BEFORE THE WORKERS' COMPENSATION APPEALS BOARD

OF THE STATE OF CALIFORNIA

JOHN DOE,	**)**
Applicant,	**)** Case No.: ADJ12345678
	)
vs.	**)** Claim No.: WC0123456789
	)
BIG BOX and	**)** DIMINISHED FUTURE EARNING
	)
COVERAGE CO.,	**)** CAPACITY REBUTTAL ANALYSIS
	)
Defendant.	**)**
	)

I.   INTRODUCTION

The Workers Compensation Appeals Board issued two en banc opinions, Ogilvie I and Ogilvie II, which set forth a process for disputing the diminished future earning capacity ("DFEC") portion of the 2005 Permanent Disability Rating Schedule ("PDRS") consistent with L.C. § 4660(b)(2) and the RAND study upon which the DFEC adjustment is based.[1][2][3] This Ogilvie DFEC rebuttal analysis follows.

II. DFEC REBUTTAL ANALYSIS

A. Determine "Post-Injury Earnings of the Injured Employee"

The first step in a DFEC rebuttal analysis is to determine the injured employee's post-injury earnings. The Board in Ogilvie indicates the "post-injury earnings of the injured employee" may be obtained by having the injured worker obtain their wage information from the EDD, earnings records from the Social Security Administration, tax records, or W-2 forms for the three years post injury.[4]

In the 3.0000 years since their date of injury, Applicant earned a total of $23,992.38.[5]

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[1] References to Ogilvie I are to Ogilvie v. City and County of San Francisco (2/3/2009) 74 Cal.Comp.Cases 248 (Appeals Board en banc) (Ogilvie I). Subsequent citations refer to the page numbers of the WCAB website version.
[2] References to Ogilvie II are to Ogilvie v. City and County of San Francisco (9/3/2009) 74 Cal.Comp.Cases 1127 (Appeals Board en banc) (Ogilvie II). Subsequent citations refer to the page numbers of the WCAB website version.
[3] En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and workers' compensation judges. (Cal. Code Regs., tit. 8, § 10341; City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia) (2005) 126 Cal.App.4th 298, 313, fn. 5 [70 Cal.Comp.Cases 109, 120, fn. 5]; Gee v. Workers' Comp. Appeals Bd. (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236, 239, fn. 6]; see also Gov. Code, § 11425.60(b).) See Exhibit 6 for Appeals Board Reporter citation cross reference chart.
[4] "[T]here is nothing magical about a three-year period." Ogilvie I at 23; Ogilvie II at 31. "In cases of individual injured employees, however, a longer or shorter period of post-injury earnings may be appropriate." Id.
[5] Exhibit 8.

B. Determine "Post-Injury Earnings of Similarly Situated Employees"

The second step in a DFEC rebuttal analysis is to determine the post-injury earnings of similarly situated employees.[6] According to the Board in <u>Ogilvie</u>, the primary source for post-injury earnings of similarly situated employees is the "EDD's Labor Market Information Division (LMID) website."[7] The Board recommends "extrapolations may be made from this [LMID website] quarterly data."[8] The EDD LMID website contains wage data for various occupations (designated by the "Standard Occupational Classification" system used by the Bureau of Labor Statistics) grouped in "Metropolitan Statistical Areas" as well as aggregated throughout the state.[9]

1. Similarly Situated Employees

Based upon the Applicant's job duties and, to a lesser extent their job title, the Standard Occupational Classification ("SOC") selected was "47-2152." This SOC is associated with "Plumbers, Pipefitters, and Steamfitters."

2. EDD Labor Market Information Division Wage Data

This information within a Metropolitan Statistical Area is then screened by the LMID "to ensure that confidential information can not be inferred from an estimate."[10] All aggregated information is available from the LMID website.[11]

In those circumstances where the sample population is too small, EDD wage data is "suppressed and not released to the public."[12] [13] Upon request, the LMID will run a custom report for nearby counties. Each custom report per county can take up to 8 hours at a rate of $71.00 per hour.[14] Even after a report is run it is possible the screening process will prevent the LMID from disclosing the data from that report.[15]

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[6] <u>Ogilvie I</u> at 24.

[7] "Often, empirical wage data on 'similarly situated employees' may be gathered from EDD's Labor Market Information Division (LMID) website." <u>Ogilvie I</u> at 25; <u>Ogilvie II</u> at 22.

[8] <u>Ogilvie I</u> at 25, fn 19.

[9] Exhibit 5, Letter from Labor Market Information Division, 11/12/2009.

[10] <u>Id</u>.

[11] <u>Id</u>.

[12] <u>Id</u>.

[13] There are several reasons why a sample size within a Metropolitan Statistical Area may be too small for a particular year. The most obvious is when there is an area with a low population. It is also possible that there are too few people within that particular industry or occupational group in that area for the selected year.

[14] Exhibit 5, Letter from Labor Market Information Division, 11/12/2009.

[15] <u>Id</u>.

- Diminished Future Earning Capacity Rebuttal Analysis -

The Board in Ogilvie suggests alternatives to the EDD data when "there may be problems with or limitations to the LMID website wage data."[16] However, it will always be more cost effective to use the free EDD wage information aggregated on a statewide level (as opposed to wage data aggregated within a Metropolitan Statistical Area) rather than request custom reports from the LMID.

