

NOT DESIGNATED FOR PUBLICATION

No. 124,824

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

DEBRA ORTEGA,
Appellant,

v.

ENCORE REHABILITATION SERVICES LLC,

and

TWIN CITY FIRE INSURANCE CO.,
Appellees.

MEMORANDUM OPINION

Appeal from Workers Compensation Board. Opinion filed February 24, 2023. Affirmed.

Mitchell Rice, of Mitch Rice Injury Law, LLC, of Hutchinson, for appellant.

Bruce L. Wendel, of Law Offices of Steven G. Piland, of Overland Park, for appellees.

Before ATCHESON, P.J., BRUNS, J., and PATRICK D. MCANANY, S.J.

PER CURIAM: In this appeal we consider whether the Workers Compensation Board of Appeals (Board) erroneously interpreted K.S.A. 44-510e(a)(2)(B)—which describes the method for determining an injured employee's percentage of functional impairment—when it determined that Debra Ortega was not entitled to work disability benefits for the injuries she sustained in a work-related accident.

Ortega was injured while working for Encore Rehabilitation Services, LLC (Encore). She filed for workers compensation benefits. After obtaining ratings from the

physician selected by her attorney and by a physician appointed by the administrative law judge (ALJ), the ALJ determined that because Ortega suffered a functional impairment of 7% to the body as a whole, under K.S.A. 44-510e(a)(2)(C), she did not exceed the 7 1/2% threshold for an award of work disability benefits. In her appellate brief, Ortega explains:

"This issue is central to the case, as Ortega is limited to functional impairment only—provided her overall impairment does not exceed 7.5%. If, however, her overall impairment exceeds 7.5%, she is entitled to a work disability, a claim that takes into account Ortega's wage loss and task loss attributed to the disability."

The relevant portion of K.S.A. 44-510e(a)(2)(C) provides:

"An employee may be eligible to receive permanent partial general disability compensation in excess of the percentage of functional impairment ('work disability') if:

"(i) The percentage of functional impairment determined to be caused solely by the injury exceeds 7 1/2% to the body as a whole."

The Board affirmed the ALJ's decision, citing *Johnson v. U.S. Food Service*, 312 Kan. 597, 478 P.3d 776 (2021) (*Johnson II*), and our holding in *Zimero v. Tyson Fresh Meats, Inc.*, 61 Kan. App. 2d 1, 499 P.3d 1153 (2021).

Ortega appeals, claiming that the Board erroneously interpreted K.S.A. 44-510e(a)(2)(B) contrary to our Supreme Court's guidance in *Johnson II* and this court's subsequent decision in *Garcia v. Tyson Fresh Meats, Inc.*, 61 Kan. App. 2d 520, 506 P.3d 283 (2022).

FACTUAL AND PROCEDURAL HISTORY

Ortega worked as a licensed physical therapist assistant for Encore. On December

27, 2017, Ortega was helping lift a patient from a wheelchair when she felt a sudden pop in her right hip. Her injuries required two surgeries. Ortega was unable to return to work, and on March 5, 2018, she applied for a hearing on her claim against Encore and its insurance carrier, Twin City Fire Insurance Co., for benefits under the Kansas Workers Compensation Act, K.S.A. 44-501 et seq.

The Competing Medical Evaluations

By way of background, the Legislature had previously adopted the Fourth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (4th ed. 1995) for use in workers compensation cases. In 2013, the Legislature replaced the Fourth Edition with the Sixth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (6th ed. 2008) in cases in which the work injury occurred during or after 2015. A panel of this court found that the adoption of the Sixth Edition was unconstitutional because, considered together with prior legislative enactments, it deprived injured workers of a remedy that adequately replaced their common-law right to sue a negligent employer in tort. *Johnson v. U.S. Food Service*, 56 Kan. App. 2d 232, 257, 427 P.3d 996 (2018), *rev'd* 312 Kan. 597, 478 P.3d 776 (2021) (*Johnson I*). At the time Ortega's 2017 injuries were being evaluated in this case, *Johnson I* was under review but had yet to be decided by our Supreme Court in *Johnson II*. Consequently, the extent of Ortega's impairment was evaluated under both the Fourth Edition and Sixth Edition.

