OPINION ENTERED: MARCH 15, 2013

CLAIM NO. 201200554

MEIJER, INC. PETITIONER

VS. **APPEAL FROM HON. JOHN B. COLEMAN, ADMINISTRATIVE LAW JUDGE**

MARIA PARDO-ARMSTRONG
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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BEFORE: ALVEY, Chairman, STIVERS and SMITH, Members.

ALVEY, Chairman. Meijer, Inc. ("Meijer") appeals from the November 15, 2012 Opinion and Award rendered by Hon John B. Coleman, Administrative Law Judge ("ALJ"), awarding Maria Pardo-Armstrong ("Pardo-Armstrong") permanent partial disability ("PPD") benefits based upon an 11% functional impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent

Impairment 5th Edition ("AMA Guides"). No petition for reconsideration was filed.

The sole question on appeal is whether the ALJ erred in re-calculating an impairment rating after excluding the upper extremity impairment assessed by Dr. Warren Bilkey for loss of grip strength. Because we determined the ALJ did not err in utilizing the AMA Guides, we affirm.

Pardo-Armstrong sustained a wrist injury on August 4, 2011 when she fell backward, landing on her right hand and bending it inward. Dr. Amit Gupta performed surgery the next day.

Dr. Bilkey conducted an independent medical evaluation ("IME") on April 3, 2012. Dr. Bilkey diagnosed a displaced, comminuted, impacted intra-articular fracture of the distal radius and ulnar stolid fracture of the right wrist. Dr. Bilkey's assessment of impairment is as follows:

> Ms. Pardo has acquired a permanent partial impairment caused by the 8/4/11 work injury. According to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, there is impairment for limitation of wrist active range of motion, for residual grip weakness and for valgus deformity of the distal forearm. These impairments are referenced as follows in the Guides. For loss of motion according to figure 16-28 for loss of flexion there is 5% upper extremity impairment and for loss of extension 4% impairment. According to Fig. 16-31 for

> loss of radial deviation there is 1% impairment. These total 10% upper extremity impairment. For grip weakness according to Table 16-35 there is 20% upper extremity impairment. For valgus deformity of the distal forearm according to Table 16-24 there is 10% upper extremity impairment. Combined these total 35% upper extremity impairment which translates to 21% whole person impairment. The entirety of the 21% whole person impairment is attributable to the 8/4/11 work injury.

In the opinion dated November 15, 2012, the ALJ made the following findings regarding Pardo-Armstrong's impairment rating:

> After a review of the entirety of the evidence, I am convinced that Dr. Bilkey did wrongfully include grip strength in his assessment, but otherwise correctly assessed the plaintiff's impairment related to her injury under the AMA Guides. The 10% upper extremity impairment for loss of range of motion combined with the 10% upper extremity impairment for valgus deformity equals 19% upper extremity impairment when combined utilizing the Combined Values Chart set forth on Pages 604 and 605 of the AMA Guides. The 19% upper extremity impairment converts to an 11% whole person impairment by utilizing Table 16-3 set forth on Page 439. This is the appropriate impairment when grip strength impairment is excluded.

On appeal, Meijer argues Dr. Bilkey's rating is not competent, substantial evidence since he erroneously included impairment for loss of grip strength. The ALJ

recognized the error as “double dipping” and found Dr. Bilkey’s rating did not follow the AMA Guides. Meijer argues the entirety of Dr. Bilkey’s rating should be rejected and the ALJ erred in recalculating the impairment rating.

Contrary to Meijers’ assertions, the ALJ acted within his authority in determining Pardo-Armstrong sustained an 11% functional impairment rating and we therefore affirm. In Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003), the Kentucky Supreme Court instructed the proper interpretation of the AMA Guides is a medical question solely within the province of the medical experts. However, in Caldwell Tanks v. Roark, 104 S.W.3d 753 (Ky. 2003), the Court instructed, when faced with un-refuted medical evidence of increased hearing impairment in the two-year period prior to filing of workers' compensation claim, the ALJ was both authorized and required to consult the AMA Guides and to convert evidence of earlier hearing impairment into a whole-body impairment to determine the claimant's medical and income benefits. Generally, the ALJ’s authority to use the AMA Guides is limited to essentially mechanical applications. An ALJ is authorized to use the combined values chart, *see*, Thomas v. UPS, 58 S.W. 3d 455 (Ky. 2001); select an impairment rating within a class of impairment

stated by a physician, *see* Knott County Nursing Home v. Wallen, 74 S.W.3d 706 (Ky. 2002); or use the AMA Guides in other instances where medical expertise is not required.

Here, Dr. Bilkey based his assessment of impairment on three values obtained for loss of motion, loss of grip strength and valgus deformity. He explained his calculation, indicating these three values for the upper extremity were then combined and the combined value was used to determine the whole person impairment rating. The ALJ determined the rating for the loss of grip strength was improperly included, leaving ratings for loss of motion and valgus deformity as compensable. The ALJ's exclusion of the impairment for loss of grip strength did not obviate the impairment assessments for loss of motion and valgus deformity. The ALJ acted well within his authority in using the combined values chart to determine the allowable upper extremity rating for the two remaining upper extremity values. Thomas v. UPS, supra.

The ALJ's use of Table 16-3 of the AMA Guides to convert the 19% upper extremity impairment into a whole person impairment was a purely mechanical function requiring no medical skill and thus permissible pursuant to the holdings in Thomas v. UPS, supra, and Caldwell Tanks v. Roark, supra. The ALJ merely took values found by Dr.

Bilkey, and assessed the proper combined values in Table 16-3 which provides a 19% upper extremity impairment converts to an 11% whole person impairment. The ALJ did not deviate from the simple process provided in Dr. Bilkey's report with the exception of eliminating the upper extremity impairment assessed for loss of grip strength. Thus, the ALJ's award based upon an 11% functional impairment rating is proper and supported by substantial evidence.

Accordingly, the November 15, 2012 Opinion and Award rendered by Hon. John B. Coleman, Administrative Law Judge is **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

SMITH, MEMBER, NOT SITTING.

COUNSEL FOR PETITIONER:

HON LAURIE GOETZ KEMP
BONTERRA BUILDING, SUITE 200
3620 BLACKISTON BOULEVARD
NEW ALBANY, IN 47150

COUNSEL FOR RESPONDENT:

HON CHED JENNINGS
455 S 4TH ST STE 1450
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE:

HON JOHN B. COLEMAN
107 COAL HOLLOW ROAD SUITE 100
PIKEVILLE, KY 41501