2) multilevel radiculopathy”, Mr. Guzman has an additional Impairment of the lower thoracic spine due to “nondisplaced T12 right transverse process fracture” (see REVIEW OF RECORDS above for date of service 01/27/22). Because of this additional factor, it is my opinion that Mr. Guzman qualifies for the higher 23% Impairment rating under the DRE Thoracic Category IV.

## APPORTIONMENT

The 2/21/2023 Cover Letter of Attorney Elizabeth S. Jones of Hanna, Brophy, MacLean, & Jensen, LLP requests:

* Please carefully address Apportionment under new Labor Code 4663 passed in 2004 under SB 899, this requires that all medical reports now address apportionment to causation. Labor Code 54663 now requires that apportionment be determined as to all factors that have caused the employee's disability, regardless of whether they were labor disabling at the time of the subject injury.

Answer:

My formulation of the Apportionment of the Permanent Impairment follows:

* Thoracic Spine: My Impairment rating is 23% Whole Person Impairment due to 1) alteration of motion segment integrity, 2) multilevel radiculopathy, and 3) nondisplaced T12 right transverse process fracture.
	+ LC 4663: In my opinion and within reasonable medical probability, 100% of the Permanent Impairment is due to the 01/27/22 industrial injury, and 0 % of the Permanent Impairment is due to “other factors.” In this case, there are no “other factors” because, there is no medical evidence that Mr. Guzman had any 1) pre-existing disability, 2) disability caused by the natural progression of pre-existing disease or conditions, 3) pathology, 4) asymptomatic prior conditions, or 5) retroactive prophylactic work restrictions. Further, it is my opinion that 100% of the thoracic spine Impairment is due to the 01/27/22 industrial injury is based on the fact that Mr. Guzman suffered a severe mechanism of injury with fractures to 8 of the 12 ribs on the right side of his ribs – 3 of which required additional medical treatment involving surgical plating. The Impairment as a result of that surgical procedure is due 100% to the industrial Injury.

## STATEMENT OF SUBSTANTIAL MEDICAL EVIDENCE

The above opinions on Permanent Impairment, and Causation/Apportionment of the Permanent Impairment are based on:

1. Reasonable medical probability and my professional experience.
2. An adequate History as provided in the medical records and as clarified by Mr. Smith.
3. My Physical Examination of Mr. Smith as the Qualified Medical Evaluator.
4. Is based on reasonable medical probability and does not rely on speculation or conjecture.