Two physicians testified to their evaluations of the extent of Ortega's whole body impairment resulting from her injuries. Dr. Pedro Murati's evaluation placed Ortega over the 7 1/2% threshold of K.S.A. 44-510e(a)(2)(C) under both the Fourth Edition and the Sixth Edition. Dr. Vito Carabetta's evaluation placed Ortega over the 7 1/2 % threshold using the Fourth Edition but under the threshold using the Sixth Edition.

Dr. Murati's Examination

Dr. Murati examined Ortega on November 2019 at her counsel's request. Dr Murati determined Ortega suffered a 12% whole body impairment using the Fourth Edition and an 8% whole body impairment using the Sixth Edition.

Dr. Murati determined Ortega's work-related injuries were:

- Torn right gluteus medius abductor tendon;
- Torn gluteus maximus/iliotibial (IT) band tendon;
- Progressive arthritis of the right hip with multiple tears of the right hip labrum;
- Sprained right IT band;
- Right trochanteric bursitis; and
- Lower back sprain.

Using the Fourth Edition, Dr. Murati found the injuries to Ortega's right hip resulted in 7% whole body impairment, with an additional 5% whole body impairment for the injuries to her lower back. These injuries combine for a 12% whole person impairment.

Using the Sixth Edition, Dr. Murati found Ortega suffered 6% whole body impairment for the injuries to her right hip and an additional 2% whole body impairment for the injuries to her lower back for a total whole body impairment of 8%.

Dr. Carabetta's Examination

The ALJ appointed Dr. Carabetta to do an independent assessment of the extent of Ortega's impairment. Dr. Carabetta examined Ortega in August 2020.

Dr. Carabetta reviewed approximately 400 pages of Ortega's medical records, along with a number of MRI scans. These MRIs were conducted before and after each of Ortega's two surgeries on her right hip.

Dr. Carabetta also took a detailed history from Ortega of the accident and her medical and surgical treatments. He conducted a physical examination of Ortega, noting her general physical condition but focusing on her lower extremities. He found no work-related injury to Ortega's lower back. He determined that her injuries were confined to her right hip and consisted of: (1) chronic trochanteric bursitis; (2) right iliotibial band syndrome; and (3) residual pain from surgically repaired tears of the right gluteus maximus and gluteus medius tendons.

Dr. Carabetta noted that the only injury specifically covered under the Fourth Edition was Ortega's chronic trochanteric bursitis, which resulted in 3% whole body impairment. He opined that Ortega's chronic irritation of the right iliotibial band resulted in an additional 2% whole body impairment, and the residual pain from her surgically repaired gluteal tendon tears resulted in an additional 5% whole body impairment. Added together (3% + 2% + 5%), these findings constituted a 10% whole body impairment using the Fourth Edition.

Using the Sixth Edition as a starting point, Dr. Carabetta determined that Ortega's rating for these injuries was 7%. Broken down, her chronic trochanteric bursitis resulted in a 3% whole body impairment—the same rating he gave for this injury under the Fourth Edition. Ortega's chronic irritation of the right iliotibial band was not specifically listed under the Sixth Edition. Nevertheless, Dr. Carabetta believed an additional 2% whole body impairment was appropriate based on his experience and judgment as a physician. The residual pain from Ortega's gluteal tendon injuries could have resulted in a lower rating under the Sixth Edition, but Dr. Carabetta believed the appropriate rating was 5%

impairment of Ortega's right lower extremity, which equated to a 2% whole body impairment. Added together (3% + 2% + 2%), Ortega's whole body impairments totaled 7% when using the Sixth Edition as the starting point.

The Final Hearing Before the ALJ

The record before the ALJ included the deposition testimony and reports of Dr. Carabetta and Dr. Murati and the depositions and reports of vocational experts Dr. Robert Barnett and Steve Benjamin. Ortega's wage and task loss are not in dispute in this appeal.

The ALJ adopted Dr. Carabetta's findings that Ortega suffered 10% whole body impairment under the Fourth Edition and 7% under the Sixth Edition. Relying on *Johnson II*, the ALJ awarded benefits based on a 7% functional impairment. Thus, Ortega did not reach the 7 1/2% threshold for entitlement to an award of work disability under K.S.A. 44-510e.

Proceedings Before the Board

Ortega sought review by the Board, asserting the ALJ failed to properly consider all competent medical evidence related to her functional impairment in accordance with *Johnson II*.

