

FACTUAL HISTORY

This case was previously on appeal. Appellant, a 56-year-old postmaster, has an accepted claim for left sub-retinal hemorrhage, which arose on January 25, 1994. On March 10, 2004 the Office granted a schedule award for 15 percent impairment of the left eye.² The award was subsequently set aside by the Branch of Hearings and Review and the case remanded to the Office for further medical development. By decision dated June 12, 2006, the Office found that appellant had not established a greater impairment than the 15 percent previously awarded. In a May 4, 2007 decision, the Branch of Hearings and Review affirmed the Office's denial of an increased schedule award.

When the case was previously on appeal, the Board set aside the hearing representative's May 4, 2007 decision and remanded the case for further development.³ The Board noted that under certain circumstances a schedule award could incorporate preexisting permanent impairment. Additionally, the Board noted that the impairment rating for the eye should have been based on measurements of appellant's uncorrected vision, rather than her corrected vision.

On remand, the Office referred appellant's case record to Dr. James G. Ravin, a Board-certified ophthalmologist. In a report dated April 30, 2008, Dr. Ravin found 35 percent visual acuity impairment. He based his rating on appellant's most recent uncorrected visual acuity results for October 3, 2006, which were 20/100 in both eyes. Dr. Ravin did not provide an impairment rating with respect to appellant's visual field because the most recent visual field measurements were obtained prior to her September 2006 cataract surgeries.

In a decision dated July 21, 2008, the Office granted an additional schedule award for 20 percent impairment of the left eye.⁴ The award covered a period of 32 weeks from March 27 through November 5, 2007. The Branch of Hearings and Review affirmed the Office's additional 20 percent award by decision dated February 25, 2009.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁵ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American

² The award covered a period of 24 weeks.

³ Docket No. 07-1607 (issued December 21, 2007). The Board's December 21, 2007 decision is incorporated herein by reference.

⁴ The Office reduced Dr. Ravin's 35 percent impairment rating by the 15 percent award appellant received in 2004.

⁵ For a total loss of use of an eye, an employee shall receive 160 weeks' compensation. 5 U.S.C. § 8107(c)(5) (2006). Compensation for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye. *Id.* at § 8107(c)(14). The degree of loss of vision under the schedule is determined without regard to correction. *Id.* at § 8107(c)(19).

Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁶ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁷

ANALYSIS

In determining the amount of a schedule award, preexisting permanent impairment of that schedule member or function should also be included.⁸ Permanent visual impairment is defined as a permanent loss of vision that remains after maximal medical improvement of the underlying medical condition has been reached.⁹ The A.M.A., *Guides* indicate that the evaluation of visual impairment is based on the functional vision score (FVS), which is based on an assessment of visual acuity; the ability of the eye to perceive details, and visual field; the ability to detect objects in the periphery of the visual environment.¹⁰ The FVS also allows for individual adjustments for other functional deficits, such as contrast and glare sensitivity, color vision, binocularity, stereopsis, suppression and diplopia, if these deficits cause a significant ability loss that is not reflected in a visual acuity or visual field loss.¹¹ However, the need for the adjustment must be well documented and the adjustment should be limited to an increase in the impairment rating of the visual system (reduction of the FVS) by, at most, 15 points.¹²

Dr. Ravin based his April 30, 2008 impairment rating on loss of visual acuity only. He specifically noted that the most recent visual fields in the record predated appellant's September 2006 cataract surgeries. As to visual acuity results, Dr. Ravin indicated that the most recent uncorrected results were obtained on October 3, 2006. Although the A.M.A., *Guides* provide that impairment ratings should be based on the "best-corrected visual acuity,"¹³ The Act mandates that the degree of loss of vision under the schedule award provisions must be determined without regard to correction.¹⁴ As noted, Dr. Ravin's April 30, 2008 visual acuity impairment rating was based on appellant's October 3, 2006 uncorrected visual acuity result, which was 20/100 in both eyes. Applying the October 3, 2006 results to Table 12-2, *Impairment of Visual Acuity*, reveals a visual acuity score of 65 and a visual acuity impairment rating of 35

⁶ 20 C.F.R. § 10.404.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁸ See, e.g., *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (June 1993).

⁹ A.M.A., *Guides* 278 (5th ed. 2001).

¹⁰ *Id.* at 278, 280, 296.

¹¹ *Id.* at 278, 297.

¹² *Id.* at 297.

¹³ Section 12.2b.3, A.M.A., *Guides* 282.

¹⁴ *Supra* note 5.

percent.¹⁵ As there were no postsurgical visual field results, Dr. Ravin did not calculate impairment of the visual field.

The Board finds that Dr. Ravin's 35 percent impairment rating conforms to the A.M.A., *Guides* (5th ed. 2001), and thus, constitutes the weight of the medical evidence.¹⁶ Appellant has not submitted any credible medical evidence indicating she has greater than 35 percent impairment of the left eye. Accordingly, the Office properly awarded appellant an additional 20 percent impairment of the left eye.¹⁷

CONCLUSION

Appellant has not established that she has greater than 35 percent impairment of the left eye.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ A.M.A., *Guides* 284.

¹⁶ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

¹⁷ The Office correctly reduced the latest award by 15 percent to reflect appellant's May 10, 2004 schedule award. See 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).