

1 permanent disability for applicant's shoulders (Finding of Fact No. 1; Award). We otherwise affirm the
2 Joint F&A.

3 **FACTUAL BACKGROUND**

4 Applicant claims injury to his shoulders on June 28, 2015 while employed as a bus driver for
5 Golden Gate Bridge Highway and Transportation District (ADJ10924724). He also claims injury to his
6 feet through December 31, 2014 while employed in the same position (ADJ10187704).

7 Applicant obtained treatment with Vincent Marino, D.P.M. Dr. Marino declared applicant's
8 bilateral feet condition permanent and stationary in his June 15, 2016 PR-4 Report and provided 0%
9 whole person impairment (WPI). (Defendant's Exhibit A, PR-4 by Vincent Marino, D.P.M.,
10 June 15, 2016.)

11 The parties agreed to use Peter Mandell, M.D., as an orthopedic AME. Dr. Mandell evaluated
12 applicant's shoulders and feet as part of his November 9, 2016 evaluation. (Joint Exhibit No. 1, Agreed
13 Medical Evaluation Report of Peter Mandell, M.D., November 9, 2016.) Examination of applicant's
14 upper extremities included measurements of both shoulders' range of motion and grip strength testing.
15 (*Id.* at p. 4.) He diagnosed applicant with bilateral metatarsalgia and bilateral shoulder tendinitis. (*Id.* at
16 p. 6.) Dr. Mandell deemed both conditions to have become permanent and stationary at the time of
17 Dr. Marino's June 15, 2016 examination. (*Id.* at p. 7.) With respect to permanent impairment,
18 Dr. Mandell provided a 3% upper extremity impairment (2% WPI) based on applicant's right shoulder's
19 range of motion and a 5% upper extremity impairment (3% WPI) for the left shoulder's range of motion
20 under "the strict *AMA Guides* criteria." (*Id.* at pp. 6-7).² Dr. Mandell found that for applicant's "bilateral
21 metatarsalgia, under the strict *AMA Guides* criteria, he doesn't qualify for an impairment rating." (*Id.* at
22 p. 7.) He then further opined as follows:

23 Under Guzman,³ for his shoulders, the above-noted impairment ratings are
24 inaccurate, because, while they take into account range of motion, they do

25 ² The "AMA Guides" or "Guides" refers to the American Medical Association Guides to the Evaluation of Permanent
26 Impairment, 5th Edition (2001).

27 ³ "Guzman" generally refers to the *Almaraz-Guzman* line of cases. (See *Milpitas Unified School Dist. v. Workers' Comp.*
Appeals Bd. (*Almaraz-Guzman III*) (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837]; *Almaraz v. Environmental*
Recovery Services/Guzman v. Milpitas Unified School Dist. (*Almaraz-Guzman I*) (2009) 74 Cal.Comp.Cases 1084 (Appeals
Board en banc).)

1 not account for strength loss. To correct for that, I turn to Table 16-32 on
2 page 509 and note that Mr. Case's RIGHT hand grip strength would be
3 expected to be 45.9 kg. His best effort was 30.1 kg. Applying the strength
4 loss index formula, that results in a 34% strength loss index, which
5 converts to 20% upper extremity impairment or a 12% whole person
6 impairment. That's the accurate rating for his RIGHT shoulder.

7 Likewise, for the LEFT shoulder, Mr. Case would be expected to have 43.5
8 kg. of grip strength. His best effort was 30.2 kg. Applying the strength
9 loss index formula, that produces a 31% strength loss index, which also
10 converts to a 20% upper extremity impairment or a 12% whole person
11 impairment. That's the accurate rating here.

12 (*Id.* at p. 8 (emphasis in original).) No apportionment to factors other than the industrial injuries was
13 given. (*Id.* at pp. 7-8.)

