

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH E. WARNING and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Rock Island, IL

*Docket No. 02-959; Submitted on the Record;
Issued September 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has greater than a 43 percent loss of use of his left eye.

On June 6, 1995 appellant, then a 28-year-old laborer, sustained an injury to his left eye when it was struck by a grease fitting.

On May 21, 1997 appellant, filed a claim for a schedule award.

In a report dated February 25, 2000, appellant's attending Board-certified ophthalmologist, Dr. Jean Disseler, stated that examination of appellant's left eye showed visual acuity of 20/40 corrected and 20/100 uncorrected and near vision at the Jaeger 5 line. An Office of Workers' Compensation Programs medical adviser reviewed Dr. Disseler's report on April 9, 2000 and concluded that it showed a 30 percent loss of vision of the left eye.

On January 18, 2001 the Office issued appellant a schedule award for a 30 percent permanent loss of use of the left eye.

By letter dated January 29, 2001, appellant requested a hearing and submitted a report dated January 8, 2001 from Dr. Disseler. In this report she stated:

"To review the findings on [appellant's] most recent examination, his best corrected visual acuity of the left eye was 20/100 uncorrected and 20/40 corrected for the distance. The near vision was the Jaeger 5 line with and without correction. This corresponds to a 30 percent uncorrected and a 13 percent corrected loss of central vision of a single eye. The next step is to determine the percent of visual field loss. I have used method #1 of the A.M.A., [*Guides*] [American Medical Association, *Guides to the Evaluation of Permanent Impairment*] and the visual field of February 18, 2000. Based on these findings, he has an 18.8 percent visual field loss, which corresponds to a 19 percent loss

that we will be using on the charts, in this left eye. No ocular motility abnormality was noted.”

* * *

“In my earlier letter of February 25, 2000, I forgot to include a portion for the pupil irregularity and dilatation seen in this left eye since his injury. According to the guidelines, this allows for an additional 10 percent impairment due to the cosmetic deformity.”

By decision dated September 4, 2001, an Office hearing representative found that further development of the medical evidence was necessary, as the Office medical adviser evaluated appellant’s corrected rather than uncorrected vision.

On remand, another Office medical adviser reviewed Dr. Disseler’s January 8, 2001, report and stated:

“According to the most recent medical evidence January 8, 2001, the claimant has a portion of pupil irregularity and dilatation in his left eye. The claimant’s visual acuity of the left eye was 20/100 uncorrected and 20/40 when corrected for the distance. The near vision was a Jaeger 5 line with and without correction. Using Table 12-2 (p. 284) of the A.M.A., *Guides* 5th [ed.], the uncorrected visual acuity of 20/100 corresponds to visual acuity impairment of 35 percent (loss of central vision). To determine the loss of visual field, the Goldman visual field plot February 18, 2001, was utilized according to sections 12.3c-d (p. 290-295). The following are the meridian values, extent of peripheral field and the corresponding scores, according to Table 12-8 (p. 290):

25 deg; 40=8

65 “ 50=9

115 “ 50=9

155 “ 60=10 scotomata 20 = -2

195 “ 70=11 scotomata 20 = -2

225 “ 60=10

255 “ 50=9

285 “ 50=9

315 “ 40=8

345 “ 40=8

91 -4 = 87 total visual field score

“Using [T]able 12-5 (p. 289), the visual field score corresponds to 13 percent visual field impairment. Based on the [C]ombined [V]alues [C]hart (p. 604) the total left eye PPI [permanent partial impairment] is 43 percent (central vision 35 percent; visual field 13 percent). Regarding the claimant’s cosmetic eye deformity, there is no section in [C]hapter 12 (Visual System) that specifically addresses deformities of the eye....”

On January 15, 2002 the Office issued appellant, a schedule award for an additional 13 percent permanent loss of vision of the left eye, for a total of 43 percent.

The Board finds that appellant has no greater than a 43 percent permanent loss of use of the left eye.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. Section 8107(c)(5) provides for 160 weeks of compensation for a lost eye and section 8107(c)(19) states: “Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction.”

The Act does not specify the manner, in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

An Office medical adviser correctly applied the Tables of the 5th edition of the A.M.A., *Guides* to the findings reported by appellant’s attending ophthalmologist to conclude that appellant had a 43 percent permanent loss of use of the left eye. This medical adviser pointed out that the chapter of the 5th edition of the A.M.A., *Guides* on the visual system does not provide for additional impairment for cosmetic deformity. This is a change from the 4th edition, which provided for up to an additional 10 percent impairment “for such conditions as permanent deformities of the orbit, scars and other cosmetic deformities that do not otherwise alter ocular function.”³ The Office began using the 5th edition of the A.M.A., *Guides* for all awards issued after February 1, 2001, including those recalculated as a result of hearings or reconsiderations.⁴ The Office used the correct edition of the A.M.A., *Guides* and properly calculated the percentage of loss of use of appellant’s left eye.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ Table 8.5, A.M.A., *Guides* (4th ed. 1993).

⁴ FECA Bulletin No. 01-05 (January 29, 2001).

The January 15, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 6, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member