3. EDD wage data, percentile within an occupation and geographic region

The EDD wage information contains hourly rate and annual income data for various occupations, at several levels (mean, 10th, 25th, 50th, 75th, and 90th percentile), for regions across California as well as an aggregated calculation for all of California.[17] The benefit of using this data is that it accounts for "[t]emporary economic downturns or other factors" such as fluctuations or trends in an industry or geographic region.[18]

4. Applicant's percentile within EDD wage data for similarly situated employees

Similarly situated employees' earnings in the year prior to the date of injury were as follows:[19]

Year	Number of Employed	Wage Mean	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
2004	10,140	$46,961.00	$21,868.00	$32,289.00	$49,029.00	$59,558.00	$70,757.00

The injured worker's average annual earnings of $65,520.00 would place them above the 75th percentile for similarly situated employees' earnings prior to their date of injury.[20]

5. Post-Injury Earnings of Similarly Situated Employees

The earnings of similarly situated employees for several years post-injury are as follows:[21]

Year	Number of Employed	Wage Mean	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
2005	10,770	$43,426.00	$21,002.00	$27,401.00	$41,590.00	$59,079.00	$70,212.00
2006	11,290	$43,597.00	$20,807.00	$29,038.00	$40,676.00	$57,955.00	$71,254.00
2007	10,300	$44,210.00	$22,069.00	$29,603.00	$40,730.00	$56,887.00	$73,228.00
2008	11,000	$47,210.00	$24,720.00	$32,997.00	$44,826.00	$59,575.00	$75,305.00

[16] The Board describes alternatives to EDD wage information for those times when "there may be problems with or limitations to LMID website wage data." Ogilvie I at 25.

[17] The "mean" is an average of all the data. The 50th percentile or "median" is a value higher than half of the sample population and lower than the other half of the same sample population.

[18] Ogilvie I at 35.

[19] Exhibit 1. Data is not available for years marked with an asterisk (*); statewide annual salary data is used instead.

[20] L.C. § 4651 states, "Average annual earnings shall be taken as fifty-two times the average weekly earnings referred to in this chapter." Given an average weekly wage of $1,260.00, Applicant's average annual earnings would be calculated as follows: (52 x $1,260.00) = $65,520.00.

[21] Exhibit 1. Data is not available for years marked with an asterisk (*); statewide annual salary data is used instead.

- Diminished Future Earning Capacity Rebuttal Analysis -

1 For the post-injury earnings of similarly situated employees over 3.0000 years are as follows:

PIESSE = Post-Injury Earnings of Similarly Situated Employees

2 PIESSE = $59,079.00 + $57,955.00 + $56,887.00

3 Thus, for the purposes of this DFEC rebuttal analysis, the post-injury earnings of similarly

4 situated employees is $173,921.00.

5 **C. Calculate "Injured Employee's Proportional Earnings Loss"**

6 The injured employees' proportional earnings loss is equal to the three year total of the post-

7 injury earnings of similarly situated employees less the three year total of the post-injury earnings of the

8 applicant, divided by the three-year total of the similarly situated employee earnings.[22] [23] [24]

9 Thus, if: *PIEA = Post-Injury Earnings of Applicant*

        PIESSE = Post-Injury Earnings of Similarly Situated Employees

10 Then: *Proportional Earnings Loss = [(PIESSE – PIEA) / PIESSE]*

11 In this case, the "Injured Employee's Proportional Earnings Loss" is calculated as follows:

12 PIEA   = $23,992.38

PIESSA   = $173,921.00

13 Proportional Earnings Loss   = [($173,921.00 - $23,992.38) / $173,921.00]

14 Thus, the Applicant's "Proportional Earnings Loss" is 0.8621.

15 **D. Calculate "Individualized Ratio of Rating Over Proportional Earnings Loss"**

16 The injured workers' "individualized ratio of rating over proportional earnings loss" or

17 "individualized rating to loss ratio"("IRL ratio") is the whole person impairment ("WPI") divided by the

18 injured employee's proportional earnings loss.[25]

19 Thus, if: *L = Proportional Earnings Loss*

        WPI = Whole Person Impairment

20 Then: *IRL ratio = (WPI / L)*

21 Since the "Individualized Ratio of Rating Over Proportional Earnings Loss" is calculated using

22 the WPI, it must be recalculated with each rating string.

23 **E. Determining Rebuttal of the DFEC Component of the 2005 PDRS**

24 Every body part under the 2005 PDRS has its own "body part code" and is associated with one of

25 eight "FEC ranks." Each FEC rank represents a range of proportional earnings loss ratios from the 2005

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27 [22] The Board also refers to the "proportional earnings loss" as the "individualized proportional earnings loss."

[23] Ogilvie I at 26.

28 [24] Ogilvie I at 26.

[25] Ogilvie I at 47.

