

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNROY W. VENABLE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Marlin, TX

*Docket No. 03-563; Submitted on the Record;
Issued September 12, 2003*

DECISION and ORDER

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

The issue is whether appellant is entitled to a schedule award for permanent impairment of his left eye caused by his July 31, 1991 employment injury.

On July 31, 1991 appellant, then a 40-year-old painter was picking up an air hose from a paint gun which had dropped when the air hose flopped around and struck his left eye. The Office of Workers' Compensation Programs accepted a left eye contusion and traumatic cataract/glaucoma and authorized surgery.

On August 6, 1999, Dr. Glen Brindley, a Board-certified ophthalmologist and appellant's treating physician, submitted to the Office an attending physician's report wherein he noted that appellant had been prescribed eyeglasses, and that appellant's current condition was caused by the accepted employment injury. The Office, thereafter, began further development of the medical evidence to determine appellant's entitlement to a schedule award for his loss of vision. In a February 27, 2000 report, written in response to the Office's request for further information upon which to base an impairment determination, Dr. Brindley reported as a result of the July 31, 1991 work injury, appellant suffered a severe hyphema with resultant glaucoma and chronic iritis in his left eye. On March 9, 1992 appellant underwent glaucoma surgery. On November 29, 1993 he underwent cataract extraction with anterior vitrectomy and an anterior chamber implant placement in the left eye. Appellant's chronic iritis had very slowly resolved and his glaucoma had now stabilized to the point where he did not require any medications in the left eye. His last examination of August 6, 1999 had a best-corrected visual acuity of 20/20 in the right eye and 20/25 in the left eye. As a result of his injury, Dr. Brindley stated that appellant would require yearly follow-up visits for the rest of his life. He further noted that it was possible that appellant might experience loss of his glaucoma control and/or a recurrence of his intraocular information. Dr. Brindley did not provide examination findings for appellant's uncorrected vision.

In a January 14, 2002 report, Dr. Don A. Mackey, a Board-certified internist and Office referral physician, advised that appellant was examined for an impairment rating in reference to

the traumatic injury to the left eye which resulted in a traumatic cataract and the subsequent cataract extraction and intraocular lens implant. Dr. Mackey indicated that appellant's ocular vision had remained relatively stable, but that appellant required eyeglasses. Examination findings were reported for corrected vision only. Formal vision testing showed corrected vision OD 20/20, corrected vision OS 20/20 and corrected vision OU 20/20. Formal visual fields showed no evidence of visual field defect secondary to the work injury. Fundoscopic examination showed post-cataract changes of the left eye with intraocular lens implant present. Minor AV narrowing noted, but no hemorrhages or exudate, no papilledema, and no retinal abnormalities noted. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition, under the visual system, page 284, Table 12-2, impairment of visual acuity, appellant's visual acuity score was 100 based upon visual acuity of OD 20/20, OS 20/20 and OU 20/20. This equaled a visual acuity impairment rating of zero percent. Appellant had no visual field impairment to calculate into the visual acuity impairment rating. Dr. Mackey noted that the fifth edition of the A.M.A., *Guides* does not give any weighted value for the presence of aphakia and/or the presence of intraocular lens implantation secondary to removal of a cataract. The date of maximum medical improvement was noted to be January 14, 2002.

On July 26, 2002 appellant underwent another second opinion impairment evaluation with Dr. Mitchel Wong, a Board-certified ophthalmologist, who noted the history of injury. Examination findings revealed a corrected vision of 20/20 in the right eye and 20/20 -1 in the left eye. Dr. Wong did not provide uncorrected vision examination findings. There was an anterior chamber intraocular lens in the left eye. Intraocular tensions were within normal limits. Slit lamp examination revealed an early nuclear cataract of the right eye. There was an anterior chamber pseudophacos to the left eye. The left eye was aphakic. There was a peripheral iridectomy, which had been performed in the eleven o'clock position. Dilated fundus examination revealed a cup to disc ratio of 2x3 in each eye. Appellant was not having any discomfort and was on no medications. The impressions were: trauma to the left eye with secondary uveitis and glaucoma; secondary traumatic cataract, left eye; status post trabeculectomy, left eye; status post cataract extraction with insertion of anterior chamber intraocular lens, left eye. Dr. Wong advised that appellant's functional acuity score was 100. His acuity-related impairment at this time was zero. Dr. Wong opined that maximum medical improvement was reached.

An Office medical adviser reviewed the medical evidence on September 3, 2002. Using Dr. Wong's corrected vision impairment evaluation of July 26, 2002, the Office medical adviser assigned a functional acuity score of 100 and a visual field score of 100. Utilizing the formula set forth in the A.M.A., *Guides*, at chapter 12.4a for Calculating an Impairment Rating for the Visual System (page 296), the Functional Vision Score (FVS) was FAS (Functional Acuity Score) x FFS (Functional Field Score)/100, which equated to 100 percent x 100 percent /100 or 100 percent. Visual impairment equals 100 percent -- FVS of 100 percent which equated to a 0 percent impairment.

By decision dated November 25, 2002, the Office determined that appellant was not entitled to a schedule award for his left eye as he had a zero percent impairment.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.¹ Regarding evaluation of loss of vision, section 8107(c)(19) of the² Act provides that "[t]he degree of loss of vision or hearing under this schedule is determined without regard to correction."

The Act, however, does not otherwise specify the method by which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice, the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Board finds that, in this case, appellant's accepted left eye condition resulted in medically necessary surgery which ultimately resulted in a permanent placement of an intraocular lens implant in 1993. The medical evidence suggests that as of August 1999 appellant's vision required further correction and eyeglasses were prescribed by his physician, Dr. Brindley. In 1999 the Office initiated evaluation of appellant's loss of vision for a schedule award. However, in requesting medical evaluation of appellant's vision loss the Office did not specify that loss of vision was to be determined by measurement of appellant's uncorrected vision, as required by the Act. All of the medical reports of record provided only an evaluation of appellant's corrected vision.

While the A.M.A., *Guides*, fifth edition, and prior editions, evaluate visual impairment using best corrected near and distance acuities, the Board has long affirmed the principle that the Act requires loss of vision to be determined without regard to correction.⁴ The rights and limitations provided by the Act govern in a conflict with the methodology provided by the *Guides*.

Consequently, the case must be remanded to the Office for further evaluation of appellant's uncorrected left eye vision. Following such further development as necessary the Office should issue a *de novo* decision.

¹ 5 U.S.C. § 8107.

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ *Hyrom M. Wright Jr.*, 19 ECAB 550 (1968); *see also Billy J. Cook*, 36 ECAB 625 (1985); *Joseph Hilton Davis*, 46 ECAB 893 (1995).

The decision of the Office of Workers' Compensation Programs dated November 25, 2002 is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
September 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member