

APPEALS PANEL DECISION SUMMARIES
(April 18 – October 04, 2012)

*Don't rely on the summaries for your arguments. Make sure the decision applies to your case.
Ken Wrobel*

120041 - There is insufficient medical evidence from the Treating Doctor linking the claimed conditions to the compensable injury or explaining how the mechanism of the injury caused the claimed conditions. The Treating Doctor did not relate all the claimed conditions specifically identified in his letter to the mechanism of injury but rather only acknowledges that the claimant's "injury could have exacerbated any pre-existing issues."

120154 – Claimant did not make all his required job searches to be entitled to SIBs.

120245 – Claimant contested finality of her impairment rating despite not disputing it within 90 days. The cases make clear that the failure to rate the entire compensable injury constitutes compelling medical evidence of a significant error by the certifying doctor in calculating the impairment rating.

120255 - Claimant contested finality of her impairment rating despite not disputing it within 90 days. Designated Doctor's medical report/narrative is compelling medical evidence establishing a significant error on his part in calculating the claimant's impairment rating. Designated Doctor improperly calculated Claimant who had bilateral shoulder injuries. Designated Doctor incorrectly combined UE impairments and then converted the result to whole person impairment instead of converting to whole person and then combining.

120352 - The hearing officer misinterpreted and misapplied the law under the Crump decision because he interpreted that case as requiring a differential diagnosis from a doctor to establish causation.

120353 - The interpreter improperly translated various terms including medical terms that were being used to describe the nature of the claimant's injury and used terminology that does not exist in the Spanish language. The case was remanded so a proper translator could be present.

120369 - The hearing officer made a disability determination for a period of time after the disputed period as certified. The hearing officer exceeded her authority in making the determination that the claimant sustained disability "but not otherwise through the date of the [CCH]."

120412 – Claimant could not have disability during his incarceration. The hearing officer found Claimant had disability during that period because the doctors had him on limited duty but that since he was incarcerated he was not entitled to TIBs for that period. The AP revised the decision to say Claimant did not have disability when he was incarcerated.

120433 – Regarding disputing an impairment rating within 90 days and having a BRC scheduled, the hearing officer applied the new Rule 141.1 retroactively.

120517 – Claimant provided to the AP evidence for the first time that the county he lived in required only three job searches to be entitled to SIBs. At the CCH, everyone seemed to agree he needed five job searches. The case was remanded for the hearing officer to determine if Claimant was entitled to SIBs based upon the three job searches required by his county of residence.

120453 – None of the doctors properly rated RSD/Causalgia.

120517 - The hearing officer did not make a conclusion of law on disability and did not include disability in the Decision portion of the decision and order. The AP rendered the decision to reflect disability. The proposed MMI date was prospective based on the Designated Doctor's examination. No other rating was valid.

120522 - It was undisputed that the claimant's drug screen was not on the date of injury, but occurred some days later. There was no expert testimony as to the time period that marijuana metabolites can be detected after drug use or the metabolism rate of marijuana. The hearing officer erred when he wrote Claimant used marijuana on the Date of Injury when the Claimant testified he smoked it a few days earlier and not on the Date of Injury.

120528 - Claimant did not demonstrate an active effort to obtain employment each week during the entire qualifying period by actively participating in a VRP as defined by Rule 130.101.

120544 – There was no indication that the Letter of Clarification and the Designated Doctor's response done after the CCH were admitted into evidence and there was a lack of evidence the parties were given the opportunity to respond to the Designated Doctor's response.

120564 – The Designated Doctor did not rate Claimant properly because even he noted further material recovery could be anticipated but then placed her at MMI. The hearing officer agreed with the Treating Doctor's referral doctor that Claimant had not reached MMI but the referral doctor rated non-compensable injuries. There were no other valid ratings.

120579 – There were no valid impairment ratings in evidence.

120611 – Carrier did not timely files its dispute of the impairment rating and no exceptions applied.

120613 – Among other reason, the Designated Doctor certification could not be adopted because he certified the claimant's MMI date based on the last ESI injection without explaining if ESI injections were treatment or that further material recovery from or lasting improvement to a lumbar sprain/strain could be reasonably anticipated. No other certifications were valid.

120628 – Doctor's assigned 1% impairment rating was not based on the claimant's condition as of the affirmed MMI date considering the medical record and the certifying examination, and failed to rate the entire compensable injury. Doctors did not properly rate CRPS.

120637 - The question was whether or not the claimant's failure to timely include a Contact Log or supporting documentation for one week of the qualifying period rendered his DWC-52

“incomplete,” and therefore a failure to timely file his DWC-52. The AP noted that nowhere does the Act or Rules specifically explain what constitutes a complete DWC-52, nor does the Act or Rules require an injured employee to provide all evidence regarding SIBs eligibility at the time of filing. They declined to read into the Act or Rules any such requirement. They held the claimant in this case timely filed his DWC-52 for the second quarter.