1   RAND Study.[26] [27] Each of the eight FEC ranks was assigned a DFEC adjustment factor used for

2   adjusting the whole person impairment assigned to a particular body region.[28]

3   The next step in the DFEC rebuttal analysis is to compare the range of proportional earnings loss

4   ratios associated with FEC rank of the body part being rated against the injured workers' individualized

5   rating to loss ratio.[29] The injured workers' individualized rating to loss ratio will either fall within the

6   range of ratios for the same FEC rank, within the range of ratios for a different FEC rank, or outside the

7   boundaries of all range of ratios for the FEC ranks.

8   If the individualized rating to loss ratio:

9   • Is within the range of ratios for the same FEC rank associated with the injured body part, the

10   DFEC component of the 2005 PDRS is not rebutted.[30]

11   • Falls within the range of ratios for a different FEC rank, the DFEC component of the 2005 PDRS

12   has been rebutted. This new FEC rank is used to adjust the whole person impairment "before

13   adjustment for age and occupation."[31] [32]

14   • "[F]alls outside all of the range of ratios for all FEC ranks," (below 0.450 or above 1.810) then

15   the DFEC component of the 2005 PDRS has been rebutted.[33] [34] However, in this instance a

16   further step is required to calculate the new DFEC adjustment factor.

17   When an injured workers' individualized rating to loss ratio is outside all the range of ratios for

18   all FEC ranks, the Board in Ogilvie holds, "the employee's DFEC adjustment factor shall be determined

19   by applying the formula of $([1.81/a] \times .1) + 1$, where 'a' is the employee's individualized rating to loss

20   ratio."[35] This DFEC adjustment factor is multiplied by the standard impairment rating (the "Whole

21   Person Impairment") to arrive at the DFEC adjusted impairment rating, "before adjustment for age and

22   occupation."[36] [37]

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[26] Ogilvie I at 27-28.
[27] Exhibit 4, 2005 PDRS, page 1-7, Table A.
[28] Exhibit 4, 2005 PDRS, pages 1-7 to 1-8.
[29] Id.
[30] Ogilvie I at 28.
[31] Id. at 29-30.
[32] Id. at 30.
[33] Id. at 31-33.
[34] Exhibit 4, 2005 PDRS, page 1-7, Table A.
[35] Ogilvie I at 31; Ogilvie II at 23.
[36] Ogilvie I at 31-32.
[37] Id. at 32.

- Diminished Future Earning Capacity Rebuttal Analysis -

1   **III. SUMMARY OF DFEC REBUTTAL ANALYSIS**

2   Based on the above, the entire DFEC rebuttal analysis process may be described as follows:

3   1. Determine Post-Injury Earnings of Applicant

4   2. Determine Post-Injury Earnings of Similarly Situated Employees

5   3. Calculate Proportional Earnings Loss

6   4. Calculate Individualized Rating to Loss Ratio

7   5. Compare the Individualized Rating to Loss Ratio to range of ratios for the FEC ranks:
         a) If the same FEC rank, the DFEC portion of the 2005 PDRS has not been rebutted.
8   b) If another FEC rank, the DFEC portion of the 2005 PDRS has been rebutted and the
            rating is recalculated using the new FEC rank.
9   c) If outside all FEC ranks, the DFEC portion of the 2005 PDRS has been rebutted and the
            rating is recalculated using a new DFEC adjustment factor according to the formula
10   "([1.81/a] x .1) + 1, where 'a' is the employee's individualized rating to loss ratio."[38]

11   **IV. SUMMARY OF EXHIBITS USED FOR DFEC REBUTTAL ANALYSIS**

12   The following exhibits include a summary of every data point used in this DFEC rebuttal

13   analysis, a rating under the 2005 Permanent Disability Rating Schedule, a combined values calculation

14   for all ratings, a step-by-step DFEC analysis for each rating string, DFEC adjusted rating as appropriate,

15   a combined values calculation after DFEC analysis, and supporting documentation for data points used.

16   • **Exhibit 1: Summary of Data Used in the DFEC Rebuttal Analysis**

17   • **Exhibit 2: Disability Rating Under 2005 Permanent Disability Rating Schedule**

18   • **Exhibit 3: Disability Rating after DFEC Rebuttal Analysis based on EDD percentile**

19   • **Exhibit 4: 2005 Permanent Disability Rating Schedule, Tables A and B**

20   • **Exhibit 5: Letter from Labor Market Information Division, 11/12/2009**

21   • **Exhibit 6: Appeals Board Reporter Citation Cross Reference Chart**

22   • **Exhibit 7: 2005 Permanent Disability Rating Schedule, Combining Ratings**

23   • **Exhibit 8: Evidence of Post-Injury Earnings of Applicant**

27   Run this calculation (or a variation) at PDRater.com by clicking here.
         (Or you can type " http://tinyurl.com/ylevut4 " into your web browser).

28   _____
     [38] <u>Ogilvie I</u> at 31; <u>Ogilvie II</u> at 23.

