

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.L., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Wilson, NC, Employer )

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**Docket No. 10-904**  
**Issued: November 17, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 18, 2010 appellant filed a timely appeal from a December 8, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

**ISSUE**

The issue is whether appellant is entitled to a schedule award for a permanent impairment of the right eye.

**FACTUAL HISTORY**

On January 10, 2006 appellant, then a 41-year-old maintenance mechanic, filed a claim alleging that on January 5, 2006 he sustained an injury to his right eye from a piece of flying metal. He stopped work on January 5, 2006. The Office accepted the claim for penetration of the right eye with a foreign object and a ruptured globe of the right eye and on January 6, 2006 appellant underwent eye surgery.

On June 26, 2009 appellant filed a claim for a schedule award. By letter dated July 1, 2009, the Office requested that he submit an impairment evaluation from his attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2008) (A.M.A., *Guides*).

In an impairment evaluation dated September 2, 2009, Dr. Srilaxmi Beareilly, a Board-certified ophthalmologist, indicated that appellant had 20/20 vision with correction. He advised that visual fields were full in both eyes. On September 28, 2009 the Office medical adviser related that to determine the extent of appellant's permanent impairment required a report addressing his vision without correction and providing the distant visual acuity and visual fields for both eyes.

On October 23, 2009 Dr. Madan Lal, a Board-certified ophthalmologist and Office referral physician, discussed appellant's complaints of blurry vision in his right eye since the injury. On physical examination, he measured unaided visual acuity in the right eye as 20/30, in the left eye as 20/20 and in both eyes together as 20/15. Appellant's near vision was JS in the right eye and J4 in the left. Dr. Lal found a normal disc of the right eye on examination with a retinal scar. He diagnosed a chorioretinal scar post pars plana vitrectomy with foreign body removal intraocular in his right eye, a visual field defect corresponding to the chorioretinal scar measuring less than five degrees in the right lower field, a slight macular edema of the epiretinal membrane in his right eye not affecting vision and a refractive error and presbyopia. Dr. Lal noted that appellant had no functional disability as his vision was correctable to 20/20. He stated, "Visual field test was done on Humphrey, the 30-degree, 30-2, which showed a scotoma in the lower field below the disc, corresponding to his retinal scar measuring less than 5 degrees." Dr. Lal further found normal binocular and stereo vision and no cataract. He stated, "Appellant does have trace epiretinal membrane possibly resulting from his injury and vitrectomy. It is possible it may get worse in the future, but it needs to be observed." Citing Table 12-2 on page 288 of the A.M.A., *Guides*, Dr. Lal determined that appellant had visual acuity of the right eye of 20/30, which yielded a visual acuity score (VAS) of 90 percent or a 10 percent impairment. He found that appellant had no impairment of the left eye.

On November 6, 2009 the Office medical adviser noted that Dr. Lal had not used the functional acuity score in determining the extent of impairment as required under the sixth edition of the A.M.A., *Guides*. He determined that, using Table 12-2 on page 288 of the A.M.A., *Guides*, appellant's VAS in the right eye was 90, in the left eye was 100 and in both eyes was 105. The Office medical adviser utilized Table 12-3 on page 289 to find the functional acuity score (FAS). As provided by the table, he multiplied the VAS for both eyes of 105 by 3 and then added this result to the FAS for the right and left eye to find a total of 505. The Office medical adviser divided the result by 5 to find a FAS of 101. He subtracted the resulting FAS of 101 from 100 to find an acuity-related impairment rating of zero percent. The Office medical adviser asserted that appellant's retinal scar "has no affect on functional acuity or field of vision. Nonwork-related presbyopia is corrected with reading glasses."

On November 23, 2009 the Office requested that Dr. Lal review and comment on the Office medical adviser's findings. In a response of the same date, Dr. Lal concurred with the Office medical adviser's finding that appellant had no impairment pursuant to Table 12-3 on page 289 of the A.M.A., *Guides*.

By decision dated December 8, 2009, the Office denied appellant's claim for a schedule award on the grounds that the weight of the medical evidence did not show that he had a permanent impairment of the right eye.

On appeal, appellant argues that he now needs to wear glasses for his vision, but that he did not require glasses before his injury. He further noted that he had permanent scar tissue that affected his vision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing federal regulations,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, functions and organs of the body. 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>3</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides*<sup>5</sup> as the appropriate edition for all awards issued after that date.<sup>6</sup>

### **ANALYSIS**

The Office accepted appellant's claim for penetration of the right eye with a foreign object and a ruptured globe of the right eye. On June 26, 2009 appellant filed a claim for a schedule award. In a report dated September 2, 2009, Dr. Bearely opined that appellant had normal vision with correction and a full visual field. An Office medical adviser found that Dr. Bearely's report was insufficient to support a schedule award as it did not address his vision without correction and did not address the visual acuity and visual fields bilaterally.

The Office referred appellant to Dr. Lal for an impairment evaluation. On October 23, 2009 Dr. Lal diagnosed a chorioretinal scar subsequent to a foreign body removal in the right eye with a visual field defect corresponding to the scar of less than five degrees in the right lower field. He noted that appellant's visual was correctable to 20/20. Dr. Lal measured visual acuity in the right eye of 20/30, in the left eye as 20/20 and in both eyes as 20/15. Applying Table 12-2 of the sixth edition of the A.M.A., *Guides*, he found that appellant's visual acuity of the right eye

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>4</sup> *Id.*

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

of 20/30 yielded a visual acuity score of 90, which constituted a 10 percent impairment. An Office medical adviser reviewed Dr. Lal's findings on November 17, 2009. He determined that Dr. Lal had not utilized the functional acuity score in reaching his impairment finding in accordance with the A.M.A., *Guides*. The Office medical adviser found that, using Table 12-2, appellant's visual acuity score in the right eye was 90, in the left eye was 100 and in both eyes was 105. He determined the functional acuity score under Table 12-3 by multiplied the visual acuity score for both eyes of 105 by 3 and then added this result to the functional acuity score for the right and left eyes to find a total of 505. The Office medical adviser divided 505 by 5 to find a functional acuity score of 101. He subtracted 101 from 100 to find no impairment rating for visual acuity. On November 23, 2009 Dr. Lal reviewed and concurred with the Office medical adviser's finding that appellant had no impairment due to a loss of visual acuity under the sixth edition of the A.M.A., *Guides*.

On appeal appellant contends that he has scar tissue due to his employment injury that affects his vision. The Office medical adviser found that appellant's retinal scar did not reduce his field of vision. Dr. Lal, however, indicated that appellant had a visual field defect corresponding to his chorioretinal scar of less than five degrees in the right lower field. He indicated that a visual field test revealed a scotoma or alteration in the visual field, corresponding to the retinal scar but did not specifically address whether the scotoma resulted in an impairment under the A.M.A., *Guides*. Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. Once the Office undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case.<sup>7</sup> The case, consequently, is remanded for the Office to request that Dr. Lal address whether appellant has an impairment under the A.M.A., *Guides* due to a loss in his field of vision. After this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>7</sup> See *P.K.*, 60 ECAB \_\_\_\_ (Docket No. 08-2551, issued June 2, 2009); *Melvin James*, 55 ECAB 406 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 8, 2009 is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 17, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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