On review, the Board explicitly gave more weight to Dr. Carabetta's opinion than to Dr. Murati's. The Board noted that under *Johnson II*, it was required to use the Sixth Edition as the starting point to determine Ortega's functional impairment and that competent medical evidence must support that determination. The Board found the competent medical evidence established Ortega had a 7% whole body functional impairment and affirmed the ALJ's award. Ortega's appeal from the Board decision brings the matter to us.

ANALYSIS

Standard of Review

Proceedings before the Board are de novo on the record. *Helms v. Pendergast*, 21 Kan. App. 2d 303, 308-09, 899 P.2d 501 (1995); see K.S.A. 44-555c(a) ("The review by the appeals board shall be upon questions of law and facts as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.").

On appeal, Ortega directs her argument against both the ALJ and the Board. But given the scope of the Board's review of Ortega's claim, we need not dwell on the reasoning of the ALJ in the proceedings below. The real issue is whether the Board erred in its de novo review.

Under K.S.A. 77-621(c)(7), the Board's decision must be factually supported by substantial evidence when viewed in light of the record as a whole. Ortega does not argue that the medical findings and opinions of Dr. Carabetta do not constitute substantial evidence of the extent of Ortega's impairment. Rather, Ortega contends that the Board failed to consider *all* the evidence in the record in arriving at its decision; that is, the Board failed to consider the evidence in the record of Ortega's higher level of impairment under the Fourth Edition.

Ortega attributes her claim of error to the Board's failure to properly follow K.S.A. 44-510e(a)(2)(B) as interpreted by our Supreme Court in *Johnson II* and our court's subsequent holding in *Garcia*.

K.S.A. 77-621(c)(4) of the Kansas Judicial Review Act provides for relief when "the agency has erroneously interpreted or applied the law." Ortega argues on appeal: "By

considering only the Sixth Edition, . . . the [Board's] decision was guided by an erroneous interpretation of the law." Thus, the ultimate issue for us to decide is a question of law over which our review is unlimited. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019).

Discussion

The Board's January 2022 decision followed our recent July 2021 opinion in *Zimero* but predated *Garcia*, which was issued two weeks after the Board's decision. Accordingly, the Board read *Johnson II* in light of *Zimero*.

Johnson II made clear that the statute's use of the phrase "'based on the sixth edition'" was used to *supplant* (i.e., take the place of) the phrase "'based on the fourth edition.'" 312 Kan. at 601. Thus:

"[T]he Legislature intended the Sixth Edition to serve as a standard starting point for the more important and decisive 'competent medical evidence.' . . .

. . . .

". . . [W]e hold that the language added in 2013 does not change the essential legal standard for determining functional impairment. K.S.A. 2019 Supp. 44-501e(a)(2)(B) still requires that ratings be 'established by competent medical evidence.' The 2013 amendments merely reflect an update to the most recent set of guidelines—which serve as a starting point for any medical opinion. . . . The key fact—percentage of functional impairment—must always be proved by competent medical evidence."

Johnson II, 312 Kan. at 602-03.

In *Zimero*, the claimant argued that the Board ignored evidence that her impairment rating was 5% under the Fourth Edition, rather than Dr. Carabetta's 3% impairment rating based on the Sixth Edition. *Zimero* argued: "[T]o adequately consider 'competent medical evidence' the medical witness, the ALJ, and the Board must compare

the results under the Fourth Edition and the Sixth Edition and factor both into their decision." 61 Kan. App. 2d at 6.

But as the *Zimero* court explained, in considering Zimero's impairment under *Johnson II*, the Sixth Edition supplants the Fourth Edition and the Sixth Edition becomes the statutorily required starting point in evaluating the extent of an impairment.

"The Legislature specifically chose to adopt the Sixth Edition as the new set of guidelines for injuries occurring after January 1, 2015. But as stated in *Johnson [II]*, the impairment rating must still be supported by 'competent medical evidence' with the Sixth Edition used as a starting point for the determination. See *Johnson [II]*, 312 Kan. at 602. Based on *Johnson [II]*, the Fourth Edition is irrelevant after January 1, 2015. We start with the Sixth Edition and then use competent medical evidence to increase or decrease that guideline amount. Parties and courts do not choose between using the Fourth Edition or the Sixth Edition. The Sixth Edition is statutorily required." *Zimero*, 61 Kan. App. 2d at 6.