                        - Diminished Future Earning Capacity Rebuttal Analysis -

EXHIBIT 1

Summary of Data Used in the DFEC Rebuttal Analysis

1. Date of Birth   = *04/08/1955*
2. Date of Injury   = *06/05/2005*
3. Age on Date of Injury   = *50*
4. Permanent and Stationary Report   = *Dr. Phil 9/1/2009*
5. 2005 PDRS Occupation
    Group 481: "PLUMBER construction"
6. Years Since Date of Injury   = *3.0000*
7. Applicant's Average Weekly Wage   = *$1,260.00*
8. Applicant's Average Annual Wage[39]   = *$65,520.00*
9. Post-Injury Earnings of Applicant[40]   = *$23,992.38*
10. Applicant's ZIP code   = *90210*
11. Applicant's geographic region
    "Los Angeles-Long Beach-Glendale Metro Div"
12. Employment Development Department "Standard Occupational Classification"

    "Standard Occupational Classification" Code 47-2152 is associated with the job title "Plumbers, Pipefitters, and Steamfitters."
    The job description for "Standard Occupational Classification" Code 47-2152 is "Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems."

13. Employment Development Department Labor Market Information Division Information[41]

Year[42]	Employed	Wage Mean	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
2004	10,140	$46,961.00	$21,868.00	$32,289.00	$49,029.00	$59,558.00	$70,757.00
2005	10,770	$43,426.00	$21,002.00	$27,401.00	$41,590.00	$59,079.00	$70,212.00
2006	11,290	$43,597.00	$20,807.00	$29,038.00	$40,676.00	$57,955.00	$71,254.00
2007	10,300	$44,210.00	$22,069.00	$29,603.00	$40,730.00	$56,887.00	$73,228.00
2008	11,000	$47,210.00	$24,720.00	$32,997.00	$44,826.00	$59,575.00	$75,305.00
2009	9,080	$50,252.00	$28,622.00	$35,990.00	$48,913.00	$62,400.00	$77,259.00

Annual Wage or Salary Information

14. Post-Injury Earnings of Similarly Situated Employees ("PIESSE")
    The Applicant's average annual wage of $65,520.00 would place them above the 75th percentile.
    For the post-injury earnings of similarly situated employees over 3.0000 years are as follows:
        PIESSE = *$59,079.00 + $57,955.00 + $56,887.00*
        PIESSE = *$173,921.00*

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[39] Infra Part II.B.4. p. 3; L.C. § 4651.
[40] Exhibit 8.
[41] Annual wage or salary and hourly wage information is available for free at www.labormarketinfo.edd.ca.gov. While the hourly wage information is usually equal to the annual salary divided by 2080 (52 wks/yr x 40 hrs/wk = 2080 hrs/yr), this is not always the case. It is best to obtain the annual salary information directly from the website.
[42] For those years marked with an asterisk (*) the EDD LMID data is not available and the statewide aggregate annual salary information is used. For further information see infra Part II.B.2. pp. 2-3. and Exhibit 5.

EXHIBIT 2

Disability Rating Under 2005 Permanent Disability Rating Schedule

1. Date of Birth = *04/08/1955*
2. Date of Injury = *06/05/2005*
3. Age on Date of Injury = *50*
4. Permanent and Stationary Report = *Dr. Phil 9/1/2009*
5. 2005 PDRS Occupation

Group 481: "PLUMBER construction"

Hand/multiple fingers - Range of motion
16.05.01.00 - 2 - [1]2 - 481H - 3 = 3%

Knee - Range of Motion
50%(17.05.04.00 - 7 - [2]8 - 481I - 12 = 14%) = 7%

Lumbar - Diagnosis-related Estimate
15.03.01.00 - 9 - [5]11 - 481I - 16 = 18%

Psychiatric - Mental and Behavioral
14.01.00.00 - 3 - [8]4 - 481H - 6 = 7%

Using the Combined Values Chart, the combined rating is "18c7c7c3=31%".
This Combined Values Chart calculation assumes the user has already combined impairments
properly as required by page 1-11 of the 2005 Permanent Disability Rating Schedule. Exhibit 7.

EXHIBIT 3

Disability Rating after DFEC Rebuttal Analysis based on EDD percentile

1. Date of Birth = *04/08/1955*
2. Date of Injury = *06/05/2005*
3. Age on Date of Injury = *50*
4. Permanent and Stationary Report = *Dr. Phil 9/1/2009*
5. 2005 PDRS Occupation
   Group 481: "PLUMBER construction"

Step 1: Determine Post-Injury Earnings of Applicant ("PIEA")

6. Years Since Date of Injury = *3.0000*
7. Post-Injury Earnings of Applicant[43] = *$23,992.38*

Step 2: Determine Post-Injury Earnings of Similarly Situated Employees ("PIESSE")

8. Applicant's Average Weekly Wage ("AWW") = *$1,260.00*
9. Applicant's Average Annual Wage ("AAW")[44] = *$65,520.00*
10. Applicant's ZIP code = *90210*
11. Applicant's geographic region:
    "Los Angeles-Long Beach-Glendale Metro Div"
12. Employment Development Department "Standard Occupational Classification"
    Code 47-2152: "Plumbers, Pipefitters, and Steamfitters"

13. Percentile earnings above Applicant's AAW for 2004 [45] = *90th*
14. Percentile earnings below Applicant's AAW for 2004 = *75th*
15. Post-Injury Earnings of Similarly Situated Employees based on the 75th percentile:
    PIESSE = *$59,079.00 + $57,955.00 + $56,887.00*
    PIESSE = *$173,921.00*