120640 – Designated Doctor assessed two percent impairment for arthritis impairments based on roentgenographically determined cartilage intervals. His narrative referenced x-rays that showed adequate healing of her left first metatarsophalangeal joint fracture but did not provide measurements of the cartilage intervals based on x-rays. Rule 130.1(c)(3) specifically requires that clinical findings of permanent impairment for the current compensable injury be identified and documented as well as a description of how the findings relate to and compare with the criteria being applied in the AMA Guides.

120672 - The DWC-69 that was sent in with the impairment rating contained only one diagnosis code in the medical status information portion of the DWC-69 despite the accepted multiple compensable injuries. The narrative from the Designated Doctor specifically assessed a 7% impairment rating for the claimant’s RSD/causalgia which is part of the claimant’s compensable injury. However, inexplicably the designated doctor subsequently submitted a DWC-69, containing a single diagnosis code which certified the claimant reached MMI with a 0%. There are no other certifications in evidence with the affirmed date of MMI which could be adopted. The case was remanded so the hearing officer could get a corrected DWC-69.

120736 – Designated Doctor examined Claimant several times. The HO accepted one of the ratings wherein the Designated Doctor was relying on measurements from one of his other examinations. The AP reversed and rendered to accept the rating wherein the Designated Doctor examined Claimant on the date of MMI agreed to by the parties.

120749 – The Designated Doctor’s certification was not supported by the medical evidence. Two other ratings were performed and documented correctly. The case was remanded for the hearing officer to choose the one that was best supported by the medical evidence.

120800 - The hearing officer found the tuition reimbursement constituted an advantage that can be estimated in money that the employee receives from the employer as part of the employee’s remuneration, and found the weekly tuition reimbursement constituted wages.

120850 – Claimant felt a sudden pop in her neck while working on an assembly line. The issue was extent of injury. The parties had stipulated to a compensable injury. By definition, compensable injury includes a repetitive trauma injury. The hearing officer needed to consider whether the carpal tunnel syndrome was due to a repetitive trauma and not just a specific incident.

120897 – The Designated Doctor applied a more stringent standard than the AMA Guides for placement in Cervicothoracic DRE Category II: Minor Impairment by requiring “must include ‘significant’ muscle spasm/guarding or dysmetria . . .” in the exam. The AMA Guides only require intermittent or continuous muscle guarding as observed by a doctor (which may include documentation of muscle spasm or guarding or nonuniform loss of ROM by a treating doctor).

120911 – Claimant reached MMI after a chronic pain management program as found by a referral doctor.

120915 – The Designated Doctor rated Claimant at 0% impairment rating; but, using his own measurements, Claimant's impairment rating would be much higher and he did not invalidate the range of motion testing. There were no other valid ratings.

120918 – The hearing officer did not supply the Designated Doctor with the complete medical records when he sent the Letter of Clarification so the impairment rating opinion by the Designated Doctor was not based on the complete medical record.

121007 - It appeared the hearing officer believed the claimant's misdiagnosis or previously undiagnosed condition needed to have been made known prior to the date the claimant disputed the first valid certification of MMI/IR. However, the AP held here, as they did in APD 080297-s, that there is no requirement in the statute that the previously undiagnosed medical condition must have been present at the time of the first certification of MMI/impairment rating.

121010 - The claimant did not establish entitlement to SIBs because she failed to meet the requirement of a narrative report from a doctor which specifically explained how the compensable injury caused a total inability to work each week during the entire qualifying period. The narrative did not cover the entire qualifying period.

121029 – There were no valid ratings. None of the ratings rated the entire injury or only the compensable injury.

121062 – The AP held that testing of a hair sample, two days after the accident, may be sufficient to raise the question of intoxication under Section 401.013(a)(2)(B), but it does not create a rebuttable presumption of intoxication under Section 401.013(c).

121075 - The diagnosis of sexual dysfunction without attendant explanation by any doctor or expert of how this condition may be related to the compensable injury or treatment for the compensable injury does not establish sexual dysfunction is related to the compensable injury within a reasonable degree of medical probability.

121098 – The Designated Doctor's opinion was conclusory without attendant explanation to causally link the claimed conditions to the work injury. The Designated Doctor failed to explain how the conditions at issue were enhanced, accelerated or worsened by the mechanism of the injury.

121157 - Adjustments under Section 2.2 page 2/9 of the AMA Guides provide for additional impairment in cases where: (1) treatment of an illness results in apparent remission of symptoms but the patient has not regained his prior good health; and (2) pharmaceuticals themselves may lead to impairment. The AP held the placement of a dorsal column stimulator would not meet either of the examples in the AMA Guides.

121193 – Designated Doctor failed to show his work or specifically assign any impairment for the left shoulder.

121244 – No certification in evidence was valid because none rated the entire compensable injury.