But Ortega contends that the Board's decision in her case conflicts with the later decision from our court in *Garcia*. She contends that *Garcia* represents the correct application of *Johnson II* and that *Zimero* does not.

In *Garcia*, the claimant was injured in 2017, after the Sixth Edition came into effect. The Board determined that under the Sixth Edition, Garcia suffered a 3% function impairment to her body as a whole, thus making her ineligible for work disability. On appeal, Garcia contended this reliance on the Sixth Edition was error. The *Garcia* court stated:

"[I]mpairment is not dictated by strict adherence to the Guides in isolation, but through careful consideration of competent medical evidence in conjunction with the Guides. . . .

". . . [W]hile the Legislature modified the starting point it did not correspondingly render examinations and tests performed under the Fourth Edition obsolete. . . .

"In some circumstances, an examining physical might conclude the Sixth Edition provides a sufficient basis alone to make a medically competent assessment of a worker's impairment rating. By the same token, however, in other circumstances, the Sixth Edition may be insufficient, requiring the examining physician to consider other reliable sources to make a professionally informed rating. . . .

. . . .

". . . [T]he evaluating physicians' starting point for Garcia's rating must be the Sixth Edition. If, in a physicians' expert medical opinion, the Guides prove too narrow a view of Garcia's ability to work and a similarly understated functional impairment, they may (and should) augment their evaluations using those tests, exams, reports, or resources they determine in their professional expertise will yield a more accurate result. That includes information and guidance that may be gleaned from the Fourth Edition or other sources they consider reliable or authoritative within their profession." 61 Kan. App. 2d at 531-33.

The *Garcia* majority concluded that the Board "erred in entering an award based on a functional impairment rating derived solely from the Sixth Edition." 61 Kan. App. 2d at 532.

The *Garcia* majority stressed the different approach taken by the Sixth Edition in focusing on enhancing the "standardization of the quantification of injuries to allow for greater uniformity in recovery across the spectrum of claimants." 61 Kan. App. 2d at 530. Indeed, this criticism of the Sixth Edition finds explicit (albeit unsuccessful) support in *Johnson I*. But *Johnson I* was in response to a constitutional challenge that by adopting the Sixth Edition, the Legislature emasculated our Workers Compensation Act "to the point that it is no longer an adequate quid pro quo for injured workers who suffer a permanent impairment as a result of an injury occurring" during or after 2015. *Johnson I*, 56 Kan. App. 2d at 257. Garcia did not mount a constitutional challenge to the denial of

her claim for work disability. Here, the issue is whether the Board considered all the substantial evidence in determining that Ortega was not entitled to work disability.

The Board specifically found Dr. Carabetta's analysis more persuasive than that of Dr. Murati. Using the Sixth Edition as a starting point, as required by *Johnson II*, *Zimero*, and *Garcia*, Dr. Carabetta neither reverted to the Fourth Edition—which the *Zimero* court found to be irrelevant—nor did he rely on the Sixth Edition to the exclusion of his own professional expertise in order to yield a more accurate rating of Ortega's impairment.

Because Ortega expressed no ongoing complaints about her lower back, Dr. Carabetta confined his evaluation to Ortega's ongoing complaints of pain in her hip area.

- (1) Dr. Carabetta did not slavishly cling to the Sixth Edition in rating Ortega's chronic trochanteric bursitis. He rated this condition as a 3% whole body impairment, which was the same rating he gave for this injury in his Fourth Edition evaluation. (Dr. Murati evaluated Ortega's bursitis as a 7% impairment of the right lower extremity but did not provide a separate whole body impairment rating for this condition.)
- (2) The range of impairment ratings under the Sixth Edition for Ortega's gluteal tendon injuries could have resulted in a lower rating than what he found to be appropriate, so Dr. Carabetta used his professional judgment and experience to rate this impairment at 5% to Ortega's right lower extremity, which resulted in a whole body impairment rating of 2%.
- (3) Because Ortega's iliotibial band syndrome was not specifically listed under the Sixth Edition, Dr. Carabetta used his experience and judgment as a physician to arrive at an additional 2% whole body impairment for this injury.