Step 3: Calculate Proportional Earnings Loss

16. Proportional Earnings Loss formula = (PIESSE – PIEA) / PIESSE
17. Proportional Earnings Loss = *[($173,921.00 - $23,992.38) / $173,921.00]*
18. Proportional Earnings Loss = *0.8621*

Step 4: Calculate Individualized Rating to Loss Ratio ("IRL ratio")

19. Individualized Rating to Loss ratio formula = (WPI / Proportional Earnings Loss)

Step 5: Compare Individualized Rating to Loss Ratio to range of ratios for the FEC ranks

20. If the IRL ratio for the injured body part is within the range of ratios for the <u>same</u> FEC rank, the DFEC portion of the 2005 PDRS <u>has not</u> been rebutted. The rating remains the same.
21. If the IRL ratio for the injured body part is within the range of ratios for a <u>different</u> FEC rank, the DFEC portion of the 2005 PDRS <u>has</u> been rebutted. The rating is recalculated with the new FEC rank.
22. If the IRL ratio for the injured body part is <u>outside</u> the range of ratios for all FEC ranks, the DFEC portion of the 2005 PDRS <u>has</u> been rebutted.
   • The rating is recalculated using a new DFEC adjustment factor according to the formula "([1.81/a] x .1) + 1, where 'a' is the employee's individualized rating to loss ratio."[46]
   • DFEC adjustment factor formula = ([1.81/a] x .1) + 1
   • DFEC adjustment factor formula = ([1.81/ **IRL ratio**)] x .1) + 1

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[43] Exhibit 8.
[44] <u>Infra</u> Part II.B.4. p. 3; L.C. § 4651.
[45] Based upon the "Annual Wage or Salary" information from the EDD LMID website for "Standard Occupational Classification" code. <u>See also</u> Exhibit 1.
[46] <u>Ogilvie I</u> at 31; <u>Ogilvie II</u> at 23.

- Diminished Future Earning Capacity Rebuttal Analysis -

EXHIBIT 3 *(continued)*

Disability Rating after DFEC Rebuttal Analysis based on EDD percentile

Body Part: "Hand/multiple fingers - Range of motion"
Rating String: 16.05.01.00 - 2 - [1]2 - 481H - 3 = 3%

Step 1: Post-Injury Earnings of Applicant = $23,992.38
Step 2: Post-Injury Earnings of Similarly Situated Employees = $173,921.00
Step 3: Proportional Earnings Loss

Proportional Earnings Loss = (PIESSE – PIEA) / PIESSE
Proportional Earnings Loss = [($173,921.00 - $23,992.38) / $173,921.00]
Proportional Earnings Loss = 0.8621

Step 4: Individualized Rating to Loss Ratio ("IRL ratio")

Individualized Rating to Loss ratio = (WPI / Proportional Earnings Loss)
Individualized Rating to Loss ratio = (0.02 / 0.8621)
Individualized Rating to Loss ratio = 0.023199

Step 5: Compare Individualized Rating to Loss Ratio to range of ratios for the FEC ranks

Body part code 16.05.01.00 is associated with an FEC rank of 1 (1.647 to 1.81).
The IRL ratio is below the lowest ratio for any of the FEC ranks (0.450).
The DFEC portion of the 2005 PDRS has been rebutted.
New DFEC adjustment factor formula = ([1.81/ (IRL ratio)] x .1) + 1
New DFEC adjustment factor formula = ([1.81/ (0.023199)] x .1) + 1
New DFEC adjustment factor formula = 8.8021
The rating is recalculated using a DFEC adjustment factor of 8.8021.
New rating: 16.05.01.00 - 2 - [*8.8021]18 - 481H - 22 = 25%

Body Part: "Knee - Range of Motion"
Rating String: 50%(17.05.04.00 - 7 - [2]8 - 481I - 12 = 14%) = 7%

Step 1: Post-Injury Earnings of Applicant = $23,992.38
Step 2: Post-Injury Earnings of Similarly Situated Employees = $173,921.00
Step 3: Proportional Earnings Loss

Proportional Earnings Loss = (PIESSE – PIEA) / PIESSE
Proportional Earnings Loss = [($173,921.00 - $23,992.38) / $173,921.00]
Proportional Earnings Loss = 0.8621

Step 4: Individualized Rating to Loss Ratio ("IRL ratio")

Individualized Rating to Loss ratio = (WPI / Proportional Earnings Loss)
Individualized Rating to Loss ratio = (0.07 / 0.8621)
Individualized Rating to Loss ratio = 0.081197

Step 5: Compare Individualized Rating to Loss Ratio to range of ratios for the FEC ranks

Body part code 17.05.04.00 is associated with an FEC rank of 2 (1.476 to 1.646).
The IRL ratio is below the lowest ratio for any of the FEC ranks (0.450).
The DFEC portion of the 2005 PDRS has been rebutted.
New DFEC adjustment factor formula = ([1.81/ (IRL ratio)] x .1) + 1
New DFEC adjustment factor formula = ([1.81/ (0.081197)] x .1) + 1
New DFEC adjustment factor formula = 3.2291
The rating is recalculated using a DFEC adjustment factor of 3.2291.
New rating: 50%(17.05.04.00 - 7 - [*3.2291]23 - 481I - 31 = 35%) = 18%

