United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 11-1937**
	)	**Issued: April 6, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Birmingham, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 25, 2011 appellant filed a timely appeal from the May 10, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the evidence established that appellant sustained a permanent impairment of her right eye.

FACTUAL HISTORY

On July 13, 2009 appellant, then a 47-year-old program support assistant, sustained an injury in the performance of duty when she fell out of a transport van and hit her face and

[1] 5 U.S.C. § 8101 *et seq.*

shoulder on the wall of a parking deck. OWCP accepted her claim for fractured facial bones and fractured right humerus.

Appellant submitted a September 3, 2009 report from Dr. Michael Vaphiades, a Board-certified neurologist, who stated that he had performed eye surgery on her. Dr. Vaphiades' examination revealed that her acuity, color vision, confrontational field, conjunctiva, cornea and anterior chamber were normal and that her diplopia condition had seemingly resolved. The optic nerves, however, had temporal cupping.

On March 4, 2010 Dr. Vaphiades indicated that appellant suffered from daily eye pain. Appellant's visual acuity was 20/20 with correction, but she had decreased supraduction of the right eye due to trauma and entrapment of the inferior rectus muscle. She also had difficulty judging distances. Dr. Vaphiades diagnosed diplopia (double vision).

On March 21, 2010 appellant requested a schedule award. OWCP routed the case file to the district medical adviser (DMA) for review.

In an April 9, 2010 report, the DMA reviewed Dr. Vaphiades' reports and concluded that appellant had no permanent functional loss of use of her right eye. He based his conclusion on findings, which showed no indication of interference with activities of daily living and normal corrected vision.

In a decision dated April 12, 2010, OWCP denied appellant's request for a schedule award based on the report of the DMA. On May 10, 2010 appellant requested a review of the written record.

In a letter dated September 1, 2010, OWCP advised appellant to submit a report from her treating physician with an opinion regarding the degree of her permanent impairment related to the accepted injury. Appellant was also asked to complete an application for a facial disfigurement award.

In September 7, 2010 reports, Dr. Vaphiades stated that appellant had decreased supraduction of the right eye, right hemifacial spasms and headaches. Acuity was 20/20 in the right eye and optic nerves were tilted and cupped. Appellant had facial pain and twitching on the right side. She had depth perception problems when driving at night, with a starburst effect.

In a September 15, 2010 report, Dr. Vaphiades provided a history of injury and treatment, noting that appellant had undergone surgery for a fractured orbit and entrapment of the inferior rectus muscles of the right eye. He indicated that she had developed chronic, disfiguring facial spasms, but that her visual acuity was normal. Dr. Vaphiades opined that appellant's disability was due to diplopia and that she had reached maximum medical improvement (MMI), but stated that he did not know the extent of her visual impairment.

On September 30, 2010 appellant submitted an application for facial disfigurement.

By decision dated November 9, 2010, an OWCP hearing representative vacated the April 12, 2010 decision and remanded the case for further development of the medical evidence. The hearing representative found that the DMA failed to describe how he reached his conclusion

through the application of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2]

On remand, OWCP prepared a statement of accepted facts and asked the DMA to review the entire file again in order to determine whether appellant had any permanent impairment of her right eye or any facial disfigurement. In a November 10, 2010 report, the DMA stated that "the eye injury was evaluated by the DMA on April 9, 2010." He requested current information on the status. In a December 10, 2010 memorandum, OWCP asked the DMA to explain how the conclusion was reached according to the sixth edition of the A.M.A., *Guides* that appellant had no right eye impairment due to his work injury.

In a December 15, 2010 report, the DMA requested that OWCP obtain an impairment rating from Dr. Vaphiades based on appellant's uncorrected vision, as required by FECA Bulletin number 09-03. On December 22, 2010 the DMA opined that the medical evidence was insufficient to establish any ratable disfigurement entitling her to a schedule.

In a note dated December 30, 2010, Dr. Vaphiades stated that his office had not recently checked appellant's uncorrected vision. He noted that, as of July 21, 2009, her uncorrected visual acuity in the right eye was 20/20.

In a report dated January 12, 2011, the DMA referred to Table 12-2 and Table 12-3 of the sixth edition of the A.M.A., *Guides* and concluded that appellant had a zero percent visual system impairment rating. Noting that appellant no longer had diplopia and that her uncorrected vision was normal as of September 3, 2009, the DMA opined that she had reached MMI by that date.

