

performance of duty. OWCP accepted the claim for right corneal abrasion, right pseudomonas keratitis and paid all appropriate treatment, including a corneal transplant and compensation benefits.

On June 16, 2010 appellant filed a claim for a schedule award. In a June 22, 2010 letter, OWCP advised his treating physician Dr. Amit Chokshi, a Board-certified ophthalmologist, of the requirements for determining an impairment evaluation under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) and provided a permanent impairment worksheet. On July 28, 2010 Dr. Chokshi opined that appellant had 13 percent visual impairment. On August 26, 2010 OWCP's medical adviser reviewed his July 28, 2010 report and indicated additional information was needed.

OWCP subsequently referred appellant to Dr. Ravi Patel, a Board-certified ophthalmologist, for a second opinion evaluation. In an October 5, 2010 report, Dr. Patel noted the history of injury and that appellant had no vision, pain and photophobia in the right eye. Review of the medical records indicated a corneal transplant in right eye and glaucoma in both eyes. On examination, Dr. Patel found uncorrected visual acuity of 20/no light perception (NLP) in the right eye, 20/40 in the left eye and 20/30 for both eyes. Corrected visual acuity was 20/NLP in the right eye, 20/30 in the left eye and 20/30 for both eyes. Appellant had normal confrontation visual fields for both eyes. Dr. Patel stated that appellant was not able to see out of his right eye. Physical restrictions include minimal work in light conditions due to severe photophobia and pain. There was also loss of depth perception and visual acuity in right eye. Dr. Patel opined that the right corneal abrasion and keratitis have resolved and appellant was at maximum medical improvement. He opined that appellant had 24 percent permanent impairment due to complete loss of vision in the right eye.

On November 2, 2010 OWCP's medical adviser reviewed Dr. Patel's October 5, 2010 report. He opined that the loss of vision in appellant's right eye was total and permanent with no improvement anticipated. The medical adviser diagnosed pseudomonas keratitis OD with total and permanent loss of vision. Under the sixth edition of the A.M.A., *Guides*, he opined that appellant had 28 percent impairment. To determine visual acuity scores (VAS), the medical adviser used Table 12-2 and Dr. Patel's uncorrected visual acuities of 20/NLP in the right eye, 20/30 in the left eye and 20/30 binocular vision. VAS was determined to be 20/NLP or 0 for the right eye, 20/30 or 90 for the left eye and 20/30 or 90 binocular vision. Table 12-3 was then used to determine functional acuity scores. The right eye VAS (20/NLP or 0) multiplied by 1 equaled 0. The left eye VAS (20/30 or 90) multiplied by 1 equaled 90. Binocular VAS (20/30 or 90) multiplied by 3 equaled 270. The sum of each VAS (0 plus 90 plus 270) or 360 was then divided by 5 to obtain the functional acuity score (FAS) of 72. The acuity-related impairment range was determined to be 100 minus FAS of 72 or 28.

By decision dated November 17, 2010, OWCP awarded 28 percent permanent impairment to the right eye. The award ran for 44.8 weeks for the period September 29, 2008 to August 8, 2009.

In a November 23, 2010 letter appellant, through his attorney, requested a telephonic hearing with OWCP's hearing representative, which was conducted on March 15, 2011. Counsel

argued it was inappropriate for OWCP to adjust appellant's visual impairment in the right eye by calculating such against his total vision.

By decision dated May 9, 2011, OWCP's hearing representative affirmed the November 17, 2010 decision.

LEGAL PRECEDENT

Section 8107 of FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.² For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.³ A loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.⁴ Partial losses are compensated proportionately.⁵

Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁶ For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition and to report findings in accordance with those guidelines.⁷

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,⁸ FECA mandates that the degree of loss of vision must be determined without regard to correction.⁹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through its medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹⁰

² *Id.* at § 8107.

³ *Id.* at § 8107(c)(5).

⁴ *Id.* at § 8107(c)(14).

⁵ *Id.* at § 8107(c)(19).

⁶ 20 C.F.R. § 10.404.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁸ A.M.A., *Guides* 283, 284, Chapter 12.2b.

⁹ 5 U.S.C. § 8107(c)(19).

¹⁰ *See supra* note 7 at Chapter 2.808.6(d) (January 2010). *See also* C.K., Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

ANALYSIS

OWCP has issued a schedule award for 28 percent impairment of appellant's right eye, amounting to 44.8 weeks of compensation out of a maximum 160 weeks. The issue on appeal is whether appellant is entitled to more than 44.8 weeks of compensation for complete loss of vision of the right eye.

Appellant's treating physician, Dr. Chokshi, failed to provide any visual examination findings or otherwise explain the basis for his 13 percent impairment finding. Thus, his report is not probative to determine an impairment rating under the A.M.A., *Guides*.

The only current visual examination comes from Dr. Patel, the Board-certified ophthalmologist and OWCP referral physician, who stated that appellant had complete loss of vision, pain and photophobia in the right eye. On examination, Dr. Patel found that appellant's uncorrected visual acuity was 20/NLP in the right eye, 20/30 in the left eye and 20/30 binocular. While he opined that appellant had 24 percent permanent impairment due to complete loss of vision in right eye, he failed to provide measurements, citations or calculating utilizing the sixth edition of the A.M.A., *Guides* to support his opinion.

OWCP's medical adviser reviewed Dr. Patel's report and opined that the loss of vision in appellant's right eye was total and permanent with no improvement anticipated. He applied Dr. Patel's examination findings to the sixth edition of the A.M.A., *Guides* and calculated 28 percent permanent impairment to the right eye. The Board notes that the compensation schedule provides that total loss of an eye equals 160 weeks of compensation.¹¹ The medical evidence in this case establishes that appellant has no light perception and no vision in his right eye. Appellant's uncorrected visual acuity in the right eye is 20/NLP with a visual acuity score of zero. In *Michael C. Knorr*,¹² the employee had no visual field and no visual function in the left eye. The Board found that he sustained total loss of his left eye and was entitled to 160 weeks compensation for loss of the left eye. While OWCP properly found appellant was entitled to a schedule award, OWCP was incorrect in finding that he was only entitled to 44.8 weeks compensation or 28 percent permanent impairment for loss of his right eye when the record indicates that he is totally blind in the right eye with no light perception and no chance of improvement in his right eye condition.¹³ The schedule award is, therefore, modified to reflect appellant is entitled to the full 160 weeks of compensation for total loss of an eye or an additional 115.2 weeks of compensation for loss of his right eye. OWCP should amend the schedule award determination to reflect the total loss of the right eye and award the appropriate schedule award benefit.

¹¹ 20 C.F.R. § 8107(c)(5).

¹² Docket No. 99-2059 (issued September 15, 2000).

¹³ *Cf. N.D.*, 59 ECAB 344 (2008) (the claimant underwent a complete removal of the left kidney due to his work injury and OWCP granted a schedule award for 15 percent impairment; the Board found that appellant clearly lost his left kidney due to his work injury and was entitled to compensation for 100 percent loss of the kidney); *D.J.*, 59 ECAB 620 (2008) (claimant had a work-related uterine prolapse requiring a total hysterectomy for which OWCP found 86 percent impairment of the uterus; the Board found that the claimant was entitled to compensation for 100 percent loss of the uterus).

CONCLUSION

The Board finds that as appellant has a total loss of vision in his right eye he is entitled to 160 weeks of compensation for total loss of vision of that eye.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 9, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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