14 Applicant cross-examined Dr. Mandell. (Joint Exhibit No. 2, Transcript of Dr. Mandell's
15 deposition, May 12, 2017.) Dr. Mandell confirmed in his testimony that applicant has Morton's neuroma
16 in his feet. (*Id.* at p. 7:15-18.) He further confirmed that he did not address *Guzman* with regard to
17 applicant's feet impairment in his report. (*Id.* at p. 10:13-16.) Dr. Mandell then provided 3% WPI for
18 each foot using Table 17-33 of the AMA Guides. (*Id.* at pp. 10:22 to 11:6.) Defendant also questioned
19 Dr. Mandell at the deposition, but did not challenge his alternative ratings for the feet or shoulders. (*Id.*
20 at pp. 11:10 to 13:18.)

21 The matter subsequently proceeded to trial, at which time the cases were consolidated.
22 (Amended Minutes of Hearing and Summary of Evidence and Order of Consolidation, October 16, 2017,
23 p. 2.) The parties stipulated to applicant's occupational code of 250 and that his average weekly earnings
24 were \$1,533.00. (*Id.* at pp. 2-3.) Both injuries were stipulated to have reached maximum medical
25 improvement on June 15, 2016. (*Id.* at p. 3.) The issues at trial included the following:

- 26 1. Permanent partial disability. Defendant is challenging the parties' agreed
27 medical evaluator's impairment analysis pursuant to the *Almaraz/Guzman*
case, and that argument is subsumed within the permanent partial disability
issue.
2. Attorney fees, with Mr. Case's counsel requesting a fee of 15 percent of his
recovery.

(*Id.*) Trial exhibits included only Dr. Mandell's November 9, 2016 report and deposition testimony, as
well as the PR-4 Report from Dr. Marino. (*Id.*) Only applicant testified at trial. (*Id.* at pp. 3-6.)

1 The WCJ referred the matter to the Disability Evaluation Unit for ratings on both cases. In the
2 resulting Joint F&A, the WCJ found that applicant had sustained 9% permanent partial disability for the
3 specific injury to his shoulders and 10% permanent partial disability for the cumulative trauma injury to
4 his feet. He specified that he did “not find Dr. Mandell’s Guzman-based ratings to be substantial medical
5 evidence” for the shoulders. (Opinion on Decision, March 2, 2018, p. 4.) The WCJ elaborated on his
6 “specific concerns with the proposed *Guzman* ratings” as follows:

7 First, I find that the need for rebuttal of the “strict” rating has not been
8 established. Such rebuttal is appropriate in cases that are “complex or
9 extraordinary” (*Guzman, supra*, 187 Cal.App.4th 808, 830). Other than his
10 statement that the “strict” ratings are “inaccurate,” Dr. Mandell does not
11 explain whether and why this case falls outside the range of upper
12 extremity disabilities contemplated by Chapter 16 of the AMA Guides, so
13 as to necessitate a departure from the prescribed protocol. In fact, his
14 reliance on grip loss is in direct contradiction with § 16.8a of the AMA
15 Guides and neither his report nor his deposition testimony provides an
16 explanation for this deviation. Also, it is not clear to me why applicant’s
17 shoulder injury should be evaluated by looking at his hand grip strength.

18 Most importantly, I note that Dr. Mandell’s calculation of the alleged loss
19 of grip strength is not within the four corners of the AMA Guides because
20 of applicant’s age. According to the AME report, he referenced
21 Tables 16-32 and 16-34 to arrive at 12% WPI for each side because
22 applicant’s dynamometer readings were over 30% below the expected
23 strength. Indeed, a loss of 31-60% of one’s expected grip strength is
24 assigned 20% WPI in Table 16-34. However, those expected strength
25 figures Dr. Mandell is relying on—45.9 kg for the major hand and 43.5 kg
26 for the minor—are appropriate for individuals between 50 and 59 years of
27 age, according to Table 16-32. Mr. Case was born on July 16, 1954. Thus,
when he saw Dr. Mandell in November 2016, he was 62 years old. There
are no average grip strength values provided for individuals over 60.