In a May 10, 2011 decision, OWCP denied appellant's request for a schedule award for right eye impairment, based upon the January 12, 2011 report of the DMA.[3]

On appeal, appellant contends that the medical evidence establishes that she has a permanent impairment to her right eye due to the accepted injury based on conditions of diplopia, which greatly impacts her activities of daily living.

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. For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.[4] Compensation for

---

[2] A.M.A., *Guides* (6th ed. 2008).

[3] By decision dated February 22, 2011, OWCP awarded appellant $400.00 for a facial disfigurement. Appellant did not seek review of this decision by the Board. Therefore, the merits of the February 22, 2011 decision will not be addressed herein.

[4] 5 U.S.C. § 8107(c)(5).

loss of binocular vision is the same as for loss of the eye.[5] Partial losses are compensated proportionately.[6]

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*.[7] For impairment ratings calculated on and after May 1, 2009, it should advise any physician evaluating permanent impairment to use the sixth edition and to report findings in accordance with those guidelines.[8]

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,[9] FECA mandates that the degree of loss of vision must be determined without regard to correction.[10]

ANALYSIS

OWCP denied appellant's schedule award claim based on the DMA's conclusion that she had a zero percent visual system impairment rating. The DMA's report, however, is insufficient to form the basis for a schedule award determination. Therefore, the May 10, 2011 decision will be set aside and the case remanded for further development.

On December 15, 2010 the DMA requested an impairment rating from Dr. Vaphiades based on appellant's uncorrected vision, as required by FECA Bulletin number 09-03. When Dr. Vaphiades indicated that he had not recently checked appellant's uncorrected vision, the DMA chose to rely on relied upon September 3, 2009 findings, which he found reflected that appellant no longer had diplopia and that her uncorrected vision was normal as of that date. The evidence, however, reflects that on March 4, 2010 six months later, Dr. Vaphiades diagnosed diplopia and continued to do so in subsequent reports. The Board notes that appellant had not reached MMI by September 3, 2009. On September 15, 2010 Dr. Vaphiades opined that her disability was due to diplopia and that she had reached MMI. The Board finds that the DMA's reliance on that September 3, 2009 report was misplaced.

The Board finds that the DMA's January 12, 2011 report does not adequately address the provisions of the A.M.A., *Guides*. While he properly referred to Table 12-2 and Table 12-3 on pages 288-89 in determining appellant's visual acuity, the DMA failed to discuss whether there

---

[5] *Id.* at § 8107(c)(14). *See Russell E. Wageneck*, 46 ECAB 653 (1995) (holding there is no provision under section 8107 of OWCP for the combination of each eye into a schedule award for both eyes together, as there is for loss of hearing in both ears; therefore, schedule awards are issued for each eye individually).

[6] *Id*. at § 8107(c)(19).

[7] 20 C.F.R. § 10.404.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims,* Chapter 2.808.6(a) (January 2010).

[9] A.M.A., *Guides* 283, 284, Chapter 12.2b.

[10] 5 U.S.C. § 8107(c)(19).

was evidence of visual field impairment or whether individual adjustments for functional vision were appropriate pursuant to page 305 of the A.M.A., *Guides*.[11] Therefore, his report is of diminished probative value.

The Board finds that this case is not in posture for decision. Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[12] Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[13] In this case, appellant submitted medical evidence in support of her schedule award claim. OWCP began to develop the evidence by seeking an opinion from the DMA and additional information from her treating physician. It failed, however, to obtain a rationalized report from the DMA based upon a current physical examination of appellant. Without such information, an informed decision cannot be reached on the relevant issue.

On remand, OWCP should further develop the medical evidence of record by requesting that its medical adviser provide a reasoned opinion regarding appellant's right eye impairment explaining the basis of impairment under the sixth edition of the A.M.A., *Guides*. If its medical adviser is unable to render a reasoned opinion fully explaining the application of the A.M.A., *Guides*, OWCP shall refer appellant to an appropriate Board-certified specialist for a second opinion regarding the extent of her eye impairment. Following this and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's schedule award claim.

CONCLUSION

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

---

[11] Adjustments for such functions as contrast sensitivity, glare sensitivity, color vision defects and binocularity, stereopsis, suppression and diplopia are permitted, although they must be well documented and should be limited to an increase in impairment by, at most, 15 points. A.M.A., *Guides* 305.

[12] *See LL*, Docket No. 10-16 (issued October 1, 2010); *Phillip L. Barnes*, 55 ECAB 426 (2004); *Horace L. Fuller*, 53 ECAB 775, 777 (2002); *James P. Bailey*, 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

[13] *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 6, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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