How the Workers’ Compensation Commission is Applying the AMA Guides
A Review of Recent Decisions
Advanced Workers’ Compensation
Presented by the ISBA Workers’ Compensation Law Section

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I. INTRODUCTION AND OVERVIEW

On June 28, 2011, Governor Quinn signed House Bill 1698 into law as Public Act 97-18.¹ This bill became effective immediately and made many substantive changes and added nine new sections to the Worker’s Compensation Act.² Among other changes, the bill added a new section 8.1b which provides that, for injuries occurring on or after September 1, 2011, a licensed physician shall provide a partial disability impairment report using, among other information, the most current edition of the American Medical Association’s Guides to the Evaluation of Permanent Impairment (AMA Guides).³ Section 8.1b also outlines five factors that shall be used by the Commission in determining permanent partial disability (PPD).

As of the date of completion of these written materials (January 23, 2013), thirteen arbitrator decisions have been filed with the Illinois Workers’ Compensation Commission involving the application of Section 8.1b of the Act. In six cases, a physician’s impairment rating report is admitted and considered by the arbitrator in the decision. In Johnson v. Central Transport, Curtis Oltmann v. Continental Tire, and Robert Todd Riley v. Con-Way Freight, Inc. the physician’s impairment report is admitted, and the PPD determination is made based on an evaluation of all of the enumerated factors. In Williams v. Flexible Staffing, Dorris v. Continental Tire, and Garwood v. Lake Land College the physician’s report and impairment rating are admitted and disputed, and again a determination is made based on all five factors. In the remaining seven cases, the arbitrators determine PPD and issue PPD awards without a doctor’s impairment rating report. Because the AMA Guides for the evaluation of impairment can have a large impact on the resulting determination of an employee’s permanent partial

disability benefits, it is important to know how the Illinois Workers’ Compensation Commission (Commission) is applying section 8.1b of the Act and the AMA Guides in determining the percentage of permanent partial disability to be awarded.

The Workers’ Compensation Lawyers Association (WCLA) held MCLE presentations on decisions applying section 8.1b and the AMA Guides on August 8, 2012, November 12, 2012 and January 22, 2013. Thanks and appreciation are extended to WCLA and the MCLE coordinator David Menchetti for granting the author permission to use the information in his preparation of these seminar materials. Additional information about the MCLE’s is available on the WCLA website at http://www.wcla.info/mcle_archive.php.

II. BACKGROUND

In 1979 and 1980 the Illinois General Assembly debated what standards the Commission should use to determine permanent partial disability. All standards, including medical guidelines, were rejected. With the passage of House Bill 3250, starting on January 1, 1981, all decisions of the Commission were published and all decisions were required to set forth in writing the reasons for the decision. Before June 28, 2011, the Illinois Workers’ Compensation Act remained “silent” as to how the Commission was supposed to determine permanency when the injury was less than 100% loss of use of the body part. The Commission was and is required to use a case-by-case approach to evaluate the effect of a disability on the life of the particular worker before it. The Commission evaluates the physical impairment of the employee and the effect of the disability on his or her life. Illinois Supreme Court decisions set forth the factors which may be considered by the Commission in determining nature and extent of disability. They include: occupation, age, inability to engage in certain kinds of work or activities, skill, training, pain, stiffness, weakness, spasms, limitation of motion, tenderness, atrophy, lack of
coordination, soreness, diminished reflexes, dizziness and other relevant criteria. Section 19(e) of the Act, in pertinent part, states as follows: “decisions rendered by the Commission and dissents, if any, shall be published together by the Commission. The conclusions of law set out in such decisions shall be regarded as precedents by arbitrators for the purpose of achieving a more uniform administration of the Act.” Thus, previous Commission decisions still serve as a guideline and a precedent for the evaluation of permanent partial disability.

For injuries occurring on or after September 1, 2011, the new section 8.1b will apply to the Commission’s determinations of employee PPD. Under this section, a licensed physician evaluates the employee and prepares an impairment rating report, using the *AMA Guides to the Evaluation of Permanent Impairment, 6th edition*, second printing (2009). The AMA Guides were created in an effort to generate more certainty, uniformity, and transparency in the rating of permanent impairments.\(^4\) In a general sense, physicians will consider the: 1) reported problem, 2) reported symptoms and resulting functional difficulty, 3) physical findings, and 4) the results of clinical studies.\(^5\) The Guides provide diagnosis based grids for each organ system, arranging diagnoses into five classes of impairment severity, and then integrate these with clinical information and patient history to determine the impairment value.\(^6\) The Guides are explicit that a rating of an individual’s impairment is distinct from a rating or determination of that person’s disability. The Guides explain that the impairment ratings are defined by anatomic, structural, functional, and diagnostic criteria that physicians are familiar with, while determinations of

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\(^5\) *Id.*

\(^6\) *Id.*
disability consider the full array of human functional activities and participations (and restrictions thereto) which physicians are seldom trained to assess.\(^7\)

Under the new section 8.1b criteria, the Commission considers the physician’s impairment rating report as well as the employee’s occupation, age, future earning capacity, and evidence of disability and the corroborating medical records. This section explicitly states that no single factor shall be the sole determinant of disability, and that the weight given to each factor must be explained in the written order. Although Section 8.1(b) the Act states that PPD “shall” be established using a physician impairment rating report, on November 28, 2011, the Commission issued guidance on AMA impairment ratings and PPD awards stating, in part, as follows: “if an impairment rating is not entered into evidence, the Arbitrator is not precluded from entering a finding of disability.”\(^8\) Whether this guidance becomes law remains to be seen. However, currently arbitrators are filing PPD awards in cases where an impairment rating report is not entered into evidence in cases where Section 8.1(b) applies.

III. FOR INJURIES OCCURRING ON OR AFTER SEPTEMBER 1, 2011, ALL PERMANENT PARTIAL DISABILITY AWARDS SHALL BE ESTABLISHED USING THE CRITERIA UNDER SECTION 8.1b OF THE ACT.

820 ILCS 305/8.1(b)\(^9\) provides as follows:

“§8.1b AMA Guides

Sec. 8.1b. Determination of permanent partial disability. For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

\(^7\) Id. at 5.


\(^9\) Available at http://www.iwcc.il.gov/act080811.pdf.
(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.”