(*Id.* at pp. 4-5.) However, with respect to applicant’s permanent impairment for his feet, the WCJ found
Dr. Mandell’s alternative 3% rating for each foot provided in his deposition testimony to be substantial
evidence. (*Id.* at p. 6.)

Applicant seeks reconsideration only of the WCJ’s finding regarding the 9% permanent partial
disability rating for his shoulders. In response to applicant’s Petition, the WCJ stated the following in his
Report:

[T]he Third District Court of Appeal in *Cannon* did not overrule *Guzman*,
but rather offered its interpretation of the “complex and extraordinary”
language. The latter opinion still includes this limitation on cases where

1 the medical evaluator may “resort[] to comparable conditions described in
2 the Guides” to arrive at the most accurate rating. [Citations omitted.]

3 (WCJ’s Report, April 4, 2018, p. 4.) He further found that the “AME also did not explain why the AMA
4 Guides-based ratings are inaccurate or why the alternative ratings are accurate.” (*Id.* at p. 5.) With
5 respect to Dr. Mandell’s shoulder ratings using grip strength, the WCJ opined that

6 It is plain that the expected grip strength table does not provide data for
7 individuals over 59 years old. Dr. Mandell gives no explanation for his
8 decision to use the expected values for 50-59-year-olds to gauge a 62-year-
9 old individual’s grip strength.

10 (*Id.* at p. 6.)

11 DISCUSSION

12 It is well established that decisions by the Appeals Board must be supported by substantial
13 evidence. (Lab. Code, §§ 5903, 5952(d);⁴ *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274
14 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35
15 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35
16 Cal.Comp.Cases 16].) To constitute substantial evidence “. . . a medical opinion must be framed in terms
17 of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on
18 an adequate examination and history, and it must set forth reasoning in support of its conclusions.”
19 (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) “Medical
20 reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based
21 on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal
22 theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation,
23 conjecture or guess.” (*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36
24 Cal.Comp.Cases 93, 97].)

25 For injuries occurring on or after January 1, 2013, like both applicant’s claims, section 4660.1
26 provides for determination of permanent disability as follows:

27 ⁴ All further statutory references are to the Labor Code unless otherwise stated.

1 (a) In determining the percentages of permanent partial or permanent total
2 disability, account shall be taken of the nature of the physical injury or
3 disfigurement, the occupation of the injured employee, and his or her age at
4 the time of injury.

5 (b) For purposes of this section, the "nature of the physical injury or
6 disfigurement" shall incorporate the descriptions and measurements of
7 physical impairments and the corresponding percentages of impairments
8 published in the American Medical Association (AMA) Guides to the
9 Evaluation of Permanent Impairment (5th Edition) with the employee's
10 whole person impairment, as provided in the Guides, multiplied by an
11 adjustment factor of 1.4.

12 (d) . . . The Schedule for Rating Permanent Disabilities pursuant to the
13 American Medical Association (AMA) Guides to the Evaluation of
14 Permanent Impairment (5th Edition) and the schedule of age and
15 occupational modifiers shall be available for public inspection and, without
16 formal introduction in evidence, shall be prima facie evidence of the
17 percentage of permanent disability to be attributed to each injury covered
18 by the schedule. Until the schedule of age and occupational modifiers is
19 amended, for injuries occurring on or after January 1, 2013, permanent
20 disabilities shall be rated using the age and occupational modifiers in the
21 permanent disability rating schedule adopted as of January 1, 2005.

22 (Lab. Code, § 4660.1(a)-(b) and (d).)

