



## **FACTUAL HISTORY**

On January 27, 2015 appellant, then a 36-year-old welder, filed a traumatic injury claim (Form CA-1) alleging that he injured his right eye on January 26, 2015 while using a metal cutting and punching machine in the performance of duty. A piece of metal was ejected into his right eye. Appellant stopped work. On February 18, 2015 OWCP accepted his claim for corneal foreign body penetration, right eye. On March 31, 2015 it provided wage-loss compensation benefits.

A January 26, 2015 computerized tomography (CT) scan demonstrated right ocular globe laceration with vitreous hematoma and deformity as well as a metallic foreign object in appellant's right maxillary sinus. Appellant had light perception only in his right eye and 20/20 vision in his left eye. On January 26, 2015 he underwent an open exploration of his right eye with repositing of the uveal tissue due to open globe injury with prolapse of the uveal tissue. On February 16, 2015 appellant underwent two surgeries including: a right eye extracapsular cataract extraction without intraocular lens implant, right eye; anterior synechialysis, right eye; and inferior peripheral iridectomy, right eye due to a traumatic cataract in his right eye and anterior synechiae. He underwent further surgery on February 16, 2015 to repair a vitreous hemorrhage of the right eye. On February 17, 2015 appellant underwent surgery to remove the foreign body in his right maxillary sinus. On April 6, 2015 he underwent surgical removal of lens material in his right eye and vitrectomy.

On April 30, 2015 OWCP placed appellant on the periodic rolls for wage-loss compensation. Appellant returned to full-time light-duty work on June 10, 2015. On July 23, 2015 OWCP listed appellant's additional accepted conditions as total traumatic cataract, rupture of eye with partial loss of intraocular tissue, cataract fragments in the right eye following surgery, ocular laceration with prolapse of intraocular tissue, vitreous hemorrhage, and retinal hemorrhage.<sup>3</sup>

Dr. Kristin Hammersmith, a Board-certified ophthalmologist, examined appellant on February 1, 2016 and found that he had reached maximum medical improvement (MMI). She examined appellant's right eye and diagnosed rupture of the globe with partial loss of intraocular tissue. Dr. Hammersmith noted that he was light sensitive and that his visual potential was severely limited with a rigid gas permeable (RGP) contact lens. Correcting his vision to 20/400 resulted in diplopia. Dr. Hammersmith noted that appellant had monocular status, but good vision in his left eye.

On February 3, 2016 appellant filed a claim for compensation (Form CA-7) seeking a schedule award due to the accepted employment injuries relating to his right eye.

In a February 9, 2016 development letter, OWCP requested that appellant obtain a report from an attending physician which addressed whether he had reached MMI with respect to his right eye. It advised that, if the physician determined that MMI had been reached, an opinion should be provided on the extent of the permanent impairment of appellant's eye under the

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<sup>3</sup> The Department of Veterans Affairs found that appellant had service-connected disability for chronic low back pain syndrome with left lower leg radiculitis of 20 percent, chronic neck pain syndrome of 10 percent, but denied appellant's claim for service-connected trauma to his eyes bilaterally.

standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup> OWCP afforded him 30 days to respond.

Appellant submitted a March 4, 2016 report from Dr. Hammersmith, who noted that a three millimeter piece of metal went through appellant's eye and lodged in his sinus cavity. He underwent four surgeries to repair his eye and remove the metal. Following these surgeries appellant had a fixed and dilated pupil on the right side, scarred retina, and "hand motions only vision in his right eye." Dr. Hammersmith placed an RGP contact lens to correct appellant's missing lens and corneal irregularity from sutures. The contact lens did not result in better vision. Dr. Hammersmith diagnosed corneal scarring, astigmatism, aphakia, retinal edema, and scarring in his right eye. She opined that appellant had loss of useful vision in his right eye and opined that he had lost 85 to 90 percent of his vision in his right eye. Dr. Hammersmith noted that he had excellent vision in his left eye and could work in a position that did not require binocular vision.