EXAMPLE #3 – LUMBAR SPINE

* Lumbar Spine: In my opinion, Mr. Smith’s current Impairment is best described as DRE Lumbar Category II. This indicates that the Clinical history and examination findings are compatible with a specific injury on 02/11/21. Findings include 1) a loss of range of motion in the lumbar spine in flexion, extension, left lateral flexion, and right lateral flexion, and 2) left sided non-verifiable radicular complaints (defined as complaints of radicular pain without objective findings). There is no alteration of the structural integrity in the form of increased translational or angular motion or decreased motion secondary to developmental fusion, fracture healing, healed infection, or surgical arthrodesis. There is no significant verifiable radiculopathy. These Criteria rate Mr. Smith in the DRE Lumbar Spine Category II which contemplates a 5% Impairment of the Whole Person.
* Lumbar Spine: My Impairment rating is 5% Whole Person Impairment due to “DRE Lumbar Category II” due to 1) muscle guarding, and 2) non-verifiable radiculopathy.
	+ LC 4663: In my opinion and within reasonable medical probability, 65% of the Permanent Impairment is due to the 02/11/21 industrial injury, and 35 % of the Permanent Impairment is due to “other factors.” In this case, other factors include:
		- Pathology – The most recent x-rays of 06/28/23 demonstrate that Mr. Smith has moderate degenerative changes of the lumbar spine. Specific findings from those studies included:
			* ….Minimal disc space narrowing at multiple levels with osteophyte formation. Osteophytes are greatest at the L4-5 level. Facet arthropathy bilaterally multiple levels….Mild degenerative disc disease at multiple levels, greatest at the L4-5 level.
	+ Substantiating Reasons for conclusion of 65%/35%) include:
		- Reasonable medical probability: My opinion on the above Apportionment “approximate percentages” (65%/35%) is predicated on “reasonable medical probability.”
		- Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
			* + Mechanism of Injury: Again as described above, on 02/11/21 Mr. Smith suffered a severe mechanism of injury but, by his description of it, the mechanism of injury to the lumbar spine did not involve direct impact as did the injury to the left chest/ribs. The injury to the lumbar spine was the result of a sudden falling and perhaps, by being dragged by farm machinery. Thus, I conclude that the mechanism of injury to the lumbar spine was not as severe as injury to the left chest/ribs. However, this mechanism of injury aggravated pre-existing degenerative conditions of the lumbar spine whether previously symptomatic or asymptomatic (causation of injury) and, in my opinion, are contributing to the current lumbar spine impairment.
				+ Response to Appropriate Medical Care: In the context of a moderate mechanism of injury (less severe than the injury to the left chest/ribs), I would have expected Mr. Smith to recover better, or even to a pre-injury condition due to time (greater than 2 years off work) and medical treatment. I conclude that the pre-existing degenerative condition of the lumbar spine is contributing to a failed recovery, and to the current Impairment.
			* Adequate History: My apportionment approximate percentages are based on an adequate history as provided in the medical records, and as conveyed to me by Mr. Smith.
			* Adequate Examination: My apportionment approximate percentages are supported by my physical examination findings which confirm symptomatic pre-existing conditions of the lumbar spine upon which my impairment rating is based.
			* “How” and “Why” Reasoning: Because Mr. Smith suffered only a moderate mechanism of injury, and because that injury condition has failed to recover to an asymptomatic pre-injury condition, I conclude that the pre-existing conditions are contributing to the current impairment. I reasonably approximate the contribution of the pre-existing conditions to the current lumbar spine impairment at 35%.
			* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise or conjecture.
		- LC 4664: There is no apportionment under LC 4664 because there is no evidence that Mr. Smith received a prior Permanent Disability Award for the left chest/ribs.

EXAMPLE #4

LEFT KNEE LOSS OF RANGE OF MOTION

#### LOWER EXTREMITY IMPAIRMENTS

According to the AMA Guides, Lower Extremity Impairment is determined based upon:

|  |  |
| --- | --- |
| AMA GUIDES | LOWER EXTREMITY IMPAIRMENTS |
| ANATOMIC CHANGES |  |
| Limb Length Discrepancy | Does not apply to Mr. Garcia |
| Muscle Atrophy | Does not apply to Mr. Garcia |
| Ankylosis | Does not apply to Mr. Garcia |
| Amputation | Does not apply to Mr. Garcia |
| Arthritis of Joints | Does not apply to Mr. Garcia |
| Skin Loss | Does not apply to Mr. Garcia |
| Peripheral Nerve Injury | Does not apply to Mr. Garcia |
| Vascular | Does not apply to Mr. Garcia |
| Reflex Sympathetic | Does not apply to Mr. Garcia |
| FUNCTIONAL CHANGES |  |
| Loss of Range of Motion | Applies to Mr. Smith as follows:* Abnormal Motion:
* Mr. Smith has 102° left knee flexion. According to Table 17-10, this qualifies for 5% Lower Extremity Impairment.
* Mr. Smith has 0° left knee extension. According to Table 17-10, this qualifies for 0% Upper Extremity Impairment.
* Total Impairment: Adding Impairments due to “abnormal motion” - 5%, plus 0%, equals 5% Lower Extremity Impairment.
 |
| Gait Derangement | Does not apply to Mr. Garcia |
| Loss of Muscle Strength | Does not apply to Mr. Garcia |
| DIAGNOSIS BASED CONDITIONS |  |
| Fractures | Does not apply to Mr. Garcia |
| Ligament Injuries | Does not apply to Mr. Garcia |
| Meniscectomies | Does not apply to Mr. Garcia |
| Foot Deformities | Does not apply to Mr. Garcia |
| Hip and Pelvic Bursitis | Does not apply to Mr. Garcia |
| Joint Replacements | Does not apply to Mr. Garcia |
| TOTAL IMPAIRMENT | According to the AMA Guides, Table 17-3 , pg. 527, 5% Lower Extremity Impairment converts to 2 % Whole Person Impairment |