23 An en banc panel of the Appeals Board outlined the roles of both the physician and the WCJ in
24 determining permanent impairment. (*Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613
25 (Appeals Board en banc). The "physician's role is to assess the injured employee's whole person
26 impairment percentage(s) by a report that sets forth facts and reasoning to support its conclusions and
27 that comports with the AMA Guides and case law." (*Id.* at p. 615.) The *Blackledge* panel recognized
that "the Guides does not address all medical conditions" and thus, the "WPI percentage to be assigned to
a condition is dependent, to some extent, on the physician's judgment, training and experience." (*Id.* at
p. 620.) The panel further specified that "to constitute substantial evidence regarding WPI a physician's
opinion must comport with the AMA Guides, including as applied and interpreted in published appellate
opinions and en banc decisions of the Appeals Board." (*Id.*)

Pursuant to section 4660.1(d), the scheduled rating is prima facie evidence of an employee's
permanent disability. However, the scheduled rating is rebuttable. (See *Almaraz-Guzman III, supra*, at
pp. 852-853.) Specifically, the WPI portion of the scheduled rating may be rebutted by showing that "a

1 different chapter, table, or method of assessing impairment of the AMA Guides more accurately reflects
2 the injured employee's impairment than the chapter, table, or method used by the physician being
3 challenged." (*Almaraz-Guzman II, supra*, at p. 1106.) Physicians must still evaluate permanent
4 impairment while staying within the "four corners of the Guides" pursuant to the Labor Code. (*Id.* at
5 p. 1101.)

6 The overarching goal of rating permanent impairment is to achieve accuracy. (*Almaraz-Guzman*
7 *III, supra*, at p. 822.) A "strict" application of the Guides may not accurately reflect an injured
8 employee's permanent impairment. The Court of Appeal in *Almaraz-Guzman III* acknowledged the
9 Guides' limitations and specifically held that

10 The *Guides* itself recognizes that it cannot anticipate and describe every
11 impairment that may be experienced by injured employees. The authors
12 repeatedly caution that notwithstanding its "framework for evaluating new
13 or complex conditions," the "range, evolution, and discovery of new
14 medical conditions" preclude ratings for every possible impairment.
15 (*Guides* § 1.5, p. 11.) The *Guides* ratings do provide a standardized basis
16 for reporting the degree of impairment, but those are "consensus-derived
17 estimates," and some of the given percentages are supported by only
18 limited research data. (*Guides*, pp. 4, 5.) The *Guides* also cannot rate
19 syndromes that are "poorly understood and are manifested only by
20 subjective symptoms." (*Ibid.*)

21 To accommodate those complex or extraordinary cases, the *Guides* calls
22 for the physician's exercise of clinical judgment to assess the impairment
23 most accurately.

24 (*Id.* at p. 823.)

25 The AMA Guides is thus not to be literally and mechanically applied. Instead, the evaluating
26 physician may use his or her experience and expertise to interpret and apply *any portion* of the entire
27 AMA Guides. A physician who departs from a strict application of the AMA Guides must explain why
28 the departure is necessary and how the WPI rating was derived. (*Id.* at pp. 828-829.) Consequently,
29 although the evaluating physician may utilize the chapter, table or method in the AMA Guides "that most
30 accurately reflects the injured employee's impairment," the physician's "opinion must constitute
31 substantial evidence upon which the WCAB may properly rely, including setting forth the reasoning
32 behind the assessment." (*Almaraz-Guzman II, supra*, at p. 1104.)

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1 To properly rate using *Almaraz-Guzman*, the physician is expected to: 1) provide a strict rating
2 per the AMA Guides; 2) explain why the strict rating does not accurately reflect the employee's
3 disability; 3) provide an alternative rating within the four corners of the AMA Guides; and 4) explain
4 why the alternative rating most accurately reflects the employee's level of disability. (*Almaraz-Guzman*
5 *III, supra*, at pp. 828-829.)

