



terrorist attack on the Pentagon. He indicated that he sustained burns over 75 percent of his body. Appellant stopped work on September 11, 2001 and has not returned.

OWCP accepted that appellant sustained third degree burns of his eyes/eyelids and other parts of his face, profound vision impairment of both eyes, after-cataract (obscuring vision) of his right eye, peripheral opacity of the cornea of his right eye, senile ectropion of both corneas, partial recent retinal detachment (with single defect) of his right eye, carcinoma in situ both eyes, post-traumatic stress disorder, and multiple other burn-related injuries to his eyes, face/head, trunk, and extremities.

Beginning September 11, 2001 appellant underwent multiple OWCP-approved surgeries which addressed the effects of the severe burns he sustained on September 11, 2001. These surgeries included skin excision, debridement, and grafting procedures, and reconstruction of his right upper eyelid, nose, lower lip, chin, and ears.<sup>2</sup>

Appellant received disability compensation on the periodic rolls beginning June 16, 2002 and continuing.

In 2003, appellant began treatments for his eye condition with Dr. Salim I. Butrus, a Board-certified ophthalmologist.

On January 6, 2005 appellant underwent OWCP-approved right eye surgery, including penetrating keratoplasty, limited anterior vitrectomy, and removal of posterior chamber implant.<sup>3</sup> On January 4, 2007 he underwent OWCP-approved retina detachment repair surgery of his right eye.

In a March 31, 2009 report, Dr. Butrus indicated that appellant was status post thermal burn to both eyes, corneas, and ocular surfaces sustained on September 11, 2001. He noted that a failed cornea transplant to appellant's right eye was performed on September 21, 2006 and that appellant also developed a retina detachment in that eye.<sup>4</sup> Dr. Butrus indicated that appellant's left eye had cornea scarring with 20/40 vision and that his right eye had 100 percent permanent visual loss.

Dr. Butrus continued to periodically evaluate appellant's eye condition, including occasions when he examined appellant and performed testing on September 12, 2014 and January 12, 2015.

In a March 7, 2016 report, Dr. Butrus advised that appellant sustained severe thermal burns in both eyes due to the September 11, 2001 terrorist attack. Due to these injuries, appellant had total blindness in his right eye secondary to total retina detachment and other damage, and his left

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<sup>2</sup> With respect to his right upper eyelid, appellant underwent surgery on April 28, 2004 in the form of cicatrix reduction, full-thickness grafting, lateral canthopexy, and reconstruction of medial canthal webbing and sulcus deformity.

<sup>3</sup> The record does not contain a report indicating when appellant received the right cornea transplant that was removed on January 6, 2005.

<sup>4</sup> The record does not contain a report of the September 21, 2006 surgery.

eye was affected with corneal scarring, haze, cataract, and severe dryness. Dr. Butrus indicated that appellant still complained of foggy vision, grittiness, foreign body sensation, decreased contrast sensitivity, light sensitivity, ghosting, night halos, starbursts, and double vision in his left eye. Upon his last examination on January 12, 2015, appellant's visual acuity in his right eye was "no light perception" and he had 20/100 vision in his left eye. Dr. Butrus noted that appellant's left cornea showed diffuse haze, scarring, medium cataract, and borderline intraocular pressures. Appellant's eye condition made it difficult for him to read, drive, work on a computer, and perform tasks on an up-close basis.

On August 31, 2017 appellant filed a claim for compensation (Form CA-7) seeking a schedule award due to the accepted employment injuries relating to his eyes.

In a September 5, 2017 development letter, OWCP requested that appellant obtain a report from an attending physician which addressed whether he had reached maximum medical improvement (MMI) with respect to his eye conditions. It advised that, if the physician determined that MMI had been reached, he or she should provide an opinion on the extent of the permanent impairment of appellant's eyes under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup> OWCP afforded appellant 30 days to respond to the letter.

Appellant submitted a September 25, 2017 report from Dr. Butrus who indicated that appellant's eye condition had been stable and unchanged since he produced his last report on March 7, 2016. Dr. Butrus discussed the history of appellant's eye condition since September 11, 2001, noting the total blindness in his right eye and the foggy vision in his left eye. He advised that appellant underwent right penetrating keratoplasty and had a keratoprosthesis (artificial cornea) in his right eye.<sup>6</sup> During Dr. Butrus' last examination,<sup>7</sup> appellant complained of marked blurry vision in his left eye with glare, haze, double vision, and halos more pronounced at night. The examination revealed no light perception in appellant's right eye and 20/80 vision in his left eye. Dr. Butrus noted that appellant had intraocular pressure of 20 millimeters of mercury (mm Hg) in his right eye and 21 mm Hg in his left eye, and he indicated that appellant had diffuse corneal haze and scarring in his left cornea. He determined that appellant reached MMI as of his September 12, 2014 examination and noted, "The right eye is 100 [percent] impaired due to retinal detachment and total blindness. [Appellant's] left eye impairment is about 65 [percent]." Dr. Butrus advised that appellant's eye condition, which he did not expect to improve, would cause difficulty in driving, reading, and performing most daily tasks.