IV. THE FOLLOWING ARBITRATOR DECISIONS HAVE BEEN FILED WITH THE WORKERS’ COMPENSATION COMMISSION APPLYING SECTION 8.1b OF THE ACT

Below is provided a summary of arbitrator decisions that have been filed with the Illinois Workers’ Compensation Commission and are public record. This information is provided to
illustrate how section 8.1b is currently being applied. The current status of each case is not known. Some of these decisions have been appealed, and consequently the results and methodology explained below may change following any appeals.

a. **Zachary Johnson v. Central Transport**
   11 WC 041328
   Arbitrator Lynette Thompson-Smith
   Filed July 24, 2012

Zachary Johnson was 28 years old and employed as a journeyman truck driver and loader by Central Transport at the time of his accident. His job duties included loading the truck trailer and driving short, urban trucking routs. On October 17, 2011, Mr. Johnson was conducting a pre-trip inspection of the trailer and while attempting to manually close the malfunctioning trailer door the door fell onto his right hand. Timely notice was given to Central Transport, and Mr. Johnson completed his shift and continued working his regular duties.

On October 18 Mr. Johnson sought medical treatment. X-rays of his hand revealed a closed right small finger metacarpal fracture. He was referred to Advanced Medical Specialists and, after his examination on October 21, 2011, was placed on restricted left-hand work. November 29 x-rays showed that Mr. Johnson’s fracture was healing, and on December 13 he was released to full duty work without restrictions, beginning December 19. At Central Transport’s request, Mr. Johnson was examined by Dr. Cohen, who noted that the fracture had been treated conservatively and opined that his susceptibility to cold weather was not permanent and should resolve over time.

In February 2012, Mr. Johnson left Central Transport for a new job with JF Freight and an increase in salary, a move unrelated to his injury. At this new job, Mr. Johnson began driving much longer distances than with Central Transport, driving from Chicago to Texas and Florida several times each week. Mr. Johnson testified that currently, his hand experiences periodic pain
throughout the day, especially while driving over bumpy roads or striking the stick shift, and stiffens in the cold.

On April 6 Dr. Vender performed an AMA Impairment examination. During this examination, Mr. Johnson complained of sporadic soreness in the ulnar aspect of his right hand and sporadic numbness of his right palm. Dr. Vender found a 1% impairment of Mr. Johnson’s right hand, 7% impairment of his finger, and 0% impairment of his whole person.

Arbitrator Thompson – Smith filed her decision with the Commission on July 24, 2012. In her decision, she considered each of the five factors enumerated under Section 8.1b as follows:

(i) The reported level of impairment. Dr. Vender’s impairment rating report finding a 1% hand impairment was admitted into evidence. Mr. Johnson did not offer an AMA impairment rating nor findings that considered the AMA guides, and admitted no evidence specifically disputing Dr. Vender’s impairment rating.

(ii) The occupation of the injured employee. Mr. Johnson is still employed as a truck driver and now drives longer routes rather than short local ones.

(iii) The age of the employee at the time of injury. Mr. Johnson was 28 years old at the time of the accident. Because he is a younger individual, the arbitrator concluded that his PPD may not be more extensive than an older individual.

(iv) The employee’s future earning capacity. The arbitrator noted that there was no evidence that Mr. Johnson’s future earning capacity was diminished because of his injury. He is still driving a truck, and in fact works for a
different employer for more pay now. Furthermore, the arbitrator noted that his young age increases the likelihood of a long career as a truck driver.

(v) Evidence of disability corroborated by medical records. The arbitrator found that medical records from both Dr. Cohen and Dr. Vender corroborated Mr. Johnson’s testimony. Dr. Vender noted complains of sporadic numbness in the palm and soreness in the ulnar aspect of the right hand. Dr. Cohen reported that Mr. Johnson’s susceptibility to cold would resolve over time and that his functional difficulties associated with the finger were minimal.

The arbitrator found previous Commission decisions persuasive\textsuperscript{10} which supported the conclusion “the conclusion that a minimal PPD award is appropriate.” The arbitrator reiterated that in determining PPD, consideration is given to all five factors, and that no single factor is the sole determinant. After considering all of the factors, including Dr. Vender’s impairment rating, the arbitrator concluded that Mr. Johnson had suffered a 10% permanent loss of his right hand.

b. \textit{Frederick Williams v. Flexible Staffing, Inc.},
11 WC 046390
Arbitrator Lynette Thompson-Smith
Filed July 24, 2012

Employee Frederick Williams was 45 years old and employed at Flexible Staffing as a welder at the time of the accident. His job duties were physically demanding, and involved cutting, welding and carrying tools and metal equipment. On October 7, 2011, while working on a section of rail weighing over 400 lbs, the rail slipped off of the horse it was positioned on and fell on Mr. Williams’ hand. He felt a sharp pain in his right arm and heard a snap when the rail fell, and immediately noticed that his arm was disfigured. He was diagnosed as having a distal

\textsuperscript{10} Specifically, the arbitration decision cited \textit{Waggman v. Freight Car Services}, 07I.W.C.C.41359, a case whose petitioner similarly suffered from a fractured metacarpal (fractured midshaft of the second metacarpal). In this case, the petitioner was treated conservatively, returned to work with a 50% loss of strength in his hand, and was awarded a 7.5% loss of use of his left hand.
biceps tendon rupture. Mr. Williams received surgery to repair the rupture on from Dr. Arabindi November 7, 2011, and attended physical therapy from November 28, 2011 through February 8, 2012.

During his last office visit on March 7, 2012, Dr. Arabindi declared Mr. Williams to be at maximum medical improvement and noticed that he lacked 5 to 10 degrees of full supination in his right forearm. Mr. Williams also complained of diminished strength in his arm, but Dr. Arabindi released him to work without restrictions as of March 8, 2012. Thereafter, he notified his employer of his full duty release and was informed by Flexible Staffing that he no longer had a job there. At the request of Flexible Staffing, Mr. Williams saw by Dr. Mark Levin who noted that Mr. Williams lacked full extension of his right arm, with both pronation and supination, and listed an AMA disability rating of 4% of the whole person or 5% loss of his right arm. Mr. Williams testified that he still experiences pain in his right arm on a daily basis, for which he takes medication, as well as numbness and tingling a few days each week, and still lacks strength and range of motion in the arm. He also testified that he finds welding difficult, cannot perform garden work, mow the lawn, or play golf. He also testified that his symptoms make it difficult for him to play with his three grandchildren.

Arbitrator Thompson – Smith filed her decision with the Illinois Workers’ Compensation Commission on July 24, 2012. The arbitrator considered the five factors listed under Section 8.1b of the Act as follows:

(i) The reported level of impairment. In the decision, the arbitrator considered Dr. Levin’s report of impairment under the AMA Guide (6% arm and 4% of the whole person), but noted that the rating referred to impairment only, not disability. The arbitrator also noted that loss of range of motion and other
measurements establishing the nature and extent of impairment were not included in Dr. Levin’s report.