On April 4, 2016 OWCP referred appellant, a statement of accepted facts, and a list of questions to Dr. Joseph L. Calkins, a Board-certified ophthalmologist, for a second opinion evaluation on the issue of permanent impairment of the right eye. In his May 12, 2016 report, Dr. Calkins described appellant's history of injury and medical history. He noted that appellant underwent several attempts to improve his vision through an aphakic contact lens, but achieved no benefit in improving his visual function. Dr. Calkins reported that appellant's best vision in his right eye was light perception with intact projection in all quadrants. He noted that appellant's left eye had 20/20 vision without correction. Dr. Calkins described appellant's right eye as aphakia with +8.75 sphere refraction. He also noted that appellant's right eye demonstrated a small degree of right exotropia, that his right pupil was fixed, dilated, and irregular as well as demonstrating a 3+ afferent pupillary defect. Fundus examination of the right eye showed extensive paramacular scarring, with a normal appearing disc, and clear media. Appellant's right eye had a large linear full-thickness, well-healed laceration repair in the superior aspect of the cornea with no lens. Dr. Calkins found that appellant had reached MMI. He reported that appellant had no stereopsis and could not perform work that required binocularity. Dr. Calkins applied Table 12-2 of the A.M.A., *Guides*<sup>5</sup> and determined that appellant's right eye had "near blindness" with an estimated visual acuity score (VAS) of 10, while appellant's left eye VAS was 100 based on 20/20 vision. He applied the formula of the A.M.A., *Guides*, for functional acuity score (FAS) where FAS is  $(3 \times \text{VAS OU} + \text{VAS OD} + \text{VAS OS})/5$  where OU is binocular vision, OD is vision in the right eye and OS is vision in the left eye<sup>6</sup> and determined that appellant had a functional acuity score FAS of 82. Dr. Calkins determined that appellant's acuity-related impairment would be 100 minus 82, but reached 10 as appellant's permanent impairment due to loss of visual acuity.

On May 19, 2016 OWCP referred appellant's case to Dr. Kevin Yuhan, a Board-certified ophthalmologist serving as an OWCP district medical adviser (DMA). It requested that the DMA

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> *Id.* at 288, Table 12-2.

<sup>6</sup> *Id.* at 284, Table 12-3.

review the evidence of record and provide an opinion regarding appellant's permanent impairment due to loss of vision under the standards of the sixth edition of the A.M.A., *Guides*.

In a June 3, 2016 report, the DMA discussed the history of appellant's right eye injury and listed appellant's right eye surgeries including corneal repair, retinal repair, vitrectomy, and lens removal. He noted that several attempts had been made to fit appellant with an aphakic contact lens to improve his vision. The DMA found that appellant's vision in his right eye was light perception. He 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*. The DMA advised that appellant's right eye had 100 percent permanent impairment while his left eye had 20/20 vision and no impairment. He utilized, under Table 12-3 on page 289 of the sixth edition, the formula for FAS and determined that the result for appellant's FAS was 80. The DMA noted that the acuity-related impairment rating was calculated by subtracting the FAS from 100<sup>7</sup> and he then subtracted the FAS of 80 from 100 to conclude that appellant had 20 percent permanent impairment for loss of vision under the sixth edition of the A.M.A., *Guides* based on loss of visual acuity. He reviewed Dr. Calkins' May 12, 2016 report and noted that, after applying the FAS formula, he had made a miscalculation as 100 minus 82 would equal 18 rather than 10. The DMA noted that an impairment rating of 18 percent was similar to his finding of 20 percent permanent impairment. He found that appellant had reached MMI after the conclusion of his surgeries and the failure of attempts of improved vision through contact lenses.

By decision dated September 1, 2018, OWCP granted appellant a schedule award for 20 percent permanent impairment of the right eye or 32 weeks of compensation. On September 15, 2016 appellant requested an oral hearing with a representative of the OWCP's Branch of Hearings and Review.