Midback, Right Knee, Left Foot / Ankle, Right Foot / Ankle:

* In my opinion, with reasonable medical probability, Mr. Garcia did not suffer Cumulative Trauma industrial injuries to his midback, right knee, left foot / ankle, right foot / ankle, while employed with Relogistics Services. Therefore, PERMANENT IMPAIRMENT is not considered

## APPORTIONMENT

Left Knee:

* First Impairment My Impairment rating is 2% Whole Person Impairment due to:
* Abnormal Motion: Mr. Garcia’s has abnormal motion, 102°/110° in left knee flexion. T**his qualifies for 2% Whole Person Impairment.**
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:
				+ Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by Left Knee X-rays, 09/16/2020. The radiological report states: “There are severe medial compartment degenerative changes. There are mild lateral compartment degenerative changes.” In my opinion, Mr. Garcia this condition contributes to his abnormal left knee motion, and he would have made a better recovery if not for this pre-existing degenerative left knee, pre-existing degenerative condition.
* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his left knee, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his left knee that rose to the level of a ratable impairment.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

Midback, Right Knee, Left Foot / Ankle, Right Foot / Ankle:

* In my opinion, with reasonable medical probability, Mr. Garcia did not suffer Cumulative Trauma industrial injuries to his midback, right knee, left foot / ankle, right foot / ankle, while employed with Relogistics Services. Therefore, APPORTIONMENT OF THE PERMANENT IMPAIRMENT is not considered.

EXAMPLE #5

LUMBAR SPINE RANGE OF MOTION METHOD

Lumbar Spine:

* First Impairment: My Impairment rating is 7% Whole Person Impairment due to:
* Specific Spine Disorders: Mr. Garcia’s lumbar spine condition is accurately described in Table 15-7, II (c) as “Intervertebral disc or other soft tissue lesion – unoperated on, with medically documented injury, pain, and rigidity associated with moderate to severe degenerative changes on structural tests; includes herniated nucleus pulposus with or without radiculopathy. According to Table 15-7, **this** qualifies for **7% Whole Person Impairment.** Mr. Garcia’s Diagnostic Studies demonstrate:
* 06/23/2022 - Lumbar Spine MRI:
	+ - * L5-Sl: The grade 1 anterolisthesis ofL5 on S1 in combination with a 2-mm circumferential disc protrusion is resulting in narrowing of the neural foramina bilaterally with abutment of the exiting right and left L5 nerve roots.
* 11/17/2022 – Electromyography Study:
	+ Clinical Study Results: Radiculopathy, L5 right.
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:
				+ Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by lumbar spine MRI, 06/23/2022, to have moderate-severe degenerative osteoarthritis throughout his lumbar spine. In my opinion Mr. Garcia would have made a better recovery if not for this pre-existing degenerative low back, pre-existing degenerative condition.
* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his lower back, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his lower back that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

Lumbar Spine:

* Second Impairment: My Impairment rating is 4% Whole Person Impairment due to:
* Abnormal Motion: Mr. Garcia’s lumbar spine has abnormal motion in lumbar flexion, 49°/60° = (2% WPI), lumbar extension, 22°/25°= (1% WPI) and left lateral flexion, 19°/25° = (1% WPI), equaling **4% Whole Person Impairment.**
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:

Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by lumbar spine MRI, 06/23/2022, to have moderate-severe degenerative osteoarthritis throughout his lumbar spine. In my opinion, Mr. Garcia this condition contributes to his abnormal lumbar spine motion, and he would have made a better recovery if not for this pre-existing degenerative low back, pre-existing degenerative condition.

* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his lower back, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his lower back that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

Lumbar Spine:

* Third Impairment: My Impairment rating is 4% Whole Person Impairment due to:
* Neurologic Deficits: Mr. Garcia does have a neurologic deficit in association with his current lumbar spine condition. L5-S1 disc protrusion affecting the L5 portion of the deep peroneal nerve, a branch of the sciatic nerve on the right side, producing sensory loss of the lateral shin to the dorsal medial aspect of the right foot, and motor loss affecting resisted extension in the right great toe.
	+ According to Table 15-15, page 424, Grade 4 sensory loss qualifies for 1-25% sensory deficit of the right lower extremity. In my opinion, Mr. Garcia qualifies for the highest Grade 4 range, 25%, as he reports, “distorted superficial tactile sensibility (diminished light touch) WITH minimal abnormal sensations or pain that is forgotten during activity.” According to Table 15-18, L5 nerve root impairment, Sensory Deficit is 5% x 25% = 1.25% Lower Extremity Impairment. According to Table 17-3, page 527, this qualifies as 0% Whole Person Impairment
	+ According to Table 15-16, page 424, Grade 4 Power, and Motor Deficit qualifies for 25% motor deficit of the right lower extremity. In my opinion, Mr. Garcia qualifies for the highest Grade 4 range, 25%, as he was only able provide brief “active movement against gravity with SOME resistance, before there was give way of the right great toe. According to Table 15-18, L5 nerve root impairment, Loss of Function due to Strength is 37% x 25% = 9.25% Lower Extremity Impairment. According to Table 17-3, page 527, this qualifies for **4% Whole Person Impairment.**
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:
				+ Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by lumbar spine MRI, 06/23/2022, to have moderate-severe degenerative osteoarthritis throughout his lumbar spine. In my opinion, Mr. Garcia this condition contributes to his abnormal lumbar spine motion, and he would have made a better recovery if not for this pre-existing degenerative low back, pre-existing degenerative condition.
* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his lower back, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his lower back that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

## APPORTIONMENT

The 9/29/23 Cover Letter from Attorney Kulkin of Law Offices of Lakeesha T. Jemerson requests:

* Please also advise whether you believe there should be any apportionment to non-industrial Factors?

Yes, Apportionment to Non-Industrial factors should be considered and it follows:

Lumbar Spine:

* First Impairment: My Impairment rating is 7% Whole Person Impairment due to:
* Specific Spine Disorders: Mr. Garcia’s lumbar spine condition is accurately described in Table 15-7, II (c) as “Intervertebral disc or other soft tissue lesion – unoperated on, with medically documented injury, pain, and rigidity associated with moderate to severe degenerative changes on structural tests; includes herniated nucleus pulposus with or without radiculopathy. According to Table 15-7, **this** qualifies for **7% Whole Person Impairment.** Mr. Garcia’s Diagnostic Studies demonstrate:
* 06/23/2022 - Lumbar Spine MRI:
	+ - * L5-Sl: The grade 1 anterolisthesis ofL5 on S1 in combination with a 2-mm circumferential disc protrusion is resulting in narrowing of the neural foramina bilaterally with abutment of the exiting right and left L5 nerve roots.
* 11/17/2022 – Electromyography Study:
	+ Clinical Study Results: Radiculopathy, L5 right.
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:
				+ Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by lumbar spine MRI, 06/23/2022, to have moderate-severe degenerative osteoarthritis throughout his lumbar spine. In my opinion Mr. Garcia would have made a better recovery if not for this pre-existing degenerative low back, pre-existing degenerative condition.
* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his lower back, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his lower back that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

Lumbar Spine:

* Second Impairment: My Impairment rating is 4% Whole Person Impairment due to:
* Abnormal Motion: Mr. Garcia’s lumbar spine has abnormal motion in lumbar flexion, 49°/60° = (2% WPI), lumbar extension, 22°/25°= (1% WPI) and left lateral flexion, 19°/25° = (1% WPI), equaling **4% Whole Person Impairment.**
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:

Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by lumbar spine MRI, 06/23/2022, to have moderate-severe degenerative osteoarthritis throughout his lumbar spine. In my opinion, Mr. Garcia this condition contributes to his abnormal lumbar spine motion, and he would have made a better recovery if not for this pre-existing degenerative low back, pre-existing degenerative condition.

* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his lower back, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his lower back that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

Lumbar Spine:

* Third Impairment: My Impairment rating is 4% Whole Person Impairment due to:
* Neurologic Deficits: Mr. Garcia does have a neurologic deficit in association with his current lumbar spine condition. L5-S1 disc protrusion affecting the L5 portion of the deep peroneal nerve, a branch of the sciatic nerve on the right side, producing sensory loss of the lateral shin to the dorsal medial aspect of the right foot, and motor loss affecting resisted extension in the right great toe.
	+ According to Table 15-15, page 424, Grade 4 sensory loss qualifies for 1-25% sensory deficit of the right lower extremity. In my opinion, Mr. Garcia qualifies for the highest Grade 4 range, 25%, as he reports, “distorted superficial tactile sensibility (diminished light touch) WITH minimal abnormal sensations or pain that is forgotten during activity.” According to Table 15-18, L5 nerve root impairment, Sensory Deficit is 5% x 25% = 1.25% Lower Extremity Impairment. According to Table 17-3, page 527, this qualifies as 0% Whole Person Impairment
	+ According to Table 15-16, page 424, Grade 4 Power, and Motor Deficit qualifies for 25% motor deficit of the right lower extremity. In my opinion, Mr. Garcia qualifies for the highest Grade 4 range, 25%, as he was only able provide brief “active movement against gravity with SOME resistance, before there was give way of the right great toe. According to Table 15-18, L5 nerve root impairment, Loss of Function due to Strength is 37% x 25% = 9.25% Lower Extremity Impairment. According to Table 17-3, page 527, this qualifies for **4% Whole Person Impairment.**
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:
				+ Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by lumbar spine MRI, 06/23/2022, to have moderate-severe degenerative osteoarthritis throughout his lumbar spine. In my opinion, Mr. Garcia this condition contributes to his abnormal lumbar spine motion, and he would have made a better recovery if not for this pre-existing degenerative low back, pre-existing degenerative condition.
* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his lower back, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his lower back that rose to the level of a ratable impairment due to multiple causative factors.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

Left Knee:

* First Impairment My Impairment rating is 2% Whole Person Impairment due to:
* Abnormal Motion: Mr. Garcia’s has abnormal motion, 102°/110° in left knee flexion. T**his qualifies for 2% Whole Person Impairment.**
* LC 4663: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal degree of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Reasons for this conclusion include:
* Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
	+ Mechanism of Injury: In my opinion, Mr. Garcia suffered a “minimal” mechanism of injury, and, because of the minimal nature of the injury, I conclude that the minority (30%) of the resulting Permanent Impairment is due to the industrial injury, and a majority (70%) of the resulting Permanent Impairment is due to “Other Factors.”  Facts related to the mechanism of injury that support my apportionment of the minority (30%) of the Permanent Impairment to the industrial injury include:
		- Fact: Mr. Garcia described his job duties while employed by Relogistics Services, Inc. to include:
			* + 1) bending, lifting, and carrying heavy wooden pallets weighing more than 50 lbs. each,
				+ 2) stacking the wooden pallets up to 10-pallets high,
				+ 3) climbing into and exiting from the forklift multiple times per day,
				+ 4) performing these tasks, 8 hours per day, 5 days per week, from 2022-2022.

This minimal mechanism of injury would not cause injury or would cause only minimal injury in any other person. Because Mr. Garcia indicated that he suffered a more severe injury than one would expect, given the minimal mechanism of injury and, because this injury resulted in Permanent Impairment given the minimal mechanism of injury, I conclude within reasonable medical probability that “Other Factors” contributed both to the injury, and to the majority (70%) of the Permanent Impairment.

* + In this case, Other Factors include:

Escobedo “Other Factors”:

* + - * + Disability caused by the natural progression of pre-existing disease or conditions:
				+ Degenerative Osteoarthritis: Mr. Garcia has been diagnosed with and documented by Left Knee X-rays, 09/16/2020. The radiological report states: “There are severe medial compartment degenerative changes. There are mild lateral compartment degenerative changes.” In my opinion, Mr. Garcia this condition contributes to his abnormal left knee motion, and he would have made a better recovery if not for this pre-existing degenerative left knee, pre-existing degenerative condition.
* Adequate History: I took an adequate history from Mr. Garcia and concluded that he did suffer an industrial injury to his left knee, and further that his job duties with Relogistics Services contributed to the cumulative industrial injury while employed with Relogistics Services.
* Adequate Examination: I provided adequate physical examination of Mr. Garcia and found positive objective findings in his left knee that rose to the level of a ratable impairment.
* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise, or conjecture.