- Diminished Future Earning Capacity Rebuttal Analysis -
[10]

EXHIBIT 3 *(continued)*

Disability Rating after DFEC Rebuttal Analysis based on EDD percentile

Body Part: "Lumbar - Diagnosis-related Estimate"
Rating String: 15.03.01.00 - 9 - [5]11 - 481I - 16 = 18%
Step 1: Post-Injury Earnings of Applicant   = $23,992.38
Step 2: Post-Injury Earnings of Similarly Situated Employees   = $173,921.00
Step 3: Proportional Earnings Loss
           Proportional Earnings Loss = (PIESSE – PIEA) / PIESSE
           Proportional Earnings Loss = [($173,921.00 - $23,992.38) / $173,921.00]
           Proportional Earnings Loss = 0.8621
Step 4: Individualized Rating to Loss Ratio ("IRL ratio")
           Individualized Rating to Loss ratio = (WPI / Proportional Earnings Loss)
           Individualized Rating to Loss ratio = (0.09 / 0.8621)
           Individualized Rating to Loss ratio = 0.104396
Step 5: Compare Individualized Rating to Loss Ratio to range of ratios for the FEC ranks
           Body part code 15.03.01.00 is associated with an FEC rank of 5 (0.963 to 1.133).
           The IRL ratio is below the lowest ratio for any of the FEC ranks (0.450).
           The DFEC portion of the 2005 PDRS has been rebutted.
           New DFEC adjustment factor formula = ([1.81/ (IRL ratio)] x .1) + 1
           New DFEC adjustment factor formula = ([1.81/ (0.104396)] x .1) + 1
           New DFEC adjustment factor formula = 2.7338
           The rating is recalculated using a DFEC adjustment factor of 2.7338.
           New rating: 15.03.01.00 - 9 - [*2.7338]25 - 481I - 33 = 37%

Body Part: "Psychiatric - Mental and Behavioral"
Rating String: 14.01.00.00 - 3 - [8]4 - 481H - 6 = 7%
Step 1: Post-Injury Earnings of Applicant   = $23,992.38
Step 2: Post-Injury Earnings of Similarly Situated Employees   = $173,921.00
Step 3: Proportional Earnings Loss
           Proportional Earnings Loss = (PIESSE – PIEA) / PIESSE
           Proportional Earnings Loss = [($173,921.00 - $23,992.38) / $173,921.00]
           Proportional Earnings Loss = 0.8621
Step 4: Individualized Rating to Loss Ratio ("IRL ratio")
           Individualized Rating to Loss ratio = (WPI / Proportional Earnings Loss)
           Individualized Rating to Loss ratio = (0.03 / 0.8621)
           Individualized Rating to Loss ratio = 0.034799
Step 5: Compare Individualized Rating to Loss Ratio to range of ratios for the FEC ranks
           Body part code 14.01.00.00 is associated with an FEC rank of 8 (0.45 to 0.62).
           The IRL ratio is below the lowest ratio for any of the FEC ranks (0.450).
           The DFEC portion of the 2005 PDRS has been rebutted.
           New DFEC adjustment factor formula = ([1.81/ (IRL ratio)] x .1) + 1
           New DFEC adjustment factor formula = ([1.81/ (0.034799)] x .1) + 1
           New DFEC adjustment factor formula = 6.2013
           The rating is recalculated using a DFEC adjustment factor of 6.2013.
           New rating: 14.01.00.00 - 3 - [*6.2013]19 - 481H - 24 = 27%

Using the Combined Values Chart, the combined rating is "37c27c25c18=72%".
This Combined Values Chart calculation assumes the user has already combined impairments properly as required by page 1-11 of the 2005 Permanent Disability Rating Schedule. Exhibit 7.

- Diminished Future Earning Capacity Rebuttal Analysis -

EXHIBIT 4

2005 Permanent Disability Rating Schedule, Tables A and B

capacity, multiply it by the appropriate adjustment factor from Table B A and round to the nearest whole number percentage. Alternatively, a table is provided at the end of Section 2 of the Schedule which provides the earning capacity adjustment for all impairment standards and FEC ranks.

Table A

Range of Ratios		FEC Rank	Adjustment Factor
Low	High		
1.647	1.810	One	1.100000
1.476	1.646	Two	1.1429857
1.305	1.475	Three	1.185714
1.134	1.304	Four	1.2286571
0.963	1.133	Five	1.271429
0.792	0.962	Six	1.3143286
0.621	0.791	Seven	1.357143
0.450	0.620	Eight	1.400000

