

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES A. SMITH and DEPARTMENT OF THE AIR FORCE,
AIR TRAINING COMMAND, LACKLAND AIR FORCE BASE, TX

*Docket No. 03-410; Submitted on the Record;
Issued June 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 38 percent impairment of his left eye for which he has received a schedule award.

On July 26, 2000 appellant, then a 56-year-old supervisory management analyst, filed a claim for traumatic injury, alleging that on July 21, 2000 he sustained a head injury while in the performance of duty.

On October 25, 2000 the Office of Workers' Compensation Programs accepted that appellant's employment incident of July 21, 2000 caused a detached left eye retina.

On April 22, 2001 appellant filed a claim for a schedule award.

On July 2, 2002 the Office referred appellant to Dr. Mitchell Wong, a Board-certified ophthalmologist, for an opinion regarding his left eye impairment.

In a report dated July 23, 2002, Dr. Wong stated that he had examined appellant that day and noted that he had reached the date of maximum medical improvement. Dr. Wong found that appellant's best-corrected visual acuity rating in the right eye was 20/20-2 for a visual acuity score of 98 and that the left eye's visual acuity rating was 28/400^{ths} for a visual acuity score of 28. He also noted that "Both eyes yield an acuity of 20/20-2, which is a visual acuity score of 98." Dr. Wong found that appellant had a total functional acuity score of 84 percent and an acuity-rated impairment rating of 16 percent. In a report dated October 7, 2002, Dr. Robert S. Meador, an Office medical adviser, reviewed the medical records and noted that based on the A.M.A., *Guides*, appellant had a 38 percent impairment of the left eye.

By decision dated November 22, 2002, the Office awarded appellant a 38 percent impairment of the left eye.

The Board finds that appellant has not established an entitlement to more than a 38 percent impairment of his left eye for which he has received a schedule award.

The schedule award provisions 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. However, 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In this case, Dr. Meador, the Office medical adviser, relied on the findings of Dr. Wong, the Office consultant, applied the appropriate tables of the A.M.A., *Guides* and determined that appellant had no more than a 38 percent left eye impairment for which the Office awarded a schedule award.⁴ Using Tables 12-2 and 12-3 of the A.M.A., *Guides*, appellant's left visual acuity score of 28/400^{ths} corresponds to a visual acuity impairment of 38 percent. Since the Office medical adviser's determination of appellant's impairment is based on the examining physician's findings and complies with the A.M.A., *Guides*, the Office properly based its schedule award decision on the medical adviser's evaluation. There is no medical evidence of record, correctly based on the A.M.A., *Guides*, which establishes that appellant has a greater than 38 percent impairment of the left eye.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ A.M.A., *Guides* (5th ed. 2001) 284, Tables 12-2 and 12-3.

The decision of the Office of Worker's Compensation Programs dated November 22, 2002 is affirmed.⁵

Dated, Washington, DC
June 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ The Board notes that this case record contains evidence which was submitted subsequent to the Office's November 22, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).