In an October 24, 2016 report, Dr. V. Eugene Kilmore, Jr., a Board-certified ophthalmologist, provided his findings on examination noting that appellant's right eye visual acuity was hand motion at one foot in the lower temporal visual field only, while his left eye was 20/20. He noted that appellant's right pupil and iris were irregular with reverse afferent pupillary response and a superior full-thickness, horizontal opacity. Appellant was aphakic and the vitreous cavity was empty. In the right eye, his macula was granular with depigmentation and extensive scarring. On Humphrey visual field testing, appellant's right eye showed no perceptions to a 120 point screening field. Dr. Kilmore did not, however, cite to or apply the A.M.A., *Guides*.

By decision dated February 15, 2017, OWCP's hearing representative set aside the September 1, 2016 decision and remanded the case for additional development of the medical evidence to determine if appellant was entitled to an increased schedule award due to loss of binocular vision under 5 U.S.C. § 8107(c)(5) and (15).

On March 16, 2017 OWCP requested that the DMA submit an additional report. In a March 23, 2017 report, the DMA repeated that appellant's right eye had 100 percent permanent impairment and that his left eye had 0 percent permanent impairment. He diagnosed ruptured globe with partial loss of intraocular tissue, retinal detachment, aphakia, and corneal scar. Applying the A.M.A., *Guides*, the DMA found that appellant had near blindness at light perception

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<sup>7</sup> *Id.*

vision.<sup>8</sup> He further noted that, in the right eye, appellant's VAS was between zero and five.<sup>9</sup> The DMA again applied the FAS formula of the A.M.A., *Guides* to reach a score of 80 resulting in 20 percent permanent visual impairment.<sup>10</sup>

On June 13, 2017 OWCP referred appellant for an additional second opinion evaluation with Dr. Calkins. In his July 3, 2017 report, Dr. Calkins repeated his earlier findings and found that appellant had no direct pupillary response to light. He noted that appellant had reached MMI at the time of his last examination and that he had a permanent loss of binocular vision. Dr. Calkins opined that appellant's light perception vision was equivalent to loss of use of the eye. In a supplemental report dated June 29, 2019, he described appellant's difficulties in activities of daily living due to his loss of binocular vision.

On August 8, 2017 OWCP requested a supplemental report from the DMA. In his August 17, 2017 report, the DMA found that the vision in appellant's right eye was light perception or 100 percent permanent impairment. He noted again that appellant's left eye was normal with 20/20 vision and 0 percent permanent impairment. The DMA concluded that appellant's FAS, under the A.M.A., *Guides*, was 80 and that he, therefore, had 20 percent permanent loss of vision.

On October 5, 2017 OWCP again requested an additional supplemental report from the DMA. It noted that he had reported that appellant had 100 percent permanent impairment of his right eye and inquired why appellant would not be entitled to a schedule award for the total loss of use of his right eye. In his October 17, 2017 report, the DMA explained that the A.M.A., *Guides* considered the visual acuity of both eyes in providing impairment ratings for loss of vision. He noted that, under the A.M.A., *Guides*, impairment of a single eye did not impair the entire visual system. The DMA found that, under the A.M.A., *Guides*, 100 percent permanent impairment of appellant's right eye did not indicate 100 percent permanent impairment of the entire visual system. He concluded that appellant was not entitled to a schedule award for 100 percent permanent impairment of the entire visual system.

On November 1, 2017 OWCP yet again requested a supplemental report from the DMA addressing whether appellant had more than 20 percent permanent impairment due to loss of vision for which he had received a schedule award. In his November 10, 2017 report, the DMA found that appellant had no more than 20 percent permanent impairment due to loss of vision.

By decision dated November 16, 2017, OWCP found that appellant had no more than 20 percent permanent impairment of the right eye due to loss of vision, for which he had previously received a schedule award.

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<sup>8</sup> *Id.* at 288, Table 12-2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 289.