LC 4664: There is no Apportionment under LC 4664 because there is no evidence of any prior disability award for any body parts.

Midback, Right Knee, Left Foot / Ankle, Right Foot / Ankle:

* In my opinion, with reasonable medical probability, Mr. Garcia did not suffer Cumulative Trauma industrial injuries to his midback, right knee, left foot / ankle, right foot / ankle, while employed with Relogistics Services. Therefore, APPORTIONMENT OF THE PERMANENT IMPAIRMENT is not considered.

**EXAMPLE 6 – PRIOR AWARD OF INDUSTRIAL INJURY**

* 34-Year-old male suffered injury to lumbar/lumbosacral spine while employed as a utility driver on 10/19/19.
* Permanent Impairment:
	+ Gait Derangement – 19% WPI (Table 13-15)



* + “50% Loss of Lifting Capacity” – 19% WPI (by analogy to Table 6-9)



* + Total – Using CVC (19% + 19%) = 34% WPI
	+ Total Disability Rating – 54% PD
* Apportionment:
	+ Prior Industrial Injury w/ Award – 2012
		- QME opined for “33% loss of lifting capacity” – 10% WPI (by analogy to Table 6-9)
	+ LC 4664 Erroneous Apportionment:
		- QME figured that 66% of the “loss of lifting capacity” existed at the time of the 10/19/19 industrial injury, and 33% of the “loss of lifting capacity was new due to the 10/19/19 injury
		- 35% of the Impairment/Disability due to the 10/19/19 industrial injury, and 65% due to “other factors” due to prior Permanent Disability Award.
		- Error?

My formulation of the Apportionment of the Permanent Impairment follows:

