

December 3, 1979.¹ The Office accepted appellant's claim for contusion to the left eye and later expanded the claim to include psychogenic pain disorder.²

On November 6, 1996 appellant filed a claim for a schedule award. In support of his claim for a schedule award, appellant submitted reports dated December 14, 1996 and April 23, 1997 from Dr. Luis Cruz, a Board-certified ophthalmologist, which supported that appellant had 10 percent loss of use of his left eye based on loss of visual field. In his December 14, 1996 report, Dr. Cruz noted that he did not use the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) (A.M.A., *Guides*). In an April 23, 1997 report, Dr. Cruz indicated that he first began treating appellant on October 2, 1996 for pain in the left eye. At that time, he conducted an examination which showed that appellant had corrected visual acuities of 20/40 OD and 20/70 OS. The physician indicated refraction was done which reflected anisometropia and he noted that a small cataract was found which probably caused his refractive error. Dr. Cruz advised that on January 14, 1997 appellant had 20/40 vision in each eye and new glasses were prescribed. He also noted that on April 18, 1997 a visual field was done with the octopus perimeter using multiple threshold levels and appellant had right eye (OD) 20/40 and left eye (OS) 20/100 with glasses. He opined that the only finding for appellant's visual activities and visual field consisted of an incipient cataract in his left eye which could be due either to the trauma or the aging process.

The Office, thereafter, began further development of the medical evidence to determine appellant's entitlement to a schedule award for his loss of vision and compensation benefits.

In a report dated April 30, 1997, the Office medical adviser indicated that he had reviewed the April 23, 1997 report of Dr. Cruz and advised that appellant was entitled to a 10 percent impairment for his loss of monocular visual field. He stated that April 23, 1997 was the date of maximum medical improvement. Dr. Cruz referenced Table 5 of the A.M.A., *Guides*.

By decision dated May 6, 1997, the Office awarded appellant a 10 percent impairment of the left eye. In a letter dated May 20, 1997, appellant requested a hearing that was held on November 17, 1997. In support his request, appellant submitted a June 27, 1984 report from Dr. James F. Pierce, Board-certified in psychiatry and neurology, who opined that appellant's psychogenic pain disorder was causally related to his employment injury. Following the hearing, the Office hearing representative affirmed the Office's May 6, 1997 schedule award decision.³

Appellant subsequently provided a copy of a December 11, 1997 report from Dr. Cruz who indicated that the tests did not include an extensive evaluation for chronic pain and no physical causes of pain were noted in the eye examination. By letter dated January 24, 2000, the

¹ On September 19, 1983 appellant officially changed his name to Joseph Hall. The record also reflects that appellant eventually left work at the employing establishment and moved to Hawaii.

² The record reflects that appellant has a prior accepted claim, No. 13-438733, for an October 23, 1974 date of injury. In that claim, the Office accepted appellant's claim for duodenal ulcer disease, mixed anxiety and depressive neurosis.

³ The decision is undated. The case record was returned to the district Office on February 26, 1998.

Office advised appellant that because pain was not included in appellant's schedule award, they would refer appellant for a second opinion examination.

In a February 24, 2000 operative report, Dr. Jon Portis, a Board-certified ophthalmologist, diagnosed blurred vision and indicated that appellant was unable to read due to a cataract in the left eye. He performed a phacoemulsification implantation of intraocular lens in the left eye.⁴

On March 15, 2000 the Office referred appellant to Dr. Troy Masao Tanji, a Board-certified ophthalmologist, for an opinion regarding his left eye impairment.

In an April 15, 2000 form report, Dr. Cruz indicated that appellant had a corrected snellen reading of OD 20/25 and OS 20/25 after the injury. On June 28, 2000 the Office received an Office form filled out by Dr. Cruz in which he provided findings under the fourth edition of the A.M.A., *Guides*. In a June 8, 2000 report, Dr. Portis noted that the left eye had healed from the cataract surgery. He provided appellant a prescription for glasses and advised a retina consultation due to appellant's complaints of white flickers prior to his surgery.

In a report dated June 9, 2000, Dr. Tanji stated that he had examined appellant on April 15, 2000 and opined that appellant had a 44 percent visual field loss pursuant to the fourth edition of the A.M.A., *Guides*. He recommended neuro-imaging to rule out a compression lesion of the optic nerve and recommended a neurological consultation if magnetic resonance imaging (MRI) scan did not show any pathology.