(ii) The occupation of the injured employee. The arbitrator took judicial notice that Mr. Williams’ occupation as a welder consists of medium to heavy work, and that consequently his PPD will be larger than an individual who performs lighter work.

(iii) The age of the employee at the time of injury. Since Mr. Williams was 45 at the time of the accident, the arbitrator concluded that he is a younger individual and that his PPD will be more extensive than an older individual because he will have to live with the disability longer.

(iv) The employee’s future earning capacity. The arbitrator explained that although Mr. Williams’ earning capacity appears undiminished since he was medically returned to work by Dr. Arabindi, the fact that when he attempted to return to work he was told he no longer had a job may negatively impact his future earning capacity.

(v) Evidence of disability corroborated by medical records. The arbitrator found Mr. Williams’ testimony of pain, numbness, tingling and range of motion credible, and that these complaints are corroborated by the medical records of Dr. Arabindi. The testimony that the disability is of a permanent nature was also corroborated by the medical record, in which Dr. Arabindi noted that Mr. Williams’ condition was as at maximum medical improvement and that he still lacked 5 to 10 degrees of full supination in his right forearm.
The arbitrator explained that the determination of PPD is not a mere calculation, but is instead an evaluation of all five factors enumerated in the Act, and reiterated that no single factor is the sole determinant. The arbitrator concluded that Mr. Williams had sustained injuries causing a 30% loss of use of his right arm.

c. **Jaelene Bryan v. SOI/Pinckneyville Correctional Center**  
11 WC 47483  
Arbitrator Gerald Granada  
Filed March 9, 2012

Jaelene Bryan was 35 years old and employed as a correctional officer at the time of the accident. On December 1, 2011, Ms. Bryan sustained injuries to her left knee when her foot got caught on a phone cord, causing her to fall to the floor, twisting her left leg. She presented to the emergency room for treatment where she was given a left knee immobilizer, crutches, and Vicodin. On December 7 she sought treatment from Dr. Reyes, her family physician, whose exam found swelling and bruising of the leg and both anterior and posterior drawer tests to be positive. On December 9 Ms. Bryan saw Dr. Choi, who diagnosed a left knee contusion with possible lateral meniscus tear. An MRI was done on December 14 which showed a “grade II signal abnormality posterior horn incomplete medial meniscus tear.” Dr. Choi recommended physical therapy, NSAIDs, and ice.

Ms. Bryan’s conditions gradually improved and she eventually was allowed to return to work. She testified that she still experiences pain in her left knee. Before the injury she ran 3 to 7 days each week, but since the injury she had been able to run only a mile and a half three times a week. She also testified that her symptoms increase while walking and standing on concrete at work, and that she takes Tylenol, Ibuprofen and Naperson [sic] [Naproxen] for pain 3-5 times per week. Finally, she has experienced difficulty in her secondary job as a photographer, since her injury has made kneeling and squatting difficult.
Arbitrator Granada filed his decision with the Commission on March 9, 2012. The arbitrator considered each of the five factors listed under Section 8.1b of the Act in his decision as follows:

(i) The reported level of impairment. The arbitrator noted that no impairment rating report was in the record, and explained that this fact does not preclude a finding of PPD.

(ii) The occupation of the injured employee. Ms. Bryan was employed as a correctional officer, and continues to work this position.

(iii) The age of the employee at the time of injury. At the time her injury, Ms. Bryan was 35 years old.

(iv) The employee’s future earning capacity. Ms. Bryan testified to difficulty performing the job functions of her secondary employment as a photographer.

(v) Evidence of disability corroborated by medical records. The arbitrator found the MRI showed a signal abnormality on her knee, and the medical records showed this was treated conservatively.

The arbitrator explained that a failure to include an impairment rating report into evidence did not preclude a finding of PPD, citing Illinois Workers’ Compensation Commission Guidance. The arbitrator made his determination of PPD on the remaining factors, and concluded that Ms. Bryan sustained a 5% permanent loss of her left leg as a result of the accident.

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Terry Wadkins was 54 years old and employed as a correctional officer with the rank of Lieutenant. On December 17, 2011, he suffered a fall and sustained injuries to his right arm and cervical spine as a result. Timely notice was given to his employer.

With respect to his right arm, medical records show Mr. Wadkins received treatment from Dr. Azam from December 16, 2011 through January 18, 2012, and Dr. Choi from January 17 through March 16. An MRI performed on March 9 showed supraspinatus and infraspinatus tendinopathy as well as mild to moderate osteoarthritis to Mr. Wadkins’s right AC joint. During a March 16 examination by Dr. Choi, it was noted that Mr. Wadkins had a normal range of motion in his right shoulder without rotator cuff weakness, but tenderness over the right trapezius muscles and a “moderately positive impingement sign” for his right shoulder. Dr. Choi had diagnosed him with rotator cuff tendinosis and gave him an injection for his shoulder symptoms during this visit. Dr. Choi released Mr. Wadkins to full duty on March 16.

Mr. Wadkins testified that he still suffers from shoulder pain during a variety of home activities, takes Tylenol for the pain, and still performs the exercises prescribed by Dr. Choi. He also testified that the March 16 injection provided only temporary relief of his symptoms, and that he has not sound medical treatment since that date. Mr. Wadkins has since retired from his position as a correctional officer.

With respect to Mr. Wadkins’s cervical spine, it was noted that on his January 17 office visit he complained of numbness in his spine, and Dr. Choi noted that the fall could have resulted in a cervical spine injury. An MRI was ordered, but did not show any pathology that
corresponded to Mr. Wadkins’s complaints. Mr. Wadkins’s attorney stipulated at arbitration that Mr. Wadkins is claiming disability for his shoulder injuries only.

Arbitrator McCarthy filed his decision with the Commission on July 3, 2012. The arbitrator considered each of the five factors under Section 8.1b as follows:

(i) The reported level of impairment. No physician’s impairment rating report was offered into evidence.

(ii) The occupation of the injured employee. Mr. Wadkins was employed as a correctional officer at the time of his injury. The arbitrator noted that the fact that he had been released to work without restriction on March 16 mitigates his degree of disability.

(iii) The age of the employee at the time of injury. At the time his injury, Mr. Wadkins was 54 years old.

(iv) The employee’s future earning capacity. Mr. Wadkins has recently retired from his position.

(v) Evidence of disability corroborated by medical records. The arbitrator found that the findings noted by Dr. Choi and the MRI findings provide a basis for an award of PPD.