## LEGAL PRECEDENT

The schedule award provisions of FECA<sup>11</sup> and its implementing regulations<sup>12</sup> 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.<sup>13</sup> For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.<sup>14</sup> A loss of 80 percent or more of the vision of an eye is considered the same as loss of the eye.<sup>15</sup> Partial losses are compensated proportionately.<sup>16</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*. For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.<sup>17</sup>

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,<sup>18</sup> FECA mandates that the degree of loss of vision must be determined without regard to correction.<sup>19</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>20</sup>

## ANALYSIS

The Board finds that appellant has 100 percent permanent impairment of his right eye entitling him to 160 weeks of compensation.

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<sup>11</sup> 5 U.S.C. § 8107.

<sup>12</sup> 20 C.F.R. § 10.404.

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *Id.* at § 8107(c)(5).

<sup>15</sup> *Id.* at § 8107(c)(14).

<sup>16</sup> *Id.* at § 8107(c)(19).

<sup>17</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>18</sup> A.M.A., *Guides* 287, Chapter 12.2c.

<sup>19</sup> 5 U.S.C. § 8107(c)(19).

<sup>20</sup> See *supra* note 17 at Chapter 2.808.6f (March 2017).

The FECA compensation schedule provides that total loss of an eye equals 160 weeks of compensation.<sup>21</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.

OWCP based its schedule award on the permanent impairment rating of its DMA, Dr. Yuhan. The DMA's calculation of 20 percent permanent impairment of appellant's right eye was not representative of his permanent impairment of the right eye. Rather, he calculated appellant's impairment of the entire visual system, utilizing the formula for loss of functional acuity under Table 12-3, which combines the scores from each eye to reach a single functional acuity score.<sup>22</sup> The Board has recognized, however, that Table 12-2 is to be used to determine permanent impairment of a single eye.<sup>23</sup>

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 of compensation for loss of the left eye, rather than the 40 weeks granted by OWCP. The Board made similar findings in *J.C.*,<sup>25</sup> *A.G.*,<sup>26</sup> and *C.P.*,<sup>27</sup> wherein the medical evidence also established, in each case, that the employee had no light perception or vision function in an eye. In these cases, the Board found that appellant was entitled to compensation based upon permanent impairment of a single eye under Table 12-2, rather than permanent impairment of the entire visual system under Table 12-3.

Appellant retains only light perception vision in his right eye. Dr. Hammersmith found that appellant had lost 85 to 90 percent of his vision in his right eye. Dr. Calkins determined that appellant's right eye had "near blindness" with an estimated VAS of 10. The DMA repeatedly opined that appellant's right eye had 100 percent permanent impairment. In *Franklin E. Larsen*,<sup>28</sup> the Board found that, while light perception was useful vision, the claimant still had 100 percent impairment of his affected eye. As noted above, FECA provides that a loss of 80 percent or more of the vision of an eye is considered the same as loss of the eye.<sup>29</sup> Although appellant retains some

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<sup>21</sup> 20 C.F.R. § 8107(c)(5).

<sup>22</sup> See A.M.A., *Guides* 288, Table 12-2.

<sup>23</sup> See *Michele Tousley*, 57 ECAB 130 (2005).

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

<sup>25</sup> Docket No. 18-0466 (issued July 27, 2018).

<sup>26</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>27</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>28</sup> 17 ECAB 391 (1966).

<sup>29</sup> 20 C.F.R. § 8107(c)(14).

useful vision in his right eye through light perception, the medical evidence establishes that he has more than 80 percent loss of vision in his right eye and he, therefore, has 100 percent permanent impairment of his right 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 32 weeks of compensation, despite having 100 percent permanent impairment of his right eye due to having only light perception vision and no chance of improvement in his right eye condition.<sup>30</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 128 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.

### **CONCLUSION**

The Board finds that appellant has 100 percent permanent impairment of his right eye entitling him to 160 weeks of compensation.

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<sup>30</sup> See *J.C.*, *supra* note 25; *A.G.*, *supra* note 26 and *C.P.*, *supra* note 27.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 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 of the Board.

Issued: January 10, 2019  
Washington, DC

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

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

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