Table B

Part of the Body	Ratio of Rating over Losses	FEC Rank
Hand/fingers	1.810	One
Vision	1.810	One
Knee	1.570	Two
Other	1.530	Two
Ankle	1.520	Two
Elbow	1.510	Two
Loss of grasping power	1.280	Four
Wrist	1.210	Four
Toe(s)	1.110	Five
Spine Thoracic	1.100	Five
General lower extremity	1.100	Five
Spine Lumbar	1.080	Five
Spine Cervical	1.060	Five
Hip	1.030	Five
General upper extremity	1.000	Five
Heart disease	0.970	Five
General Abdominal	0.950	Six
PT head syndrome	0.930	Six
Lung disease	0.790	Seven
Shoulder	0.740	Seven
Hearing	0.610	Eight
Psychiatric	0.450	Eight

The FEC Rank for the "Other" category is based on average ratings and proportional earning losses for the following impairments:

1-7

EXHIBIT 5

Letter from Labor Market Information Division, 11/12/2009

California Labor and Workforce Development Agency

EDD
Employment Development Department
State of California

Patrick W. Henning, Director

Received by Jay Shergill 11/12/2009

Arnold Schwarzenegger Governor

To Whom It May Concern:

The Occupational Employment Statistics (OES) survey is a semiannual mail survey measuring occupational employment and wage rates for workers in non-farm establishments, by industry. The survey collects information from about 37,000 establishments per year. Estimates are actually based on three years of survey data collected from a sample of approximately 113,000 establishments in California. The OES program provides occupational employment and wage estimates at the major group and detailed occupation level, and are available at Statewide and Metropolitan Statistical Area (MSA) geographic regions. These estimates are on the EDD website at http://www.labormarketinfo.edd.ca.gov/?pageid=152.

OES estimates must be screened to ensure we maintain our guidelines not to release data that may reveal confidential information about any of the survey respondents. To protect against this, OES screens estimates to ensure that confidential information can not be inferred from an estimate. This type of screening is called Primary Confidentiality Screening. Estimates that fail Primary Screening are not released to the public. However, estimates that fail Primary Screening can sometimes be deduced through simple arithmetic operations on the released estimates. Therefore, OES also performs a Secondary Confidentiality Screening. Estimates that fail Secondary Screening are also suppressed and not released to the public.

If estimates are not available for a given region, the Labor Market Information Division is capable of running custom estimate reports at the county, MSA, and/or statewide level. Any combinations of these regions are available but will not guarantee that the estimate sought after will pass Primary or Secondary Screening. Each custom report could take anywhere from 1 to 8 hours to process and will incur a fee that currently runs at a rate of $71/hour.

If you have any further questions please contact me at michaelc.martinez@edd.ca.gov or call (916) 262-2330.

Thank you for your inquiry.

Sincerely,

Michael Martinez
Research Analyst II
Labor Market Information Division-OES
Employment Development Department

P.O. Box 826880 • Sacramento CA 94280-0001 • www.edd.ca.gov

EXHIBIT 6

Appeals Board Reporter Citation Cross Reference Chart

CITATION CROSS REFERENCE CHART
APPEALS BOARD REPORTER---OFFICIAL REPORTER CITATION

2009-1999		
Case Name	**Official Reporter**	**WCAB Rptr. Citation**
Gee v. WCAB	**96 Cal.App.4th 1418**	4 WCAB Rptr. 10,101
City of Long Beach v. WCAB (Garcia)	**126 Cal.App.4th 298**	7 WCAB Rptr. 10,051

Provided to you by Appeals Board Reporter - www.appealsboardreporter.com

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- Diminished Future Earning Capacity Rebuttal Analysis -
[14]

EXHIBIT 7

2005 Permanent Disability Rating Schedule, Combining Ratings

2.   Adjusting AMA Impairments and Combining Ratings

As used here, the term "adjusting" refers to adjusting an AMA impairment rating for diminished future earning capacity, occupation and age.

Except as specified below, all impairments are converted to the whole person scale, adjusted, and then combined to determine a final overall disability rating.

Multiple impairments involving the hand or foot are combined using standard AMA Guides protocols. The resulting impairment is converted to whole person impairment and adjusted before being combined with other impairments of the same extremity.

Multiple impairments such as those involving a single part of an extremity, e.g. two impairments involving a shoulder such as shoulder instability and limited range of motion, are combined at the upper extremity level, then converted to whole person impairment and adjusted before being combined with other parts of the same extremity. Note that some impairments of the same body part may not be combined because of duplication.

Impairments with disability numbers in the 16.01 and 17.01 series are converted to whole person impairment and adjusted before being combined with any other impairment of the same extremity.

Impairments of an individual extremity are adjusted and combined at the whole person level with other impairments of the same extremity before being combined with impairments of other body parts. For example, an impairment of the left knee and ankle would be combined before further combination with an impairment of the opposing leg or the back.

The composite rating for an extremity (after adjustments) may not exceed the amputation value of the extremity adjusted for earning capacity, occupation and age. The occupational variant used to rate an entire extremity shall be the highest variant of the involved individual impairments.