Since no reported level of impairment under the AMA Guides was admitted, the arbitrator made his determination of PPD on the remaining factors. The arbitrator concluded that Mr. Wadkins sustained a 2% permanent loss of his person as a whole as a result of the shoulder injury, adopting the reasoning of the Appellate Court decision in *Will County Forest Preserve v. Illinois Workers’ Compensation Comm’n*, 2012 Ill. App. (3d) 110077WC.12

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12 Available at [http://www.state.il.us/court/opinions/WorkersComp/2012/3110077WC.pdf](http://www.state.il.us/court/opinions/WorkersComp/2012/3110077WC.pdf). This case held that the award for the loss of the person as a whole was proper, even though the plaintiff was returned to work at full duty.
Terrence Davis was 45 years old and employed as a police officer when he was injured on February 28, 2012. While driving his assigned marked police car to the police station to begin his shift, Mr. Davis’s vehicle encountered water on the road and hydroplaned, causing him to lose control, and the car ran through a fence and struck a pole.

During the accident Mr. Davis suffered injuries to his left-hand, ankles, lower back, and right arm and he immediately went to the emergency room at St. John’s Hospital to receive treatment. The hospital records show that Mr. Davis complained of left hand and right forearm pain, and that the diagnosis was a contusion. Mr. Davis was discharged. On April 4 he was seen by Dr. Brewer who noted that he had some tenderness over the MP joint of the fifth finger and diagnosed a probably contusion to this joint, prescribing some medications.

Mr. Davis testified the he still experiences some pain in the fifth finger of his left hand if it is bumped. The other injuries, he testified, have totally resolved. Mr. Davis was not out of work for any length of time as a result of the injuries.

Arbitrator Gallagher filed his decision with the Commission on July 11, 2012. The arbitrator considered each of the factors under Section 8.1b of the Act as follows:

(i) The reported level of impairment. The arbitrator noted that there was no level of impairment pursuant to the AMA Guides determined by any physician and that both parties waived their rights to an AMA impairment rating.

and resumed all prior job activities. This holding was based on section 8(d)(2) of the Illinois Workers’ Compensation Act which allows for a person as a whole award when a claimant sustains injuries not covered by either section 8(c) or 8(e) of the Act and “which partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity.” 820 Ill. Comp. Stat. 305/8(d)(2).
(ii) The occupation of the injured employee. Mr. Davis was employed as a police officer.

(iii) The age of the employee at the time of injury. At the time his injury, Mr. Davis was 45 years old.

(iv) The employee’s future earning capacity. The arbitrator noted that Mr. Davis continues to work as a police officer and that there was no evidence that the accident will have any effect on future earning capacity.

(v) Evidence of disability corroborated by medical records. The arbitrator found Mr. Davis’s medical records show the diagnosis of a contusion of the MP joint of the fifth finger and that he still has some ongoing symptoms and complaints with respect to this left hand injury.

The arbitrator found that both parties waived their rights to an AMA impairment rating. Therefore, the arbitrator made his determination on the remaining factors. The arbitrator found Mr. Davis’s occupation, age, and future earning capacity not relevant to any determination of PPD, and concluded that Mr. Davis sustained a 2% permanent loss of use of his left hand as a result of the accident.

f. **Ricky Belton, Jr. v. SOI/Chester Mental Health Ctr.**  
11 WC 41595  
Arbitrator Joshua Luskin  
Filed August 1, 2012

Ricky Belton was 30 years old and employed as a security therapy aid when he was injured on September 27, 2011 while separating two mental health treatment recipients who were fighting. His left hand was injured (he is right-hand-dominant) and he first sought treatment on October 4 from the Chester Memorial Hospital Emergency Room. The records note that Mr. Belton complained of tingling in his left hand, but that there was no swelling or deformity. He was placed on light duty.
On October 7 Mr. Belton saw Dr. Preuss, who diagnosed him with a traction type injury, gave him the steroid Medrol Dosepak, and maintained him on light duty. On October 20 Mr. Belton complained of numbness in his left hand. He was noted to have a normal wrist but and EMG was ordered. Mr. Belton began working full duty without restrictions in November. The EMG was conducted on November 15 and showed no abnormalities, and thereafter Mr. Belton was referred to a specialist. Dr. Young saw Mr. Belton on April 16, 2012, and noted numbness and weakness in his left hand but found he did not have carpal tunnel syndrome. By this time, Mr. Belton was working full duty, and Dr. Young maintained work without restrictions but prescribed Mr. Belton an anti-inflammatory and a forearm brace. On June 7 Mr. Belton described his wrist as much better and said his symptoms had improved, and on this date Dr. Young released him at maximum medical improvement without restrictions. Mr. Belton testified that his left hand still experiences numbness when he wakes up in the morning, lasting about fifteen minutes) and intermittently throughout the day.

Arbitrator Luskin’s decision was filed with the Illinois Workers’ Compensation Commission on August 1, 2012. The arbitrator considered each of the five factors under Section 8.1b as follows:

(i) The reported level of impairment. The arbitrator noted that no level of impairment pursuant to the AMA Guides was determined by any physician. Consequently, the arbitrator explained the determination would be made based on an evaluation of the remaining four factors.

(ii) The occupation of the injured employee. Mr. Belton was employed as a security therapy aid. He has continued to work in this occupation since the injury and will continue to do so without medical impairment.
(iii) The age of the employee at the time of injury. At the time his injury, Mr. Belton was 30 years old.

(iv) The employee’s future earning capacity. The arbitrator noted that Mr. Belton will continue working in his current occupation without difficult or restriction.

(v) Evidence of disability corroborated by treating medical records. The arbitrator noted that Mr. Belton’s testimony was corroborated by the medical records, and were consist with a sprain/strain injury to his left hand.

The arbitrator evaluated the remaining four factors of section 8.1b, and determined that Mr. Belton sustained injuries causing a 3.5% loss of use of his left hand.

g. **Derek Richardson v. SOI/Tamms Correctional Center**
12 WC 08263
Arbitrator Joshua Luskin
Filed August 1, 2012

Derek Richardson was 32 years old and employed as a correctional officer at the time of the accident. On February 11, 2012, Mr. Richardson responded to a medical emergency and, while kneeling in an effort to secure the inmate, twisted his left knee and felt a pop. The following day, February 12, he sought treatment from Massac Memorial Hospital and was given crutches and a brace. Thereafter Mr. Richardson saw his primary care physician who ordered an MRI which revealed a torn meniscus. Mr. Richardson then sought care from the orthopedic surgeon Dr. George Paletta, who on April 12 performed arthroscopic left knee meniscal repair. After the surgery Mr. Richardson underwent physical therapy and on May 1 he returned to full duty.