On October 20, 2017 OWCP referred appellant's case to Dr. Kevin R. Yuhan, a Board-certified ophthalmologist serving as an OWCP medical adviser. It requested that Dr. Yuhan review the evidence of record, including Dr. Butrus' September 25, 2017 report and provide an

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> The record does not contain a report indicating when appellant had a keratoprosthesis implanted in his right eye.

<sup>7</sup> Dr. Butrus listed appellant's last examination as occurring on October 2, 2017 and the record contains examination findings from that date. Therefore, his report dated September 25, 2017 actually was completed after the October 2, 2017 examination was completed.

opinion regarding the permanent impairment of appellant's eyes under the standards of the sixth edition of the A.M.A., *Guides*.

In a November 10, 2017 report, Dr. Yuhan discussed the history of appellant's eye conditions, noting that appellant had a keratoprosthesis in his right eye.<sup>8</sup> He indicated that the medical evidence of record showed that appellant's right eye had no light perception, and he advised that appellant had 20/30 vision in his left eye with correction and 20/100 vision in his left eye without correction. The visual field in appellant's left eye was normal, but there was no visual field in his right eye due to lack of vision. Dr. Yuhan evaluated the permanent impairment of appellant's eyes under Table 12-2 on page 288 of the sixth edition of the A.M.A., *Guides*. He found that appellant had a visual acuity score (VAS) of 0 for his right eye due to no light perception in that eye, which equaled 100 percent permanent impairment of his right eye. Appellant had a VAS of 65 for his left eye due to his uncorrected vision of 20/100, which equaled 35 percent permanent impairment of his left eye. Dr. Yuhan indicated, under Table 12-3 on page 289 of the sixth edition, the formula for the functional acuity score (FAS) is  $(3 \times \text{VAS}_{\text{OU}} + \text{VAS}_{\text{OD}} + \text{VAS}_{\text{OS}}) / 5$  where OU is binocular vision, OD is vision in the right eye and OS is vision in the left eye.<sup>9</sup> The result for appellant's FAS under this formula was 52. Dr. Yuhan noted that the acuity-related impairment rating was calculated by subtracting the FAS from 100<sup>10</sup> and he then subtracted the FAS of 52 from 100 to conclude that appellant had a combined 48 percent permanent impairment of both eyes under the sixth edition of the A.M.A., *Guides* based on impairment of visual acuity. He advised that there was "no visual field loss per provider" and he indicated that appellant reached MMI by September 12, 2014. Dr. Yuhan noted that Dr. Butrus did not explain how his finding of about 65 percent permanent impairment of the left eye was derived under the A.M.A., *Guides*.

By decision dated December 13, 2017, OWCP granted appellant a schedule award for 48 permanent impairment of both his eyes. The award ran for 76.80 weeks from December 10, 2017 to May 31, 2019 and was based on the opinion of Dr. Yuhan.<sup>11</sup>

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>12</sup> and its implementing regulations<sup>13</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

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<sup>8</sup> Dr. Yuhan indicated that appellant underwent failed cornea transplant surgery of his right eye in 2006 and bilateral cataract surgeries on unspecified dates. The record does not contain reports of these surgeries, although Dr. Butrus had noted in his March 31, 2009 report that the failed cornea transplant surgery occurred on September 21, 2006.

<sup>9</sup> A.M.A., *Guides* 284, Table 12-3.

<sup>10</sup> *Id.*

<sup>11</sup> The schedule award listed the date of MMI as September 12, 2014. OWCP noted that the starting date of the schedule award had been adjusted to December 10, 2017 because appellant received disability compensation through December 9, 2017.

<sup>12</sup> 5 U.S.C. § 8107.