In a July 28, 2000 report, Dr. Dean R. Hirabayashi, a Board-certified ophthalmologist and Office medical adviser, indicated that there was a discrepancy between the normal objective findings on the physical examination and the visual field abnormality in appellant's left eye. He recommended an examination by a neuro-ophthalmologist to ascertain the etiology for the visual field loss in the left eye.

Following review by the Office medical adviser, by letters dated October 5, 2000, the Office advised appellant that he was being referred to Dr. Tyrie L. Jenkins, an ophthalmologist,⁵ and Dr. Nancy Lamb, a Board-certified neurologist. The Office informed the physicians that appellant should be evaluated utilizing the fourth edition of the A.M.A., *Guides*.

In reports dated November 4 and 20, 2000, Dr. Lamb noted appellant's history of injury and treatment and opined that he had residual chronic orbital and peri-orbital pain that was nonwork disabling and not functionally disabling. She noted that the prior award did not provide any impairment for pain and opined that this was the correct conclusion. Dr. Lamb explained that appellant's pain was not functionally or work disabling.

⁴ There is not indication in the record as to whether this cataract surgery was authorized by the Office.

⁵ Dr. Jenkins was not listed in the certification directory.

In a January 31, 2001 report, Dr. Jenkins noted appellant's history of injury and treatment including that he had visual field loss in his left eye for which he had already been awarded a 10 percent impairment. He advised that uncorrected visual acuity was 20/20 in the right eye and 20/30 on the left. Dr. Jenkins noted that appellant also had psychogenic pain syndrome and advised an MRI scan would be beneficial to rule out optic neuropathy as the etiology of appellant's visual field loss had never been determined. He advised that, if appellant was awarded the total allowable impairment for pain under the A.M.A., *Guides*, he would have a total whole body disability of 18 percent.⁶

In a March 23, 2001 report, Dr. Dean R. Hirabayashi, the Office medical adviser, reviewed Dr. Jenkins' January 31, 2001 report. He explained that, since the etiology of the temporal visual field loss in the left eye was not established, appellant had no additional impairment.

By decision dated April 20, 2001, the Office denied appellant's claim for an additional schedule award. By letter dated May 10, 2001, appellant requested a review of the written record. On December 14, 2001 the Office hearing representative remanded the file for the Office to request that Drs. Lamb and Jenkins provide a specific impairment rating to the left eye without including the translation to a whole person impairment rating.

In a May 6, 2002 report, Dr. Lamb performed a repeat examination, discussed the mechanism of injury, and noted her findings on examination. She also noted that appellant had already received a 10 percent impairment for visual field loss and provided an 11 percent whole person impairment for the eye. She advised that appellant had had extensive evaluations which failed to reveal any objective abnormalities which would explain appellant's complaints of "peri- and retro-orbital pain." Dr. Lamb indicated that this along with the accepted condition of "psychogenic pain disorder" supported that there was not a physiological basis for appellant's chronic pain. She provided an extensive discussion and analysis under the fourth edition of the A.M.A., *Guides* noting Table 15 at page 309, allowed for pain that resulted in decreased ability to carry out daily activities. Dr. Lamb also referred to the A.M.A., *Guides*, at page 317, and noted examples of daily living as described in the A.M.A., *Guides*. She opined that there was inadequate objective evidence to support that appellant's pain limited his activities of daily living.

In a May 31, 2002 report, Dr. Jenkins noted that appellant's complaints and examination were essentially unchanged from his previous examination for which he rendered an opinion. He did not provide an impairment rating.

In a July 4, 2002 report, the Office medical adviser, Dr. Hirabayashi, advised that he had reviewed the additional reports from Drs. Jenkins and Lamb and opined that he was unable to modify his previous conclusion. He noted that there was no evidence of any vision change nor any change in the ocular motility of the visual field.

⁶ Dr. Jenkins did not indicate which edition of the A.M.A., *Guides* he consulted.