On June 6, Mr. Richardson described minimal soreness of his knee and described it as doing very well. Dr. Paletta noted an overall “excellent” result and placed him at maximum medical improvement at that time. Mr. Richardson testified that he continued to experience
persistent soreness, occasionally using over the counter medication to control his symptoms, and that he experiences difficulty with climbing stairs.

Arbitrator Luskin’s decision was filed with the Commission on August 1, 2012. The arbitrator considered each of the five factors under Section 8.1b of the Act as follows:

(i) The reported level of impairment. The arbitrator noted that there was no level of impairment pursuant to the AMA Guides determined by any physician. Consequently, the arbitrator explained that the remaining four factors only must be evaluated to reach the PPD determination.

(ii) The occupation of the injured employee. Mr. Richardson was employed as a correctional officer, and continues to work this position in his pre-injury capacity.

(iii) The age of the employee at the time of injury. At the time his injury, Mr. Richardson was 32 years old.

(iv) The employee’s future earning capacity. The arbitrator noted that since Mr. Richardson continues to work as a correctional officer in his pre-injury capacity, there was no evidence of diminished future earning capacity.

(v) Evidence of disability corroborated by medical records. The arbitrator found Mr. Richardson’s testimony of residual soreness in his knee is consistent with the knee surgery noted in the medical records.

Since neither party introduced evidence of a reported level of impairment under the AMA Guides, the arbitrator made his determination of PPD on the remaining four enumerated factors only. The arbitrator concluded that Mr. Richardson sustained a 17.5% permanent loss of his left leg as a result of the accident.
Scott Day was 33 years old and employed as a police officer at the time of his injury. On November 22, 2011, while responding to an alarm call at a residence after dark, Mr. Day conducted a check of the perimeter. While stepping from behind a partition in the backyard, he stepped on a big wheel and fell down into the splits, twisting his right knee as he hit the ground. Mr. Day had immediate pain in his right leg and experienced trouble walking, but completed the remainder of his shift, taking it easy. The next day he reported the accident.

On December 1 Mr. Day sought treatment from Dr. Kolb. Mr. Day reported that his right knee had hurt since the accident, and that the pain had worsened. Dr. Kolb conducted an examination of the knee and ordered an MRI. The MRI revealed an intermediate grade sprain and a 9mm interstitial tear of the posterior cruciate ligament (PCL), patellar tendinosis, stress reaction in the distal femur, and a small gastrocnemius-semimembranosus bursal cyst.

On May 8, 2012 Mr. Day returned to Dr. Kolb, complaining of reoccurring discomfort in his right knee over the previous 2-3 weeks. The examination showed tenderness along the lateral joint line, and Dr. Kolb assessed aggravation of right knee pain secondary to the PCL sprain. Prior to his injury Mr. Day was very active with working out and weight lifting, and played competitive softball. He attempted to play softball in March 2012, but pulled himself out to resume in April. Prior to his injury he was the first baseman, but has been unable to play that position since, and instead is now the designated hitter. Prior to his injury, Mr. Day was part of the Pressure Points and Control Tactics (PPCT), but has been unable to be recertified since his injury because he has been unable to pass the physical agility test. Mr. Day testified that
squatting is still painful for him, but that he continues his regular police officer work without restriction.

Arbitrator Pulia’s decision was filed with the Commission on August 3, 2012. The arbitrator considered each of the five factors under Section 8.1b of the Act as follows:

(i) The reported level of impairment. The parties in this case stipulated that neither was going to submit into evidence an impairment rating report written under the AMA Guides.

(ii) The occupation of the injured employee. Mr. Day was employed as a police officer at the time of the injury. Although he has been able to return to his regular job duties, he has been unable to recertify for the PPCT tactical unit since the injury.

(iii) The age of the employee at the time of injury. At the time of the injury, Mr. Day was 33 years old.

(iv) The employee’s future earning capacity. Mr. Day has been able to return to his regular job duties, but he has been unable to recertify for the PPCT tactical unit since the injury. The arbitrator noted this could negatively impact his future earning capacity.

(v) Evidence of disability corroborated by medical records. The arbitrator found that Mr. Day’s testimony was corroborated by the treating medical records of Dr. Kolb, which show Mr. Day sustained a PCL sprain, 9mm interstitial tear of the midbody PCL, patellar dentinosis, stress reaction in the distal femur, and a small gastrocnemius-semimembranosus bursal cyst. The records also showed that, although his condition is improved, Mr. Day continues to
complain of knee pain while kneeling and squatting, both of which are activities required of a police officer.

Since neither party introduced evidence of a reported level of impairment under the AMA Guides, the arbitrator made her determination of PPD by evaluating the remaining enumerated factors of section 8.1b. The arbitrator concluded that Mr. Day sustained a 5% loss of use of his right leg as a result of the accident.

i. Cheryl Edwards v. SOI/Murray Center
   12 WC 007449
   Arbitrator Gerald Granada
   Filed August 9, 2012

Cheryl Edwards, 53 at the time of the accident, was employed as a Mental Health Tech and was attacked by a patient on January 17, 2012. Two days later she reported to St. Mary’s Work Safety Institute where she was diagnosed with Cervicalgia and was released to light duty. X-rays of her spine were taken on January 19 and were “unremarkable.” Ms. Edwards then underwent a course of physical therapy and chiropractic treatment, and returned to full duty after about two months. During her final treatment on April 25 Ms. Edwards said she was experiencing no pain during the visit, but described that during static activity such a sitting she experienced intermittent pain.

Ms. Edwards testified that her symptoms wax and wane, and are exacerbated by strenuous activity. She also testified that she continues to work without restrictions and is able to perform all of her assigned job duties, but that she sometimes requires assistance when moving heavier residents into and out of shower chairs.

Arbitrator Granada’s decision was filed with the Commission on August 9, 2012. The arbitrator considered each of the five factors under Section 8.1b of the Act as follows:
(i) The reported level of impairment. The arbitrator noted that there was no reported level of impairment pursuant to the AMA Guides.

(ii) The occupation of the injured employee. Ms. Edwards was employed as a Mental Health Tech. She continues to work in this position and manages to perform all of her assigned job duties.

(iii) The age of the employee at the time of injury. At the time her injury, Ms. Edwards was 53 years old.

(iv) The employee’s future earning capacity. Ms. Edwards has not alleged any lost future earning capacity as a result of her injury.

(v) Evidence of disability corroborated by medical records. The arbitrator found that Ms. Edwards’ complaints of neck and back pain were corroborated by the medical records showing a diagnosis of Cervicalgia.

Since neither party introduced evidence of a reported level of impairment under the AMA Guides, the arbitrator made his determination of PPD on the remaining enumerated factors of section 8.1b. The arbitrator concluded that Ms. Edwards sustained a 1% loss of use of the person as a whole as a result of the accident.