6 In *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360,
7 the Court of Appeal addressed whether a physician could provide a permanent impairment rating
8 utilizing *Almaraz-Guzman* based purely on the employee's subjective complaints without objective
9 findings. The police officer in *Cannon* had plantar fasciitis, which has no standard rating in the AMA
10 Guides, but caused the officer to have heel pain. The AME provided a WPI rating by analogy to a limp
11 (gait derangement abnormality) due to the heel causing weightbearing problems. (*Id.* at p. 1365.) The
12 City of Sacramento argued that "a rating by analogy under *Almaraz/Guzman* is permissible only in
13 complex or extraordinary cases." (*Id.* at p. 1372.) The Court specifically rejected this argument and
14 determined that "this is an unwarranted interpretation of the Sixth District's decision in *Milpitas*
15 *Unified.*" (*Id.*) The Court further stated that "the Sixth District was using the term 'complex or
16 extraordinary cases' to describe syndromes that are poorly understood and are manifested only by
17 subjective symptoms, which the AMA Guides do not, and cannot rate." (*Id.* (internal quotations
18 omitted).)⁵

19 I.

20 The WCJ in the instant matter opined that "the need for rebuttal of the 'strict' rating has not been
21 established" and "such rebuttal is appropriate in cases that are 'complex or extraordinary.'" The Report
22 further states that the *Almaraz-Guzman* opinion still contains "this limitation on cases where the medical

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⁵ We acknowledge that the *Almaraz-Guzman* decisions and *Cannon* analyzed section 4660 rather than section 4660.1, which is
applicable to the instant matter. However, section 4660.1(b) is identical to section 4660(b)(1) with the exception of the
additional language of "...with the employee's whole person impairment, as provided in the Guides, multiplied by an
adjustment factor of 1.4." Moreover, section 4660.1(h) expressly states that "In enacting the act adding this section, it is not
the intent of the Legislature to overrule the holding in *Milpitas Unified School District v. Workers' Comp. Appeals Bd.*
(*Guzman*) (2010) 187 Cal.App.4th 808." (§ 4660.1(h).)

1 evaluator may” rate by analogy despite the *Cannon* decision. These statements suggest a belief that an
2 alternative rating in lieu of the strict rating is only permissible if the case is deemed “complex or
3 extraordinary.” This is an incorrect understanding of the applicable case law. As discussed in *Cannon*,
4 the Court of Appeal in *Almaraz-Guzman III* used the term “complex or extraordinary” to describe
5 “syndromes that are poorly understood and are manifested only by subjective symptoms,” not in order to
6 limit the evaluating physician’s use of a different chapter, table, or method of assessing impairment in the
7 AMA Guides to *only* those cases deemed complex or extraordinary. There are also several panel
8 decisions rejecting this interpretation of *Almaraz-Guzman III*. (See *Maggard v. Kings Canyon Unified*
9 *Sch. Dist.* (August 29, 2013, ADJ3288062, ADJ1081299, ADJ4249956) [2013 Cal. Wrk. Comp. P.D.
10 LEXIS 497] [the panel upheld a WCJ’s finding that nothing in *Almaraz-Guzman III* requires a
11 determination by the physician that the case is “complex or extraordinary”]; *Strawberry v. California*
12 *Dept. of Corrections and Rehabilitation* (November 28, 2016, ADJ7438046) [2016 Cal. Wrk. Comp.
13 P.D. LEXIS 624, *11] (the panel overturned a WCJ’s rejection of the physician’s rating because the
14 injuries were not deemed “complex or extraordinary” and opined that the *Cannon* Court “rejected the
15 theory that an *Almaraz/Guzman* analysis of disability may only be used in a ‘complex or extraordinary’
16 case”]; *Diaz v. The Gainey Vineyard* (April 11, 2017, ADJ8558787) [2017 Cal. Wrk. Comp. P.D. LEXIS
17 154, *16] [the panel found “no requirement that a physician proclaim the case to be complex or
18 extraordinary in order to justify a rating by analogy, provided that the rating is based upon the Guides”];
19 and *Rice v. Procut, LLC* (May 28, 2013, ADJ7558401) [2013 Cal. Wrk. Comp. P.D. LEXIS 334, *12]
20 [the panel ordered further development of the record on the *Almaraz-Guzman* rating, but also opined that
21 neither the *Almaraz-Guzman* “Court nor the AMA Guides limit the cases in which a physician may
22 exercise his or her clinical judgment by resorting to comparable conditions only to complex and
23 extraordinary cases”].)⁶