By decision dated July 18, 2002, the Office found that appellant was not entitled to an additional schedule award for impairment to his left eye. In a letter dated August 9, 2002, appellant requested an examination of the written record. In his request, appellant alleged that the opinions of Dr. Jenkins and Dr. Lamb, along with the Office medical adviser, were inadequate. He also submitted reports which were previously of record and a February 22, 2002 prescription for glasses from Dr. Jenkins.

By decision dated April 14, 2003, the Office hearing representative affirmed the Office's July 18, 2002 decision which found that appellant had not met his burden of proof to establish that he had greater than a 10 percent impairment of the left eye.

LEGAL PRECEDENT

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.⁷ Regarding evaluation of loss of vision, section 8107(c)(19) of the Act⁸ 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 A.M.A., *Guides* (5th ed. 2001), has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁹

ANALYSIS

The Board finds that this case is not in posture for decision as the Office failed to use the proper edition of the A.M.A., *Guides* when assessing appellant's impairment rating. The Office accepted appellant's case for contusion to the left eye and later expanded the claim to include psychogenic pain disorder. In 1997 the Office initiated evaluation of appellant's loss of vision for a schedule award. However, none of the physician's utilized the proper edition of the A.M.A., *Guides*.¹⁰ Although the Office specified that loss of vision was to be determined by measurement of appellant's uncorrected vision, as required by the Act, some of the reports that the Office relied upon were either based on corrected vision with glasses or based partly on prior reports of Dr. Cruz dated April 23, 1997 and April 15, 2000, who allowed appellant to undergo his examination with glasses and who offered an opinion based on appellant's corrected vision. Furthermore, the physicians who provided reports on and after January 31, 2001 utilized the incorrect edition of the A.M.A., *Guides*.¹¹ For instance, the Office medical adviser, in his

⁷ 5 U.S.C. § 8107.

⁸ 5 U.S.C. § 8107(c)(19).

⁹ 20 C.F.R. § 10.404.

¹⁰ A.M.A., *Guides* (5th ed. 2001). The Office began using the fifth edition effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001).

¹¹ As indicated previously, it is unclear which edition of the A.M.A., *Guides* Dr. Jenkins utilized in his January 31, 2001 report.

March 23, 2001 report, relied upon Dr. Jenkins' January 31, 2001 report and did not discuss the fifth edition of the A.M.A., *Guides*. Dr. Lamb, who had previously evaluated appellant for pain, again referred to the fourth edition of the A.M.A., *Guides* in her March 6, 2002 report and on May 31, 2002, Dr. Jenkins declined to change his previous opinion, without addressing the proper edition of the A.M.A., *Guides*. Furthermore, on July 4, 2002, the Office medical adviser reviewed the aforementioned reports of Drs. Lamb and Jenkins and declined to alter his opinion. He too failed to note that the correct edition of the A.M.A., *Guides* had not been utilized.

While the A.M.A., *Guides*, fifth edition,¹² 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.¹³ The rights and limitations provided by the Act govern in a conflict with the methodology provided by the A.M.A., *Guides*. In addition, the fifth edition of the A.M.A., *Guides* was significantly revised with respect to vision as compared to the fourth edition of the A.M.A., *Guides*.¹⁴

Consequently, as none of the physicians evaluated appellant under the proper edition of the A.M.A., *Guides*, the case must be remanded to the Office for further evaluation of appellant's uncorrected left eye vision and pain pursuant to the fifth edition of the A.M.A., *Guides*.¹⁵ Following such further development as necessary the Office should issue a *de novo* decision.¹⁶

CONCLUSION

The Board finds that this case is not in posture for a decision on whether appellant has more than a 10 percent permanent impairment of his left eye. Additional development of the medical evidence is warranted. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for an increased schedule award.

¹² *Id.*

¹³ *Joseph Hilton Davis*, 46 ECAB 893 (1995); *see also Billy J. Cook*, 36 ECAB 625 (1985); *see also Hyrom M. Wright, Jr.*, 19 ECAB 550 (1968).

¹⁴ A.M.A., *Guides* at 277 (5th ed. 2001)

¹⁵ *See* footnote 10.

¹⁶ Should the later calculation result in a percentage which is lower than the original award, the Office should make the finding that appellant has no more than the percentage of impairment previously awarded. *See* FECA Bulletin No. 01-05 (issued January 29, 2001).

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: August 18, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member