V. UPDATE: DECISIONS AFTER OCTOBER 8, 2012

a. *Shawn Dorris v. Continental Tire*

12 WC 046624
Arbitrator Brandon J. Zanotti
Filed November 27, 2012

Shawn Dorris, a passenger tire press operator, was 38 years old and working for Continental Tire at the time of the accident. On September 18, 2011, as Mr. Dorris was pulling a stuck tire from the mold, it broke loose and hit the bottom side of the plate which then bounced up and struck his left forearm and wrist. That day, Mr. Dorris saw the plant physician who
recommended physical therapy at the plant physical therapy facility. Following this therapy Mr. Dorris saw the plant physician again, who referred him to Dr. David Brown, a hand surgeon in St. Louis, Missouri.

On November 2 Dr. Brown saw Mr. Dorris and found diffuse tenderness over the ulnar aspect of the left wrist and recommended continued use of a wrist splint. He ordered an MRI scan which was performed on November 15, and Dr. Brown noted findings consistent with a peripheral triangular fibrocartilage complex (TFCC) tear. On December 1 Dr. Brown performed a left wrist arthroscopy with repair of peripheral TFCC tear.

Mr. Dorris remained off work following surgery at the recommendation of Dr. Brown, and was paid temporary total disability benefits. On December 12 Dr. Brown removed his sutures and released him to return to work with restrictions. Subsequently, on January 16, 2012, Dr. Brown recommended physical therapy, which Mr. Dorris began on January 24. On March 12 Dr. Brown recommended two more weeks of physical therapy followed by a home exercise program.

Mr. Dorris’ last appointment with Dr. Brown was on May 7 at which time Mr. Dorris estimated that he was “80% better.” Dr. Brown noted that the arthroscopic portals were well healed, and that the active range of motion in his wrist was “82 degrees supination to 76 degrees pronation, 56 degrees dorsiflexion to 54 degrees palmar flexion, 21 degrees radial deviation to 33 degrees ulnar deviation.” Dr. Brown also noted grip strength testing results and a good range of motion in the digits. Dr. Brown had no further treatment recommendations.

Dr. Brown prepared a permanent partial disability impairment report at the request of Continental Tire. The report was entered into evidence. The report, dated August 27, noted that Mr. Dorris estimated he was “80% better,” and that Dr. Brown found Mr. Dorris had “excellent
range of motion and good strength.” The report also states: “According to the Sixth Edition AMA Guidelines, table 15-3, table 15-6, table 15-7 and table 15-9, Mr. Dorris has sustained a 6% upper extremity impairment as a result of his TFCC tear and subsequent surgery (as noted on page 390 of the AMA Guidelines ‘all impairments in the wrist, elbow and shoulder regional grids are expressed as upper extremity impairment’).

Mr. Dorris testified that on May 7 he had told Dr. Brown he was approximately 80% better, but testified that continues to have left wrist and forearm pain that comes and goes, and that he has restricted motion and loss of strength in his hand and wrist. Mr. Dorris also demonstrated the restricted motion in his hand and wrist at arbitration. He testified that although his wrist had improved since surgery, he would not describe his range of motion as “excellent” like Dr. Brown had in his report. Mr. Dorris further testified that he had altered his work activities to compensate for his left hand and wrist, and that he had concern completing a home flooring project without assistance due to his left hand and wrist. Mr. Dorris had returned to his regular duties as a passenger tire press operator for Continental Tire and continues to work without restrictions, a job which required he lift tires weighing between 50 and 90 pounds throughout 8 to 12 hour shifts.

Arbitrator Zanotti’s decision was filed with the Commission on November 27, 2012. The arbitrator considered each of the five factors under Section 8.1b of the Act as follows:

(i) The reported level of impairment. The arbitrator noted that in his August 27, 2012 report Dr. Brown stated that according to the AMA Guides Sixth Edition Mr. Dorris sustained 6% upper extremity impairment. The arbitrator also noted that in accordance with Illinois Workers’ Compensation Commission
decision precedent, the TCFF tear injury permanency awards are based on the “hand” and not the “arm.”

(ii) The occupation of the injured employee. Mr. Dorris was employed as a passenger tire press operator. The arbitrator concluded that Mr. Dorris’ permanent partial disability may be larger because this is a labor-intensive job.

(iii) The age of the employee at the time of injury. At the time his injury, Mr. Dorris was 38 years old. The arbitrator concluded that because he is a somewhat younger individual and will have to live with the permanent partial disability longer, his permanent partial disability will be more extensive than that of an older individual.

(iv) The employee’s future earning capacity. Mr. Dorris had not alleged any lost future earning capacity as a result of his injury, and no weight was given to this factor.

(v) Evidence of disability corroborated by medical records. The arbitrator found that Mr. Dorris’ testimony of pain which comes and goes, loss of strength, and restricted motion of his left wrist and forearm was corroborated by Dr. Brown’s medical records.

The arbitrator explained that the determination of PPD is not a mere calculation, but is instead an evaluation of all five factors enumerated in the Act, and reiterated that no single factor is the sole determinant. The arbitrator concluded that Mr. Dorris had sustained injuries causing a 13% loss of use of his left hand and wrist.
b. Jeffrey Garwood v. Lake Land College  
12 WC 004194  
Arbitrator Nancy Lindsay  
Filed January 3, 2013

Jeffrey Garwood was 54 years old and employed as a full-time vocational computer instructor at the Western Illinois Correctional Center at the time of the accident. On September 12, 2011, Mr. Garwood tripped and fell while walking to his vehicle after work, landing on his left knee, left elbow and side. Mr. Garwood immediately noticed pain in his knee, elbow, ribs and left wrist, but continued home where he continued to experience increasing pain and swelling in his left knee. Mr. Garwood reported the fall the next morning to his immediate supervisor.

Mr. Garwood sought medical care from his family doctor Dr. Jennifer Schroeder the following day, September 13, complaining of pain in his left knee, left elbow, and left rib area. Mr. Garwood said that he felt as if his leg would give way, and was walking stiff legged on that day. He acknowledged having had a left knee arthroscopy previously but denied having any further knee problems prior to his fall.