⁶ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they also discussed the issue of whether *Almaraz/Guzman* alternative ratings are only permissible in “complex or extraordinary” cases. We recommend that

1 An alternative rating instead of the strict rating may more accurately reflect an applicant's
2 impairment in those complex or extraordinary cases involving conditions that are manifested only by
3 subjective complaints, such as the officer's plantar fasciitis in *Cannon*. However, we discern nothing in
4 *Almaraz-Guzman* and the related case law that restricts an alternative rating to *only* those complex or
5 extraordinary cases and this reading conflicts with *Cannon*. The goal is to achieve the most accurate
6 rating of the employee's impairment based on a medical opinion that constitutes substantial evidence. If
7 the strict rating does not accurately reflect the employee's impairment, the physician may use his or her
8 judgment, training and experience to provide an alternative rating from within the AMA Guides.

9 II.

10 The AME's alternative impairment rating was also rejected because it "is not within the four
11 corners of the AMA Guides." (WCJ's Report, April 4, 2018, p. 5.) However, Dr. Mandell did stay
12 within the Guides. In his report, Dr. Mandell found that applicant's range of motion impairment ratings
13 did not account for his strength loss. Accordingly, he provided impairment ratings for both shoulders
14 utilizing Table 16-32 on page 509 of the Guides and applying the strength loss index formula from the
15 same page. The alternative ratings assigned by the AME were expressly from the Guides.

16 The WCJ's Report states that these ratings are not within the four corners of the Guides because
17 Table 16-32 "does not provide data for individuals over 59 years old" and applicant was 62 years old at
18 the time of Dr. Mandell's evaluation. (WCJ's Report, April 4, 2018, p. 6.) While *Almaraz-Guzman* does
19 not permit the physician to manipulate the Guides to achieve a more favorable result, the physician is
20 allowed to exercise his or her judgment, training and experience in evaluating impairment using the
21 Guides "even if that is possible only by resorting to comparable conditions described in the Guides."
22 (*Almaraz-Guzman III, supra*, at pp. 829-830.) A rating by analogy to another condition is precisely that
23 -- an analogy to a condition the employee may not have, but that has a similar effect on the employee's
24 activities of daily living. *Almaraz-Guzman* ratings have previously been upheld as supported by
25 substantial medical evidence even where the chapter, table or method would not otherwise be applicable

26
27 practitioners proceed with caution when citing to a panel decision and verify its subsequent history.

1 to the employee's condition. (*Cannon, supra*, at p. 1365 [physician analogized officer's plantar fasciitis
2 condition to a limp with arthritis "despite the absence of any arthritic changes"]; *Scott's Jack London*
3 *Seafood, Inc. v. Workers' Comp. Appeals Bd. (Fitzsimmons)* (2011) 76 Cal.Comp.Cases 1348 (writ den.)
4 [QME's ratings analogizing to herniation and gait derangement were substantial evidence even though
5 applicant did not have a hernia or lower extremity injury].) To restrict use of the AMA Guides to only
6 those cases where applicant's condition, age or other distinguishing factors neatly fit into the chapter,
7 table or method being applied would render *Almaraz-Guzman* meaningless. The test is whether the
8 alternative rating is within the four corners of the Guides and is substantial medical evidence that may be
9 relied on to support a decision regarding permanent disability.

