



## ISSUE

The issue is whether appellant met his burden of proof to establish greater than the six percent impairment of the left eye, for which he previously received a schedule award.

On appeal counsel asserts that, based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (hereinafter A.M.A., *Guides*),<sup>3</sup> appellant is also entitled to six percent visual impairment of the right eye because the appropriate rating is for the visual system as a whole.

## FACTUAL HISTORY

On March 31, 2004 appellant, then a 32-year-old civil aviation security specialist (air marshal) injured his left eye during a training exercise. OWCP accepted left eye central serous retinopathy. A treating Board-certified ophthalmologist, Dr. Stephen R. Kaufman, advised on August 27, 2004 that appellant's examination was stable and his visual acuity had improved. On October 8, 2004 Dr. Philip J. Schaville, an optometrist, advised that appellant's visual acuity had improved to 20/20 in the left eye. He recommended annual observation.

On November 17, 2015 appellant, through counsel, filed a schedule award claim (Form CA-7).

In a November 12, 2015 report, Dr. Neil Allen, Board-certified in internal medicine and neurology, noted examining appellant on October 30, 2015. He described the history of injury, appellant's subsequent eye treatment, and noted current symptoms of reduced vision in the left eye. Dr. Allen indicated that appellant denied using prescription or corrective devices including glasses or contact lenses. Bilateral ophthalmic examination demonstrated no flame hemorrhages or arteriovenous nicking. The macula and optic discs were within normal limits. Examination with the traditional Snellen chart viewed at 20 feet demonstrated right eye 20/13, left eye 20/80, and both eyes together 20/10. Dr. Allen noted that the findings yielded visual acuity scores (VAS) of 110, 70, and 110 respectively, found in Table 12-2, Impairment of Visual Acuity, of the sixth edition of the A.M.A., *Guides*. Dr. Allen then applied the formula found in Table 12-3 of the A.M.A., *Guides* used to calculate acuity-related impairment.<sup>4</sup> He found that the sum of appellant's visual acuity scores (110 + 70 + 110 x 3 or 330) was 470. Dr. Allen then divided this by 5 to yield a functional acuity score (FAS) of 94. In accordance with Table 12-3, he subtracted appellant's FAS of 94 from 100 and concluded that appellant had a whole person permanent impairment of six percent.

On May 23, 2016 Dr. Kevin Yuhan, a Board-certified ophthalmologist and OWCP medical adviser, noted his review of a statement of accepted facts and the medical record. He indicated that there was no medical evidence between 2004 and 2015 when appellant reported a change in his visual condition. Dr. Yuhan advised that, since the first documentation of severe

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> The formula indicates that VAS of the right eye, VAS of the left eye, and binocular VAS times 3 are added, with the sum and divided by 5 to yield a functional visual acuity score. *Id.* at 289.

visual acuity impairment in the left eye was on November 12, 2015, that was the date maximum medical improvement occurred. Regarding appellant's impairment, he noted Dr. Allen's acuity examination findings for both eyes. Dr. Yuhan agreed with Dr. Allen's conclusion that appellant had a functional visual acuity score of 94 and that appellant had six percent permanent impairment. He found that maximum medical improvement was reached on November 12, 2015, the date of Dr. Allen's report.

On July 28, 2016 appellant was granted a schedule award for six percent permanent loss of use of the visual acuity of his left eye, for 9.6 weeks of compensation, to run from November 12, 2015 to January 18, 2016.

Appellant, through counsel, requested reconsideration on November 7, 2016. He asserted that, based on the A.M.A., *Guides*, appellant was entitled to a rating for both eyes.

In a December 1, 2016 report, Dr. Yuhan repeated his impairment calculation. He further advised that, following review of counsel's November 7, 2016 correspondence, although appellant's only problem was with his left eye and the right eye was within normal limits, the six percent impairment was for the entire visual system as computed using the rating system found in the A.M.A., *Guides*. Dr. Yuhan noted that the system in the A.M.A., *Guides* required him to incorporate visual findings for both eyes in reaching his conclusion that appellant had six percent visual impairment. He concluded that since the impairment rating was computed using measurements for both eyes and visual fields in the overall calculation, there was no separate impairment for the right eye because the six percent impairment awarded was for the entire visual system involving both eyes.

In a merit decision dated January 30, 2017, OWCP denied modification of its prior decision. It found that, based on the opinion of its medical adviser, Dr. Yuhan, appellant was not entitled to additional impairment of his eyes.