Mr. Garwood saw Dr. Schroeder again on September 23, reporting continued left knee pain and requesting a referral to the orthopedic surgeon Dr. Ronald Wheeler. Mr. Garwood saw Dr. Wheeler on October 3 and reported left knee pain which had begun after a fall at work about three weeks earlier. Dr. Wheeler diagnosed pes anserine bursitis and recommended adjustment of activities and consideration of therapy. Mr. Garwood returned on October 10, reporting continued left knee discomfort. And MRI was taken of the knee that day, and Dr. Stanton found there to be “mild chondromalacia and arthritis involving the patellofemoral compartment and a complete tear of the posterior horn of the lateral meniscus.”
Mr. Garwood saw Dr. Wheeler again on October 31, reporting increased left knee pain aggravated by activity. Dr. Wheeler noted diffuse tenderness and positive McMurray testing, and recommended surgery. The arthroscopic surgery was performed on December 2, at which time Dr. Wheeler confirmed his diagnosis of medial and lateral meniscus tears, debriding the tears, and finding Class II chondromalacia of the medial femoral condyle and medial tibial plateau, performing chondroplasty. Synovectomy was performed and a synovial plica was removed. Mr. Garwood’s subsequently saw Dr. Wheeler on December 8 at which time the sutures were removed and post-operative therapy was ordered.

At his final appointment on May 7, Mr. Garwood reported that he was doing fairly well but continued to experience some soreness. Dr. Wheeler noted improved range of motion and good strength in his left knee, and balance between quads and hamstrings. No tenderness, swelling or effusion was noted. Dr. Wheeler released Mr. Garwood from care, finding him at maximum medical improvement and not anticipating any permanent disability.

On August 3 Mr. Garwood was examined, at Lake Land College’s request, by Dr. Joseph T. Monaco who provided an impairment rating of the injury under the AMA Guides Sixth Edition. In addition to the physical examination Dr. Monaco also reviewed Mr. Garwood’s medical records, took a history, and took a summary of Mr. Garwood’s complaints. At this examination, Mr. Garwood reported liking to walk for exercise and did so for about thirty minutes two to three times a week. Mr. Garwood also reported taking two Aleve about three times a week for knee pain, and reported pain from six inches above the knee to six inches below, reaching a level of 5/10 on occasion. He also reported feeling weak when rising from a sitting position or turning to his left, a stiffening of his knee if he sat for more than twenty minutes with his knee bent, occasional loss of balance while walking down a hallway, and
increasing pain and stiffness when driving a car or walking in a store or on any concrete surface for a long period of time. Mr. Garwood also reported left knee pain while lying in bed at the end of the day, and that the pain and stiffness were lessened by elevating his leg during the day.

Based on the AMA Guides, Dr. Monaco found an impairment rating of 3% of the whole person or 8% loss of the lower extremity. Dr. Monaco concurred with Dr. Wheeler’s earlier diagnosis of tears of the medial and lateral meniscus of the left knee and chondromalacia of the patellofemoral joint of the left knee, and believed that the tears were causally related to the accident but that the chondromalacia was not related. Dr. Monaco concurred that Mr. Garwood had reached maximum medical improvement. Dr. Monaco looked to Table 16-3 of the AMA Guides, used the Diagnostic Criteria of ”Meniscal Injury” and assigned the injury to Class 1 as “Partial (medial and lateral),” an assignment based upon the tear and unrelated to whether or not the treatment was surgical. Dr. Monaco testified that, under the Guides, he would initially assign the injury to Class C within that class, providing a default impairment of 10% of the lower extremity subject to grade modifiers and adjustment grids.

Mr. Garwood testified that he remains employed as an instructor of Construction Occupations and denied having problems with his knee prior to his September 12, 2011 fall. He testified that he is able to perform his present job duties but sits whenever he can, preferring to sit rather than stand while teaching. Mr. Garwood also testified to taking Aleve when the pain is “real bad,” and to continuing to experience the same problems with his knee as he described during his August 3 visit with Dr. Monaco. He also testified that he and his wife used to walk for exercise four to five times a week, but walk less now because his knee will hurt and he doesn’t feel like it.
Arbitrator Lindsay’s decision was filed with the Commission on January 3, 2013. The arbitrator considered each of the five factors under Section 8.1b of the Act as follows:

(i) The reported level of impairment. The arbitrator noted that in his report Dr. Monaco provides an 8% impairment of a lower extremity. In determining this rating, Dr. Monaco acknowledged that he did not use the recommended “outcome measure” for lower extremity ratings and that he did not take into account any aggravation that Mr. Garwood suffered to his pre-existing chondromalacia because he believed the condition unrelated to the September 12 accident. The arbitrator also noted that Dr. Monaco agreed during cross-examination that Mr. Garwood’s PDQ score would place him in a “moderate” impairment category rather than the “mild” indicated in his report.

(ii) The occupation of the injured employee. Mr. Garwood was employed as an instructor in Construction Occupations.

(iii) The age of the employee at the time of injury. At the time his injury, Mr. Garwood was 53 years old. The arbitrator noted that no evidence was presented as to how Mr. Garwood’s age might affect his disability.

(iv) The employee’s future earning capacity. Mr. Garwood testified that his employer allows him to accommodate his ongoing problems, that he can sit and stand as desired, and that strenuous activity is not required. The arbitrator noted that if he were to lose his current employment and be required to seek alternative employment, Mr. Garwood could experience issues with accommodation, but notes that Mr. Garwood’s varied past skills could present greater employment opportunities. The arbitrator further noted that no
evidence was presented showing diminished future earning capacity as a result of the injury.

(v) Evidence of disability corroborated by medical records. The arbitrator found that Mr. Garwood’s testimony of pain and stiffness in his left knee limiting his ability to stand and walk were corroborated by medical records and by Dr. Monaco’s findings.

The arbitrator considered all of the enumerated factors, and concluded that Mr. Garwood had sustained a permanent partial disability of 20% loss of use of the left leg.

c. Curtis Oltmann v. Continental Tire
12 WC 11777
Arbitrator Joshua Luskin
Filed January 14, 2013

Curtis Oltmann was 49 years old and employed as a labor trainer at the time of the accident. On January 31, 2012 Mr. Oltmann, who is right hand dominant, tripped and fell over a guard rail, landing on and injuring his left hand. Mr. Oltmann sought medical care the same day and x-rays were taken which showed a nondisplaced fracture. His wrist was splinted and he was referred to the orthopedist Dr. David Brown. On February 1 Mr. Oltmann saw Dr. Brown who concurred with the diagnosis, applied a splint, and released him to one-handed duty. Mr. Oltmann returned to work on light duty.

Mr. Oltmann returned to Dr. Brown on February 29 and reported feeling “a lot better.” At this visit Dr. Brown noted a good range of motion and that residual symptoms would likely resolve. He discharged Mr. Oltmann to full duty, finding him to be at maximum medical improvement.
Dr. Brown prepared his AMA rating report on March 15. In this report, Dr. Brown gave the opinion that Mr. Oltmann had 0% impairment of the left wrist. Dr. Brown also testified at deposition in support of his findings, treatment course, and the bases for his impairment rating.