In affirming the ALJ's adoption of Dr. Carabetta's findings and his whole body impairment ratings under the Sixth Edition, the Board found Dr. Carabetta's analysis to

be more persuasive than that of Dr. Murati. Under *Johnson II*, Dr. Carabetta was required to use the Sixth Edition as the starting point but to exercise his own professional judgment and to not slavishly adhere to the Sixth Edition in arriving at his evaluation of Ortega's impairment if it did not comport with his evaluation.

The Board's ruling, which adopts Dr. Carabetta's findings and conclusions, reflects a proper application of *Johnson*, *Zimero*, and *Garcia* in Dr. Carabetta's use of the Sixth Edition as a starting point and relying on other competent medical evidence—including his examination of Ortega, his review of her medical records, as well as his own professional experience and judgment—to determine Ortega's actual impairment.

We find no error in the Board's conclusion that Ortega had not met the 7 1/2% whole body impairment threshold for an award of work disability benefits.

Affirmed.

* * *

ATCHESON, J., dissenting: The physicians evaluating Debra Ortega's injuries in this workers compensation case failed to deploy the sort of broad medical expertise contemplated in *Johnson v. U.S. Food Service*, 312 Kan. 597, 603, 478 P.3d 776 (2021). The court issued *Johnson* after the physicians undertook their evaluations, so they shouldn't be faulted for the shortcoming. But that doesn't excuse the erroneous result here. This case replicates the circumstances in our opinion in *Garcia v. Tyson Fresh Meats, Inc.*, 61 Kan. App. 2d 520, 506 P.3d 283 (2022), that did apply *Johnson*. I provided the deciding vote in *Garcia*, although I did not write the opinion, and I remain of the view it correctly states the governing law. Consistent with *Garcia*, I would reverse and remand to the Workers Compensation Board of Appeals for further proceedings that

likely would require the physicians to reassess their conclusions about Ortega's functional impairment. For that reason, I respectfully dissent.

The posture of this case requires some historical background for context. In 2013, the Legislature amended the Workers Compensation Act to require that as of January 1, 2015, functional impairments of injured workers be "based on" the Sixth Edition of the American Medical Association Guides, thereby replacing the Fourth Edition. K.S.A. 44-510e(a)(2)(B). The revised statute retained the requirement that an impairment be "established by competent medical evidence." K.S.A. 44-510e(a)(2)(B). The amendment sparked litigation from injured workers who argued the Sixth Edition so substantially diminished impairment ratings on the whole that the workers compensation scheme no longer provided an adequate substitute for their right to a remedy for personal injuries protected in section 18 of the Kansas Constitution Bill of Rights. See *Johnson*, 312 Kan. at 599 (acknowledging worker's constitutional challenge); *Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 855, 942 P.2d 591 (1997) (workers compensation scheme substitutes for common-law actions for on-the-job injuries); *Rajala v. Doresky*, 233 Kan. 440, 441, 661 P.2d 1251 (1983).

While those legal challenges, including *Johnson*, made their way through the judicial process, workers compensation practitioners, administrative law judges, and the Board devised an ostensible workaround by having physicians prepare two evaluations of an injured worker—one using the AMA Fourth Edition and one using the AMA Sixth Edition. See *Garcia*, 61 Kan. App. 2d 522. They did so here. In appointing Dr. Vito Carabetta to make an independent medical examination of Ortega, the ALJ directed that he prepare evaluations using both the Fourth and Sixth Editions of the AMA Guides. Dr. Carabetta followed that directive and provided a written report in late August 2020 using both editions.

In January 2021, the court issued *Johnson* and held the amendment to K.S.A. 44-510e(a)(2)(B) substituting the Sixth Edition for the Fourth Edition did not create a constitutional problem because the statute simply required a physician to use the Sixth Edition "as a starting point" for "any . . . opinion" that ultimately should rest on "competent medical evidence." 312 Kan. at 603. The court indicated that approach did not differ materially from the process that would have been used with the Fourth Edition. 312 Kan. at 603. Given that rationale, the ultimate evaluation of an injured worker—grounded in competent medical evidence—presumably should be the same whether the examining physician starts with the Fourth Edition or the Sixth Edition. In turn, replacing the Fourth Edition with the Sixth Edition did not diminish an injured worker's substantive rights under the Act, a conclusion undercutting the legal premise for the constitutional challenge. 312 Kan. at 603.

