

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

C.P., Appellant)

and)

**HOUSE OF REPRESENTATIVES, HUMAN
RESOURCES OFFICE, Washington, DC,
Employer**)

**Docket No. 17-0630
Issued: July 18, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 27, 2017 appellant filed a timely appeal from a November 4, 2016 decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ (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 appellant has established more than 20 percent permanent impairment of his right eye, for which he previously received a schedule award.

FACTUAL HISTORY

On January 19, 2016 appellant, then a 55-year-old cabinet maker, alleged that he sustained a retinal detachment in the right eye as a result of strain from lifting and moving 10

¹ 5 U.S.C. § 8101 *et seq.*

plywood sheets weighing 98 pounds each, for a distance of approximately 50 feet. His supervisor noted on the claim form that appellant stopped work on March 11, 2013 and returned to work on June 7, 2013.

On March 15, 2016 OWCP referred appellant for a second opinion examination with Dr. Pedro M. Rivera-Velasquez, a Board-certified ophthalmologist, to determine appellant's diagnosis and disability status. It did not request that the physician render an impairment rating according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (hereinafter A.M.A., *Guides*).

In a second opinion report dated April 5, 2016, Dr. Rivera-Velasquez opined that appellant had permanent, total vision loss in his right eye and that he was now monocular. He explained that appellant was totally blind in the right eye due to a total retinal detachment.

By decision dated April 14, 2016, OWCP accepted the claim for aggravation of retinal detachment of the right eye with preexisting retinal break.

On June 16, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated June 20, 2016, OWCP informed appellant that he had not submitted sufficient evidence to establish permanent impairment warranting a schedule award. It informed appellant of the requirements for a medical report to support a schedule award and afforded him 30 days to submit additional evidence.

By decision dated July 21, 2016, OWCP denied appellant's schedule award claim. It found that appellant had not submitted medical evidence demonstrating a measureable impairment of his right eye.

On September 14, 2016 appellant requested reconsideration of OWCP's July 21, 2016 decision. With his request, he attached a medical report from Dr. David G. Wagner, a Board-certified ophthalmologist. Dr. Wagner noted that appellant had reached maximum medical improvement (MMI) on February 1, 2016. He reported that appellant had total permanent loss of all vision and visual function of the right eye, with no light perception. Referencing Table 12-2 and Table 12-3 of the sixth edition of the A.M.A., *Guides*, Dr. Wagner found 20 percent permanent impairment of appellant's visual system due to total loss of use of the right eye.

On October 19, 2016 OWCP routed Dr. Wagner's report and a statement of accepted facts to a district medical adviser (DMA). On October 27, 2016 the DMA rendered a report, concurring in full with Dr. Wagner's calculations according to the A.M.A., *Guides*, date of MMI and final impairment rating.

By decision dated October 28, 2016, OWCP vacated its July 21, 2016 decision finding that appellant had established 20 percent permanent impairment of the right eye.

On November 4, 2016 OWCP issued a schedule award for 20 percent impairment of appellant's right eye. The award ran from February 1 through September 11, 2016.

LEGAL PRECEDENT

The scheduled 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, organs, or functions of the body.⁴ For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.⁵ A loss of 80 percent or more of the vision of an eye is considered the same as loss of the eye.⁶ Partial losses are compensated proportionately.⁷

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*.⁸ For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.⁹

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,¹⁰ FECA mandates that the degree of loss of vision must be determined without regard to correction.¹¹

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.¹²

ANALYSIS

OWCP issued appellant a schedule award for 20 percent permanent impairment of appellant's right eye, or 32 weeks of compensation out of a maximum of 160 weeks. The issue on appeal is whether appellant is entitled to more than 32 weeks of compensation.

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404.

⁴ 5 U.S.C. § 8107.

⁵ *Id.* at § 8107(c)(5).

⁶ *Id.* at § 8107(c)(14).

⁷ *Id.* at § 8107(c)(19).

⁸ *Supra* note 3.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

¹⁰ A.M.A., *Guides* 283, 284, Chapter 12.2b.

¹¹ 5 U.S.C. § 8107(c)(19).

¹² *See C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

Dr. Wagner's calculation of 20 percent permanent impairment was not representative of a 20 percent loss of function of appellant's right eye. He repeatedly noted that appellant had a total loss of vision in his right eye. OWCP's medical adviser concurred with Dr. Wagner's report and impairment rating calculations, also noting that appellant had a total loss of vision of the right eye.

The Board notes that the compensation schedule provides that total loss of an eye equals 160 weeks of compensation.¹³ The medical evidence of record in this case establishes that appellant has total loss of vision of the right eye.

The Board has previously considered what constitutes total loss of vision of an eye. In *Michael C. Knorr*, the employee had no light perception and no visual function of the left eye.¹⁴ The Board found that he had sustained total loss of his left eye and was entitled to 160 weeks compensation for loss of the left eye, rather than the 40 weeks granted by OWCP. The Board made similar findings in *A.G.*, wherein the medical evidence also established that the employee had no light perception or vision function in the eye.¹⁵

The Board finds that, while OWCP properly found that appellant was entitled to a schedule award, it was incorrect in finding that he was only entitled to 32 weeks of compensation for 20 percent permanent impairment for loss of his right eye, despite his having no light perception and no chance of improvement in his right eye condition.¹⁶ The schedule award is, therefore, modified to reflect that appellant is entitled to the full 160 weeks of compensation for his total loss of an eye, or an additional 128 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.

CONCLUSION

The Board finds that as appellant has established more than 20 percent permanent impairment of his right eye for which he previously received a schedule award.

¹³ 20 C.F.R. § 8107(c)(5).

¹⁴ Docket No. 99-2059 (issued September 15, 2000).

¹⁵ *Cf. A.G.*, Docket No. 11-1512 (issued April 9, 2012) (claimant was issued a 44.8 week schedule award for 28 percent impairment of the right eye despite total permanent loss of vision in that eye; the Board found that appellant was entitled to the full 160 weeks of compensation for such total permanent loss).

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2016 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this opinion.

Issued: July 18, 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