Mr. Oltmann continues to work as a labor trainer, but noted occasional discomfort in his left wrist. Mr. Oltmann also testified that he continues to engage in recreational activities including golf, in which his team came in first out of sixteen in the plant league after he achieved maximum medical improvement.

Arbitrator Luskin’s decision was filed with the Commission on January 14, 2013. The arbitrator considered each of the five factors under Section 8.1b of the Act as follows:

(i) The reported level of impairment. The arbitrator noted Dr. Brown found a permanent partial disability rating of 0% of the left wrist.

(ii) The occupation of the injured employee. Mr. Oltmann was employed as a labor trainer and continues to work in this position in his usual and customary manner.

(iii) The age of the employee at the time of injury. At the time his injury, Mr. Oltmann was 49 years old.

(iv) The employee’s future earning capacity. Mr. Oltmann was released to his regular job duties and continues to work in the same position as before the accident.

(v) Evidence of disability corroborated by medical records. The arbitrator noted that Mr. Oltmann complained of some minor residual symptoms in his wrist.
The arbitrator considered all of the factors and evidence produced and found that Mr. Oltmann’s injuries had caused him a permanent partial disability of 5% loss of use of his left hand.

d. Robert Todd Riley v. Con-Way Freight, Inc.
12 WC 11083
Arbitrator Joshua Luskin
Filed January 14, 2013

Robert Todd Riley was 46 years old and employed as a freight truck driver sales representative at the time of his injury. The duties of this position included loading and unloading trucks, hauling and distributing freight, and operating forklifts and pallet jacks. On December 5, 2011 Mr. Riley was operating a forklift to load a crate into a trailer when the crate slipped off the forklift pinning him down and injuring his right knee. He was brought to the emergency room that day where x-rays were taken, revealing “an acute closed comminuted fracture of the proximal end of the right fibula.”

Mr. Riley was referred to the orthopedist Dr. McIntosh, and was seen by him on December 7. Dr. McIntosh recommended an MRI, which was performed on December 14 and revealed bone bruising and thinning of the ACL with possible tearing. Dr. McIntosh diagnosed a proximal fibular fracture with an ACL tear, and recommended ACL reconstruction. On February 27, 2012 the arthroscopic ACL repair was performed.

After a period of work hardening Dr. McIntosh released Mr. Riley to full duty on July 9. On August 7 Dr. McIntosh found Mr. Riley to be at maximum medical improvement, noting a full range of motion.

At the request of Mr. Riley’s attorney, Dr. McIntosh prepared a permanent partial disability rating pursuant to the AMA Guides on August 31. Dr. McIntosh gave the opinion that Mr. Riley had sustained a 7% impairment of his leg, or a 3% impairment of the whole person.
Since July 9 Mr. Riley has returned to his usual and customary employment. He still uses a hinged knee brace while working, but does not at home or during leisure activities. Mr. Riley testified that he is able to perform his pre-injury work activities, and that his knee continues to improve, but testified that his knee aches from time to time and that he does not need medication for this pain.

Arbitrator Luskin’s decision was filed with the Commission on January 14, 2013. The arbitrator considered each of the five factors under Section 8.1b of the Act as follows:

(i) The reported level of impairment. The arbitrator noted Dr. McIntosh found a permanent partial disability rating of 7% of the lower extremity, or 3% of the person as a whole.

(ii) The occupation of the injured employee. Mr. Riley was employed as a freight truck driver sales representative and has since returned to work in this position in his usual and customary manner.

(iii) The age of the employee at the time of injury. At the time his injury, Mr. Riley was 46 years old.

(iv) The employee’s future earning capacity. Mr. Riley was released to his regular job duties and continues to work in the same position and at the same rate of pay as before the accident. No evidence of diminished future earning capacity was introduced.

(v) Evidence of disability corroborated by medical records. The arbitrator noted that Mr. Riley complained of some stiffness, aching, and weather sensitivity in his right knee, and of difficulty climbing ladders, and noted that these complaints are consistent with the medical records.
The arbitrator considered all factors and all of the evidence produced and found that Mr. Riley had sustained a 27.5% permanent loss of the use of his right leg.

VI. CONCLUSION

The newly added section 8.1b provides that for injuries occurring on or after September 1, 2011, a licensed physician shall provide an partial disability impairment rating report using the most current edition of the AMA Guides, and outlines five factors that shall be used by the Commission in determining permanent partial disability (PPD): level of impairment, occupation, age, future earning capacity, and medical records.

After September 1, 2011, arbitrators have issued thirteen separate decisions involving the application of Section 8.1b of the Act. In six of those cases have the arbitrators considered physician impairment rating reports. In Johnson, Oltmann and Riley the doctor’s impairment rating report was admitted, in Williams, Dorris, and Garwood an impairment rating report was admitted and disputed. In the remaining seven cases no impairment rating report was admitted. In all cases the PPD determination was rendered after a thorough evaluation of all of the enumerated factors of section 8.1b. These decisions reveal that even when an impairment rating report is included, the additional evaluation of the remaining enumerated factors results in a determination of disability that is higher than the rating. Furthermore, these decisions have shown that occupations with a heavier workload may lead to a finding of greater PPD, and that the age of the employee may also be relevant to determinations of PPD, since younger individuals may be found more likely to live longer with the disability, but younger individuals may also be more likely to have a long career in their current occupation. Finally, findings of no change in future earning capacity because of an injury may be weighed against the factors
supporting PPD. Any evidence of disability and corroborating treating medical records are also considered.

It is important to know that physician impairment rating reports based on AMA Guides can be disputed through testimony and corroborating medical records, especially since the AMA Guides can have a large impact on the resulting determination of impairment and, consequently, an employee’s PPD benefits. The decisions have shown that the impairment rating report is not the sole determinative factor in these cases. Other factors are considered by the arbitrators and are being weighed in their decisions awarding permanent partial disability benefits. The authors of the AMA Guides state that they were written to generate more certainty and uniformity in the rating of permanent impairment. However, arbitrators are writing decisions and awarding permanent partial disability in cases where no physician impairment report is entered into evidence. In these cases, the arbitrators consider the remaining five factors in reaching a determination as to the injured worker’s permanent partial disability percentage. Even when physician impairment rating reports are entered into evidence, they are often rebutted by other evidence including inconsistencies with the requirements contained within the AMA Guides and findings inconsistent with other medical records. Thus, the physician’s impairment rating report, when entered into evidence, becomes simply one additional factor to be considered by the arbitrator in awarding permanent partial disability.