10 Dr. Mandell found that the strict ratings of applicant's bilateral shoulder impairment "take into
11 account range of motion, but they do not account for strength loss." Dr. Mandell measured applicant's
12 grip strength for both upper extremities as part of his examination. Utilizing these measurements, he
13 provided impairment ratings using Table 16-32 and the strength loss index formula in the AMA Guides.

14 Consequently, Dr. Mandell explained why the strict ratings did not accurately reflect applicant's
15 impairment and utilized his judgment, experience and training to provide alternative ratings from within
16 the four corners of the Guides that more accurately reflect applicant's impairment. Moreover,
17 Dr. Mandell acted as an AME in this matter. The parties presumably choose an AME because of the
18 AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd. (1986)* 179 Cal.App.3d 775,
19 782 [51 Cal.Comp.Cases 114].) We will follow the opinions of the AME unless good cause exists to
20 find his opinion unpersuasive. (*Ibid.*)⁷ We discern no reason to reject these ratings as not substantial
21 evidence and applicant's permanent disability should be determined using Dr. Mandell's alternative
22 ratings.

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26 ⁷ We further note that defendant did not challenge Dr. Mandell's alternative ratings for the shoulders during his cross-
27 examination.

1 Utilizing Dr. Mandell's alternative ratings, we thus rate applicant's bilateral shoulder condition as
2 follows:

3 Right shoulder

4 16.02.01.00 - 12 - [1.4]17 - 250F - 17 - 21

5 Left shoulder

6 16.02.01.00 - 12 - [1.4]17 - 250F - 17 - 21

7 CVC = 21 C 21 = 38%

8 This results in an award of 38% permanent disability amounting to 187.00 weeks of disability payments
9 at the rate of \$290.00 per week in the total sum of \$54,230.00.⁸ We will also adjust the award of
10 attorney's fees accordingly.

11 We therefore grant applicant's Petition for Reconsideration and amend the Joint F&A to find 38%
12 permanent disability for the shoulders (Finding of Fact No. 1; Award). The Joint F&A is otherwise
13 affirmed.

14 For the foregoing reasons,

15 **IT IS ORDERED** that applicant's Petition for Reconsideration of the Joint Findings and Award
16 issued by the WCJ on March 5, 2018 is **GRANTED**.

17 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'
18 Compensation Appeals Board that the Joint Findings and Award issued by the WCJ on March 5, 2018 is
19 **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

20 **FINDINGS OF FACT**

- 21 1. The injury in WCAB Case No. ADJ10924724 has resulted in 38%
22 permanent partial disability.

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25 ⁸ The parties stipulated at trial to occupational group 250 and defendant did not dispute the permanent disability indemnity
26 rate of \$290.00 per week applied in the Joint F&A, which comports with the stipulated amount of applicant's average weekly
27 earnings of \$1,533.00. (Amended Minutes of Hearing and Summary of Evidence and Order of Consolidation,
October 16, 2017, pp. 2-3.)

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AWARD

In WCAB Case No. ADJ10924724, AWARD IS MADE in favor of STEVEN CASE against GOLDEN GATE BRIDGE HIGHWAY AND TRANSPORTATION DISTRICT of permanent partial disability of 38%, entitling applicant to 187 weeks of disability indemnity, starting June 15, 2016, at the rate of \$290.00 per week, in the total sum of \$54,230.00, less credit to defendant for all sums heretofore paid on account thereof, and less \$8,134.50 payable to LAW OFFICE OF MICHELLE BRODIE as attorney fees to be commuted from the far end of the award if necessary.

WORKERS' COMPENSATION APPEALS BOARD

Jose H. Razo

JOSÉ H. RAZO

I CONCUR,

Patricia A Garcia

DEPUTY PATRICIA A GARCIA

CONCURRING, BUT NOT SIGNING

MARGUERITE SWEENEY



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 17 2018

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

**DIETZ, GILMOR & CHAZEN
LAW OFFICE OF MICHELLE BRODIE
STEVEN CASE**

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CASE, Steven

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