<sup>13</sup> 20 C.F.R. § 10.404.

loss or loss of use of scheduled members, organs, or functions of the body.<sup>14</sup> For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.<sup>15</sup> A loss of 80 percent or more of the vision of an eye is considered the same as loss of the eye.<sup>16</sup> Partial losses are compensated proportionately.<sup>17</sup>

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*.<sup>18</sup> For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.<sup>19</sup>

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,<sup>20</sup> FECA mandates that the degree of loss of vision must be determined without regard to correction.<sup>21</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>22</sup>

### ANALYSIS

The Board finds that appellant has 100 percent permanent impairment of his right eye entitling him to 160 weeks of compensation and that the case is not in posture for decision regarding the permanent impairment of appellant's left eye.

OWCP issued appellant a schedule award for 48 percent permanent impairment of both of his eyes, or 76.80 weeks of compensation. The issue on appeal is whether appellant is entitled to more than 76.80 weeks of compensation.

OWCP based its schedule award on the permanent impairment rating of Dr. Yuhan, an OWCP medical adviser. Dr. Yuhan's calculation of 48 percent permanent impairment of

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

<sup>15</sup> *Id.* at § 8107(c)(5).

<sup>16</sup> *Id.* at § 8107(c)(14).

<sup>17</sup> *Id.* at § 8107(c)(19).

<sup>18</sup> *Supra* note 14.

<sup>19</sup> See 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 (March 2017).

<sup>20</sup> A.M.A., *Guides* 287, Chapter 12.2c.

<sup>21</sup> 5 U.S.C. § 8107(c)(19).

<sup>22</sup> See *supra* note 19 at Chapter 2.808.6f (March 2017).

appellant's eyes was not representative of his total permanent impairment. He determined that appellant had a total loss of vision in his right eye due to no light perception or visual function in that eye, and the Board finds that this constitutes 100 percent loss of function of appellant's right eye.

The Board notes that the compensation schedule provides that total loss of an eye equals 160 weeks of compensation.<sup>23</sup> The medical evidence of record in this case establishes that appellant has total loss of vision of the right eye which entitles him to additional schedule award compensation beyond that already granted.

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 his left eye.<sup>24</sup> 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.*,<sup>25</sup> and *C.P.*,<sup>26</sup> wherein the medical evidence also established, in each case, that the employee had no light perception or vision function in an eye.

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 76.80 weeks of compensation, despite having 100 percent permanent impairment of his right eye due to having no light perception and no chance of improvement in his right eye condition.<sup>27</sup> The schedule award is, therefore, modified to reflect that appellant is entitled to the full 160 weeks of compensation for total loss of his right eye, or an additional 83.20 weeks of compensation. OWCP should amend the schedule award determination to reflect the total loss of the right eye and award the appropriate schedule award benefit.

The Board further finds that the case is not in posture for decision regarding the permanent impairment of appellant's left eye. The evidence of record suggests that appellant has permanent impairment of his left eye for which he has not yet been compensated.<sup>28</sup> The Board notes that a complete evaluation of his left eye permanent impairment, which fully considers permanent impairment of visual acuity and visual field, has not yet been conducted. Dr. Yuhan did not conduct a complete rating of appellant's left eye permanent impairment under the relevant standards. Although he opined that appellant did not have impairment of the visual field of the

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<sup>23</sup> 20 C.F.R. § 8107(c)(5).

<sup>24</sup> Docket No. 99-2059 (issued September 15, 2000).

<sup>25</sup> Docket No. 11-1512 (issued April 9, 2012) (finding that the claimant was entitled to the full 160 weeks of compensation for total permanent loss of vision in his right eye).

<sup>26</sup> Docket No. 17-0630 (issued July 18, 2017) (finding that the claimant was entitled to the full 160 weeks of compensation for total permanent loss of vision in his right eye).

<sup>27</sup> See *A.G.*, *supra* note 25 and *C.P.*, *id.*

<sup>28</sup> Dr. Yuhan provided a calculation for appellant's left eye under Table 12-2 (Impairment of Visual Acuity), finding a visual acuity score of 65 and permanent impairment of 30 percent due to 20/100 vision in that eye without correction. See *A.M.A., Guides* 288, Table 12-2.

left eye, he did not provide a clear explanation for this opinion. Therefore, the case shall be remanded to OWCP for consideration of the permanent impairment of appellant's left eye. After carrying out such development, it shall issue a *de novo* decision regarding the permanent impairment of his eyes.

**CONCLUSION**

The Board finds that appellant has 100 percent permanent impairment of his right eye entitling him to 160 weeks of compensation and that the case is not in posture for decision regarding the permanent impairment of appellant's left eye.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this decision.

Issued: July 27, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board