We have since released two opinions that are not entirely harmonious in outlining how *Johnson* should be applied. See *Garcia*, 61 Kan. App. 2d at 529 (*Johnson* "contemplates the use of an array of sources the medical expert considers professionally appropriate in arriving at an injured worker's functional impairment rating"); *Zimero v. Tyson Fresh Meats, Inc.*, 61 Kan. App. 2d 1, 5-6, 499 P.3d 1153 (2021) (rating from Sixth Edition may be increased or decreased based on competent medical evidence).

As contemplated in *Johnson* and *Garcia*, a physician should begin with the AMA Sixth Edition and then draw on those additional resources he or she professionally considers sound to arrive at an opinion grounded in competent medical evidence. In short, the Sixth Edition is merely the place to start and should not be the endpoint unless a physician considers it to be the sole source of relevant medical guidance based on the facts of the particular workers compensation claim.

To reiterate, the physicians in this case had neither the benefit of *Johnson* nor the gloss from *Garcia* and *Zimero* when they examined Ortega and prepared their reports.

The ALJ and the Board found Dr. Carabetta's evaluation of Ortega to be reliable and adopted his conclusions resting on the AMA Sixth Edition. So, I zero in on those determinations.

Dr. Carabetta's report details the medical records he reviewed, his physical examination of Ortega, and the clinical assessment he reached. But the report doesn't really explain how Dr. Carabetta applied either the AMA Fourth Edition or the AMA Sixth Edition. He gave a terse evidentiary deposition in which he authenticated his report and testified it contained his findings and conclusions. He was not questioned about how he used the AMA Guides in rendering his opinions.

Dr. Carabetta essentially identified two physical conditions adversely affecting Ortega. I don't attempt to translate the medical terminology in the report, since the anatomical nature of the maladies is irrelevant. First, Dr. Carabetta found Ortega had "chronic trochanteric bursitis with a documented abnormal gait pattern." The condition is identified in the Sixth Edition, and Dr. Carabetta cited tables in that edition he used to determine a percentage of impairment for workers compensation purposes. Second, he found Ortega suffered from "iliotibial band syndrome"—a condition he determined was "not specifically listed" in the Sixth Edition. Dr. Carabetta stated in his report he, therefore, used "[p]hysician judgment and experience" to arrive at a percentage of impairment for that condition. He then relied on what he identified as the combined values chart in the Sixth Edition to aggregate the two percentages into an overall impairment rating for Ortega.

Based on the limited record on this point, Dr. Carabetta's handling of the iliotibial band syndrome seems to be consistent with *Johnson* and *Garcia* in the sense that he apparently relied on his expertise to fashion a rating resting on competent medical evidence. See K.S.A. 44-510e(a)(2)(B) (percentage of functional impairment to be based on Sixth Edition "if the impairment is contained therein"). His conclusory

characterization of that expertise fairly would be open to examination on the exact reasoning and resources he relied on in reaching his conclusion. But Dr. Carabetta's evaluation of Ortega's chronic trochanteric bursitis seems to deviate from the governing standards outlined in *Johnson* and *Garcia* and appears to entail a rote or mechanical application of the Sixth Edition. In his report, Dr. Carabetta does not suggest he filtered the tabular results from the Sixth Edition through his judgment and experience or any other source of medical evidence—in contrast to what he described in assessing Ortega's iliotibial band syndrome. Again, given the limited record, Dr. Carabetta's evaluation of the chronic trochanteric bursitis and, in turn, his aggregate rating of Ortega does not satisfy the method set out in K.S.A. 44-510e(a)(2)(B), as construed in *Johnson* and *Garcia*. The ALJ and the Board, therefore, erred in relying on Dr. Carabetta's evaluation.

I would reverse the award and remand with directions that each of the physicians who examined Ortega and offered evaluations of her impairment prepare new reports that start with the Sixth Edition and then reach conclusions based on those sources of "competent medical evidence" they consider professionally reliable, recognizing they may well extend beyond the AMA Guides. The administrative process for Ortega's claim probably should be reengaged at that stage because what colors those physicians' professional judgment of competent medical evidence may also affect the credibility of their conclusions.