



# Apportionment in Workers' Compensation: Issues, Significance, and Solutions

## Problem

To calculate permanent disability in California workers' compensation, apportionment must be determined correctly. This includes both industrial and non-industrial apportionment, each of which can contribute to permanent disability. Unfortunately, apportionment is often calculated incorrectly, leading to incorrect value determination for the entire workers' compensation claim. This, in turn, leads to costly litigation, delay, and confusion in efforts to obtain accurate and objective values.

## Causes

This problem can occur for a variety reasons.

- Stakeholders have a poor understanding of the legal concept of apportionment.
- The apportionment values assigned by the provider are estimates, rather than data derived from scientific knowledge using reproducible methods.
- Stakeholders do not have a standardized approach to the collection of the data or the weighting system to deliver apportionment contributions as they relate to permanent impairment—for example, Administrative permanent disability. (See Labor Code section 4663. Apportionment of permanent disability)



## Case Study

Here is an example of how an apportionment value is commonly determined. An injured worker undergoes a two level lumbar fusion for her accepted industrial injury. She is 52 years old and her BMI is 31.9 kg/m<sup>2</sup>. Her lumbar spine has mild degenerative changes at the L2-4 level, moderate changes at the L4-5 level, and severe changes at the L5-S1 level.

The provider values the claim using the AMA Guides 5th Edition administrative rule set at 16% WPI by a validated clinical dataset in Chapter 15 The Spine.

Then, the provider assigns an additional 2% WPI for a residual surgical scan under Chapter 18 The Skin. The provider correctly determines that the total claim value is 18% WPI.

Now the apportionment must be calculated.

The provider, lacking a systematic method for determining apportionment, arbitrarily assigns 5% non-industrial apportionment for the degenerative spine changes. The 5% apportionment provided for the lumbar spine degenerative changes adjusts the impairment contribution to 15.2% WPI industrial contribution and 0.8% non-industrial degenerative changes.

This adjusted impairment contribution of 15.2% will play a significant role in determining any workers' compensation benefits that the patient might receive. If the number is inaccurate, then the employee might receive a monetary benefit at the insurance carrier's expense, or else the employee will receive fewer benefits than they are actually entitled.



## **Solution**

All stakeholders—insurance payers, employers, and employees—need a standardized approach to ensure all data is completely collected and weighted appropriately.

Such a standardized approach moves the apportionment values away from the provider’s easily-contestable guesses and toward solid medical fact.

Correct apportionment requires the provider to collect objective data about the patient and to analyze the data set using statistical methods to process and round the results. This must be done not only for each independent condition apportioned, but also for multiple conditions to be considered jointly.

A representation of the data must be constructed both without the non-industrial apportionable factor and with the non-industrial apportionable factors in order to determine the correct percentages.

## **Determining Apportionment Correctly using RateFast**

First, the provider enters the clinical dataset into RateFast—including the patient’s weight, height, and the severity of the changes at each level of the spine.

RateFast’s apportionment engine determines the weighting of the “impairment load.” The output is a severity score ranging from “none” to “severe degenerative changes” in accordance with the AMA Guides 5<sup>th</sup> Edition.



Next, this severity score is weight averaged across the entire lumbar spine using statistical rounding and data methods.

Finally, a data set model is constructed with and without the injured worker's industrially related component.

The resultant variance for apportionment is 32% for the non-industrial degenerative spine changes. A similar objective approach is determined for the worker's obesity, and 15% is assigned for the non-industrial portion of the excess weight load using the World Health Organization obesity scoring system.

The total corrected non-industrial apportionment for the claim is 47%. Contrast that with the original 5%. These results demonstrate a 9.4-times variance between the provider's clinical estimate and the actual weighted data. These results also recognize each additional apportionable factor (in this case, obesity) which was not identified by the provider.

In this example, the fact that the provider entered the patient's height and weight into the calculation is crucial. In the previous scenario, the provider may have measured the height and weight, but did not think to incorporate the patient's resulting Body Mass Index into the apportionment calculation. Using a tool like RateFast, relevant factors that are commonly overlooked by providers will be automatically and consistently incorporated into the apportionment.

## **Conclusion**

The error variance of 9.4-times in the above-mentioned study may result in litigation, which means additional cost and delay for all stakeholders. This type of common apportionment error can be avoided by using a systematic approach to



data collection, such as the RateFast app, and applying established scientific knowledge, as set forth in the AMA Guides 5<sup>th</sup> Edition and the World Health Organization (in this case, the obesity scoring systems).

This case study demonstrates the importance and variable error risk in determining apportionment for industrial injuries in California Workers' Compensation.

Learn more about injury mapping and comprehensive California workers' compensation reporting at [Rate-Fast.com](http://Rate-Fast.com).