### **LEGAL PRECEDENT**

It is the claimant's burden of proof to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of any employment injury.<sup>5</sup>

The schedule award provision of FECA<sup>6</sup> and its implementing federal regulations,<sup>7</sup> 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>8</sup> For decisions issued

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<sup>5</sup> See *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404(a).

after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>9</sup> Chapter 12 of the sixth edition is to be utilized in assessing visual impairment.

For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.<sup>10</sup> A loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.<sup>11</sup> Partial losses are compensated proportionately.<sup>12</sup> Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,<sup>13</sup> FECA mandates that the degree of loss of vision must be determined without regard to correction.<sup>14</sup> Neither FECA nor OWCP regulations provide for the payment of a schedule award for a whole person. A claimant is not entitled to such an award.<sup>15</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.<sup>16</sup>

### ANALYSIS

The Board finds this case is not in posture for decision. On November 2, 2016 OWCP granted appellant a schedule award for six percent permanent impairment of the left eye, based on the calculations provided by Dr. Allen, an attending neurologist, as reviewed by its medical adviser, Dr. Yuhan, an ophthalmologist. The physicians agreed that appellant had six percent visual impairment. However, the Board finds that Dr. Allen's report, which was relied upon by Dr. Yuhan, contains a computation error.

Dr. Allen noted that appellant denied using corrective glasses or contact lenses. He applied Snellen chart findings of appellant's vision in each eye and his binocular function to Table 12-2, Impairment of Visual Acuity.<sup>17</sup> Dr. Allen properly found that, based on appellant's Snellen chart findings, he had a VAS of 110 in the right eye, 70 in the left eye, and 110 in both eyes. He then calculated appellant's acuity-related impairment using the formula found in Table

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>10</sup> *Supra* note 6 at § 8107(c)(5).

<sup>11</sup> *Id.* at § 8107(c)(14).

<sup>12</sup> *Id.* at § 8107(c)(19).

<sup>13</sup> *Supra* note 3 at Chapter 12.2b, page 286.

<sup>14</sup> *Supra* note 12.

<sup>15</sup> S.K., Docket No. 08-848 (issued January 26, 2009).

<sup>16</sup> *See supra* note 9 at Chapter 2.808.6(f) (February 2013).

<sup>17</sup> *Supra* note 3 at 288.

12-3,<sup>18</sup> using appellant's VAS findings. The formula indicates that the VAS of 110 in the right eye is to be added to the VAS of 70 in the left eye which is added to the VAS in both eyes of 110 times three (or 330). Dr. Allen found a total VAS score of 470, which as provided in Table 12-3, he then divided by 5 to find a FAS of 94. However, adding 110 plus 70 plus 330 yields 510 not 470. 510 divided by 5 yields a FAS score of 102. Table 12-3 then indicates that the VAS score is deducted from 100 to determine the degree of impairment. Dr. Allen deducted appellant's FAS of 94 from 100 to find six percent impairment. However, deducting 102 from 100 yields 0 impairment. Dr. Yuhan merely adopted Dr. Allen's finding without further explanation. As there is a computation error, the case must be remanded to OWCP for further development.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>19</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>20</sup> Herein, appellant submitted medical evidence from Dr. Allen in support of his schedule award claim. OWCP began to develop the evidence by seeking an opinion from Dr. Yuhan, its medical adviser. As noted, the schedule award granted in this case was based on an incorrect calculation.

On remand, OWCP should further develop the medical evidence of record by requesting its medical adviser to provide a reasoned opinion regarding appellant's left 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 appellant's eye impairment. Following this and further development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's schedule award claim.<sup>21</sup>

### CONCLUSION

The Board finds this case is not in posture for decision regarding appellant's impairment for visual acuity loss.

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<sup>18</sup> *Id.* at 289.

<sup>19</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>20</sup> *L.P.*, Docket No. 12-168 (issued August 22, 2012).

<sup>21</sup> As to counsel's assertion on appeal that appellant was entitled to an additional award for the right eye, there is nothing in the A.M.A., *Guides* to support his assertion. While the impairment calculation under Table 12-3 is for total visual acuity loss, the formula used to calculate impairment contains specific visual values for each eye in reaching the total impairment. Therefore, although a visual impairment could be for a single eye, as in appellant's case, the visual impairment found under Table 12-3 is for total visual impairment, taking into consideration vision measurements found for each eye.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2017 and November 2, 2016 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: August 1, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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