1-11

- Diminished Future Earning Capacity Rebuttal Analysis -

EXHIBIT 8

Evidence of Post-Injury Earnings of Applicant

EXHIBIT 8 *(continued)*

Evidence of Post-Injury Earnings of Applicant

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EXHIBIT 8 *(continued)*

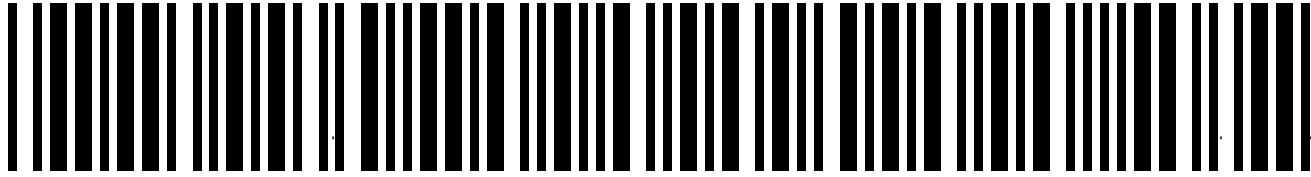**Evidence of Post-Injury Earnings of Applicant**

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- Diminished Future Earning Capacity Rebuttal Analysis -

STATE OF CALIFORNIA
DWC DISTRICT OFFICE

DOCUMENT COVER SHEET

Is this a new case?   Yes ☐   No ☑   Companion Cases Exist ☐   Walkthrough   Yes ☐   No ☑

More than 15 Companion Cases ☐

_____
Date:(MM/DD/YYYY)

SSN: _____

☐ Specific Injury

ADJ12345678
_____
Case Number 1

☐ Cumulative Injury   (Start Date: MM/DD/YYYY)   (End Date: MM/DD/YYYY)

(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: _____   Body Part 3: _____

Body Part 2: _____   Body Part 4: _____

Other Body Parts: _____

Please check unit to be filed on (check only one box)

☑ ADJ   ☐ DEU   ☐ SIF   ☐ UEF   ☐ VOC   ☐ INT   ☐ RSU

Companion Cases

☐ Specific Injury

_____
Case Number 2

☐ Cumulative Injury   (Start Date: MM/DD/YYYY)   (End Date: MM/DD/YYYY)

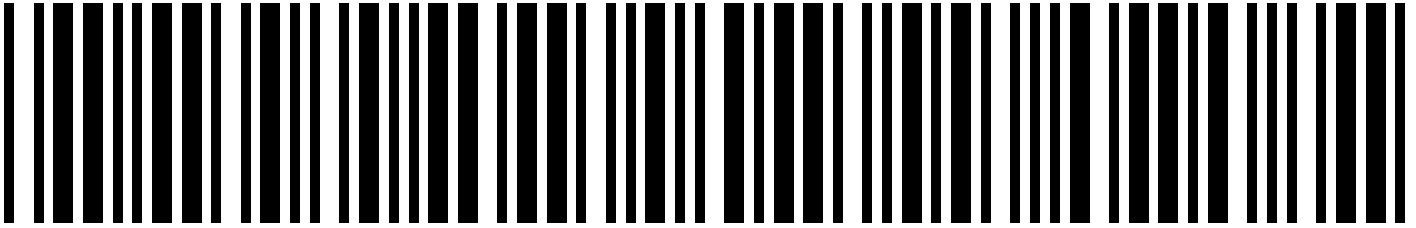(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: _____   Body Part 3: _____

Body Part 2: _____   Body Part 4: _____

Other Body Parts: _____

DWC-CA form 10232.1 Rev. 11/2008 - Page 1 of 8

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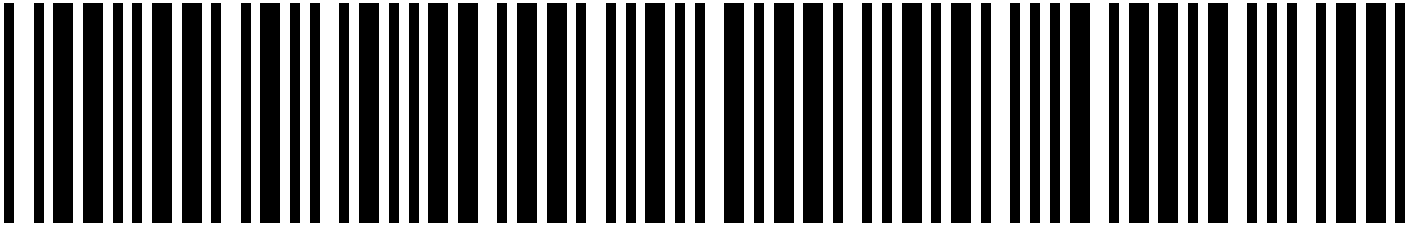
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Author   WWW.PDRATER.COM

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PDRater.com

workers' compensation resources

Receipt Date:	12-11-2009
Receipt #:	ylevut4
Applicant:	John Doe
Employer:	Big Box
WCAB #:	ADJ12345678
Claim #:	WC0123456789

INVOICE FOR:

PAYMENT TO:	PAYMENT FROM:
Jay Shergill P.O. Box 333 Clayton, CA 94517 FEIN 20-2691447 jay@pdrater.com	Pdrater 1234 Main Street Pleasant Hill, CA 94523 EAMS #: 16777215

FOR:

ITEM	PRICE
PDRater Ogilvie DFEC Rebuttal Analysis	$80.00
TOTAL:	$80.00

Thank you for your business!

Jay Shergill