

through a wooded area at work. Appellant did not stop work but performed limited-duty indoor work for about a week after his injury.

Appellant was seen on a periodic basis by Dr. Welden Haw, an attending Board-certified ophthalmologist. In progress reports from late-2011 through mid-2013, Dr. Haw advised in the objective findings portion of the reports that appellant had 20/20 or 20/25 vision in his left eye. He provided the diagnoses of corneal scar and corneal astigmatism of the left eye. In the subjective complaints portion of these reports, Dr. Haw noted that appellant complained of blurry/distorted vision and foreign body sensation in his left eye.

In a May 8, 2013 report, Dr. Haw saw appellant in follow up of a corneal scar encroaching on his superior pupillary border sustained from a tree branch which had “cut” into his left cornea while on duty in November 2011. On the initial evaluation on November 17, 2011, appellant had 20/30 vision and irregular astigmatism on his left eye resulting from injury. Dr. Haw noted that best spectacle corrected vision was 20/20 on November 30, 2011. On the last refraction, appellant’s vision was 20/20 and a Pentacam reading demonstrated improvement in his irregular astigmatism. Dr. Haw noted that the corneal scar was likely to be persistent and stated that appellant’s present uncorrected visual acuity was 20/25.

On September 18, 2013 appellant filed a claim for a schedule award due to his accepted left eye laceration.

In a form report dated September 4, 2013, Dr. Haw discussed the mechanism of appellant’s November 15, 2011 injury and stated that he complained of blurry vision and foreign body sensation in his left eye. He diagnosed corneal scar with astigmatism of the left eye. A portion of the form report stated, “Impairment rating: Report the whole person (WPI) rating for each impairment using the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*], 5th Edition and explain how the rating was derived. List tables used and page numbers.” Dr. Haw responded that appellant had a “0-10 percent” whole person impairment under Table 6 on page 10. He also indicated that appellant’s uncorrected left eye vision was 20/30 and that his vision was correctable to 20/20 in both eyes. Appellant had full ability to work without restrictions.

In a letter dated October 11, 2013, OWCP requested that appellant submit additional medical evidence in support of his claim. It advised that the September 4, 2013 report of Dr. Haw did not provide a “clear impairment rating” under the standards of the sixth edition of the A.M.A., *Guides*. Appellant resubmitted a portion of Dr. Haw’s September 4, 2013 evaluation which indicated that he had 20/30 vision in his left eye.

In a February 6, 2014 decision, OWCP denied appellant’s schedule award claim. It found that he had not submitted sufficient medical evidence to establish that he sustained permanent impairment of his left eye. OWCP determined that the September 4, 2013 report of Dr. Haw did not provide an impairment rating that was conducted in accordance with the relevant standards of the sixth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁵ The Board has held that a schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁶ An opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment.⁷

Section 8107(c)(19) of FECA provides that “[t]he degree of loss of vision or hearing under this schedule is determined without regard to correction.”⁸ The sixth edition of the A.M.A., *Guides* indicates that the evaluation of visual impairment is based on the functional vision score (FVS), which is the combination of an assessment of visual acuity, the ability of the eye to perceive details, necessary for activities such as reading and an assessment of visual field, the ability of the eye to detect objects in the periphery of the visual environment, which relates to orientation and mobility.⁹ The A.M.A., *Guides* also allows for individual adjustments for other functional deficits, such as contrast and glare sensitivity, color vision defects and binocularity, stereopsis, suppression and diplopia, only if these deficits are not reflected in a visual acuity or visual field loss.¹⁰ However, the A.M.A., *Guides* specifically limits adjustment of the impairment rating for these deficits to cases which are well documented and states, “The

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁶ *See Gordon G. McNeill*, 42 ECAB 140 (1990).

⁷ *See James Kennedy, Jr.*, 40 ECAB 620 (1989).

⁸ 5 U.S.C. § 8107(c)(19).

⁹ A.M.A., *Guides* 282, 285. This represents a change from the visual efficiency scale that was used up to the fourth edition of the A.M.A., *Guides*, as the extra scale and losses for diplopia and aphakia have been removed. The sixth edition of the A.M.A., *Guides*, also utilizes a different formula for calculating visual impairment ratings to better account for situations where the binocular function is not identical to the function of the better eye.

¹⁰ A.M.A., *Guides* 305.

adjustment should be limited to an increase in the impairment rating of the visual system (reduction of the FVS) by, at most, 15 points.”¹¹

ANALYSIS

OWCP accepted that on November 15, 2011 appellant sustained a laceration of his left eye when he was poked in his left eye by a tree branch while running through a wooded area while working. On September 18, 2013 appellant filed a claim for a schedule award due to his accepted left eye laceration. OWCP denied his claim as he had not submitted sufficient medical evidence to establish entitlement to schedule award compensation.

The Board finds that appellant did not meet his burden of proof to establish that he sustained permanent impairment of his left eye due to the accepted injury.

Appellant submitted a September 4, 2013 form report in which Dr. Haw, an attending Board-certified ophthalmologist, diagnosed corneal scar and corneal astigmatism of the left eye. The form report of Dr. Haw is clearly a state workers’ compensation form citing to state code section and use of the fifth edition of the A.M.A., *Guides*. A portion of the state form states, “Impairment rating: Report [WPI] rating for each impairment using the A.M.A., *Guides*, 5th Edition and explain how the rating was derived. List tables used and page numbers.” Dr. Haw listed that appellant had “0 to 10 percent” whole person impairment under Table 6 on page 10. He also indicated that appellant’s uncorrected left eye vision was 20/30 and that his vision was correctable to 20/20 in both eyes.

The Board finds that the September 4, 2013 report of Dr. Haw is of diminished probative value. Dr. Haw failed to provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides* as required for claims before OWCP.¹² Moreover, his opinion on left eye impairment was also equivocal in that he merely listed a range of impairment (0 to 10 percent whole person impairment). The Board notes schedule awards are not payable for whole person impairment.¹³ Dr. Haw made reference to Table 6 on page 10, but there is no such table in the fifth or sixth edition of the A.M.A., *Guides* which relates to the evaluation of eye impairment. The sixth edition of the A.M.A., *Guides* provides the relevant standards for evaluating appellant’s eye impairment.¹⁴ Dr. Haw did not provide any assessment of appellant’s eye impairment under these standards.

On appeal, appellant argued that the September 4, 2013 report of Dr. Haw showed that he sustained a permanent impairment of his left eye, but the Board has explained why this report does not establish permanent impairment under the relevant standards of the sixth edition of the A.M.A., *Guides*.

¹¹ *Id.*

¹² See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989).

¹³ See *supra* note 6.

¹⁴ See *supra* note 5.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish permanent impairment of his left eye entitling him to receive schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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