* Lumbar Spine:
	+ First Impairment: My Impairment rating is 19% Whole Person Impairment due to “gait derangement.” Mr. Jones rises to a standing position, walks some distance with difficulty and without assistance, but is limited to level surfaces. According to Table 13-15, this qualifies for 19% Whole Person Impairment).
	+ LC 4663: In my opinion and within reasonable medical probability, 100% of the Permanent Impairment/Disability is due to the 10/19/19 industrial injury, and 0% of the Permanent Impairment is due to “other contributing causal factors.” In this case, other contributing causal factors include:
		- Escobedo “Other Contributing Causal Factors”:
			* Pre-existing disability – does not apply to Mr. Jones. Mr. Jones does not have any pre-existing disability that is currently a contributing causal factor of the impairment/disability of “gait derangement.”
			* Disability caused by the natural progression of pre-existing disease or conditions – does not apply to Mr. Jones. Mr. Jones does not have any pre-existing disease of condition that is currently a contributing causal factor of the impairment/disability of “gait derangement.”
			* Pathology - does not apply to Mr. Jones. Mr. Jones does not have any lumbar spine pathology that is currently a contributing causal factor of the impairment/disability of “gait derangement.”
			* Asymptomatic prior conditions does not apply to Mr. Jones. Mr. Jones does not have any asymptomatic prior conditions that are currently a contributing causal factor of the impairment/disability of “gait derangement.”
			* Retroactive prophylactic work restrictions – N/A.
		- “Other Contributing Causal Factors”:
			* Prior industrial injury – Although Mr. Jones had a prior industrial injury in 2012, it is my opinion that that injury is not a contributing causal factor of the current impairment/disability of “gait derangement.”
			* Subsequent industrial injury - does not apply to Mr. Jones. Mr. Jones did not have any subsequent industrial injury that is currently a contributing causal factor of the impairment/disability of “gait derangement.”
			* Prior non-industrial injury - does not apply to Mr. Jones. Mr. Jones did not have any prior non-industrial injury that is currently a contributing causal factor of the impairment/disability of “gait derangement.”
			* Subsequent non-industrial injury - does not apply to Mr. Jones. Mr. Jones did not have any subsequent non-industrial injury that is currently a contributing causal factor of the impairment/disability of “gait derangement.”
		- Substantiating Reasons for this conclusion include:
		- Reasonable medical probability: My opinion on the above Apportionment “approximate percentages” (100%/0%) is predicated on “reasonable medical probability.”
		- Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
			* Mechanism of Injury: On 10/19/19, Mr. Smith suffered a severe mechanism of injury. Recall that when Mr. Smith attempted to catch a falling 1500 lb. lock safe, his back “exploded”, resulting in L4/L5 disc injury, and injury to the L5 nerve root. Despite time and treatment, the L5 nerve root failed to recover, and Mr. Jones has been left with a drop foot. Because of the severity of the injury, it is my opinion that a large portion of the resulting Impairment/Disability is due to the industrial injury.
				+ Pre-existing condition(s): Mr. Jones does not have a pre-existing condition that is contributing to the current Impairment/Disability due to gait derangement. Therefore, it is my opinion that a large portion of the resulting Impairment/Disability is due to the industrial injury.
				+ Prior Industrial Injury: Although Mr. Jones has a prior industrial injury to the lumbar spine, that industrial injury is not a contributing causal factor to the current Impairment/Disability of gait derangement.
			* Adequate History: My opinion on the Apportionment approximate percentages are supported by an adequate history from both the medical records, and from Mr. Jones.
			* Adequate Examination: My opinion on the Apportionment approximate percentages is supported by an adequate examination which demonstrates the residual effects of a severe spinal compression injury.
			* “How” and “Why” Reasoning: Because Mr. Jones suffered a severe mechanism of injury, it is my opinion that a large portion of the resulting disability/impairment is due to the industrial injury. Further, it is my opinion that this injury of attempting to catch, and then being crushed by a 1500+ lb. locksafe would cause same/similar injury in any other person. Therefore, and in the absence of any other contributing causal factors, it is my opinion that the impairment/disability due to “gait derangement” is due 100% to the industrial injury, and 0% to “other factors.
			* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise or conjecture.
		- LC 4664: In my opinion and within reasonable medical probability, 100% of the Permanent Impairment is due to the 10/19/19 industrial injury, and 0 % of the Permanent Impairment is due to “other contributing causal factors.” Reasons for this conclusion include:
			* Prior Permanent Disability Award: Although Mr. Jones suffered a prior industrial injury in 2012, there is no overlap between the prior permanent impairment/disability (due to “loss of lifting capacity”) and the current impairment/disability due to gait derangement.
	+ Second Impairment: My Impairment rating is 19% Whole Person Impairment due to “loss of lifting capacity” by analogy to Table 6-9 hernia.
	+ LC 4663: In my opinion and within reasonable medical probability, 35% of the Permanent Impairment/Disability is due to the 10/19/19 industrial injury, and 65% of the Permanent Impairment is due to “other contributing causal factors.” In this case, other contributing causal factors include:
		- Escobedo “Other Contributing Causal Factors”:
			* Pre-existing disability – applies to Mr. Jones due to pre-existing disability of “loss of lifting capacity” due to 2012 industrial injury (see below).
			* Disability caused by the natural progression of pre-existing disease or conditions – does not apply to Mr. Jones. Mr. Jones does not have any pre-existing disease or condition that is currently a contributing causal factor of the impairment/disability of “loss of lifting capacity.”
			* Pathology - does not apply to Mr. Jones. Mr. Jones does not have any lumbar spine pathology that is currently a contributing causal factor of the impairment/disability of “loss of lifting capacity.”
			* Asymptomatic prior conditions does not apply to Mr. Jones. Mr. Jones does not have any asymptomatic prior conditions that are currently a contributing causal factor of the impairment/disability of “loss of lifting capacity.”
			* Retroactive prophylactic work restrictions – N/A.
		- “Other Contributing Causal Factors”:
			* Prior industrial injury – Mr. Jones had a prior industrial injury in 2012 (see below), that left him with impairment/disability of “loss of lifting capacity” that is current a contributing causal factor of the current impairment/disability of increased “loss of lifting capacity.”
			* Subsequent industrial injury - does not apply to Mr. Jones. Mr. Jones did not have any subsequent industrial injury that is currently a contributing causal factor of the impairment/disability of “loss of lifting capacity.”
			* Prior non-industrial injury - does not apply to Mr. Jones. Mr. Jones did not have any prior non-industrial injury that is currently a contributing causal factor of the impairment/disability of “loss of lifting capacity.”
			* Subsequent non-industrial injury - does not apply to Mr. Jones. Mr. Jones did not have any subsequent non-industrial injury that is currently a contributing causal factor of the impairment/disability of “loss of lifting capacity.”
	+ Substantiating Reasons for this conclusion include:
		- Reasonable medical probability: My opinion on the above Apportionment “approximate percentages” (35%/65%) is predicated on “reasonable medical probability.”
		- Pertinent Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
			* + Mechanism of Injury: Mr. Jones suffered a severe mechanism of injury and this injury would have caused same/similar injury and impairment/disability in any other person. However, because Mr. Jones already had some “loss of lifting capacity” impairment/disability due to prior industrial injury (see below), it is my opinion that no all of the current “loss of lifting capacity” is due to the 10/19/19 industrial injury.
				+ Pre-existing condition(s): At the time of the 10/19/19 injury, Mr. Jones had a pre-existing condition of the lumbar spine that caused impairment/disability for “loss of lifting capacity.” I therefore conclude that some portion of the current impairment/disability due to “loss of lifting capacity” is due to the pre-existing condition.
				+ Prior Industrial Injury: Mr. Jones had a prior industrial injury that left him with “loss of lifting capacity.” This prior industrial injury is a contributing causal factor to the current impairment/disability of “loss of lifting capacity.”
			* Adequate History: My opinion on the Apportionment approximate percentages are supported by an adequate history from both the medical records, and from Mr. Jones.
			* Adequate Examination: My opinion on the Apportionment approximate percentages is supported by an adequate examination which demonstrates the residual effects of a severe spinal compression injury.
			* “How” and “Why” Reasoning: See below.
			* No Speculation: The above opinion on the Apportionment “approximate percentages” is not based on guess, speculation, surmise or conjecture.
	+ LC 4664: In my opinion and within reasonable medical probability, 35%% of the Permanent Impairment is due to the 10/19/19 industrial injury, and 65 % of the Permanent Impairment is due to “other contributing causal factors.” Reasons for this conclusion include:
		- * Prior Permanent Disability Award:
				+ Prior Injury:

Mr. Jones had a prior 2012 industrial injury to the lumbar spine which is the same body part involved with the current industrial injury. For this injury, Mr. Jones received a Permanent Disability Award based on the medical reporting of Smith M.D. QME who, in her 01/01/15 Report described lumbar spine impairment related to “loss of lifting capacity.” Smith M.D. QME described 33% loss of lifting capacity which qualified for 10% Whole Person Impairment by analogy to Table 6-9 Hernia.

According to Mr. Jones, after the resolution of his case/claim, he lost 30 lbs. and he began exercising at the health club. He regularly performed core strengthening exercises and over time, he noticed improvement in his back pain condition. His strength improved and, according to him, he was able to recover to pre-injury condition with limitations whatsoever to lifting capacity. He was able to return to the pre-injury occupation at the loading dock, regularly lifting 50-100 lbs. crates constantly over his 8 hour work shift. He states that, as a result of his efforts along with changes in his diet, he was completely rehabilitated from the 2012 injury.

* + - * + Current Injury:

For the current 10/19/19 industrial injury, Mr. Jones has lost approximately 50% of his pre-injury lifting capacity. He has medically prescribed lifting restrictions of “no lifting above 40 lbs.” He has not been able to return to the pre-injury occupation. His impairment rating is 19% Whole Person Impairment due to “loss of lifting capacity.”

* + - * Overlap: According to Labor Code 4664 - (b) “If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury.” Mr. Jones has a prior permanent disability award due to “33% loss of lifting capacity.” He currently has a disability of “50% loss of lifting capacity.” Therefore, in my opinion and within reasonable medical probability, due to overlap of the prior and current disabilities, 35% of the current impairment/disability due to “loss of lifting capacity” is due to the 10/19/19 industrial injury, and 65% is due to “other contributing causal factors” specifically relating to a prior award of permanent disability.