



## ISSUE

The issue is whether appellant has met his burden of proof to establish more than 15 percent permanent impairment of the left eye, for which he previously received a schedule award.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On February 27, 2013 appellant, then a 40-year-old supervisory border patrol agent, filed a traumatic injury claim (Form CA-1) alleging a left eye injury after a tree branch struck him when tracking through a wooded area while in the performance of duty. OWCP accepted his condition for superficial injury of the left cornea and central opacity of the left cornea. Appellant did not stop work.

On August 7, 2013 Dr. John D. Goosey, a Board-certified ophthalmologist, performed a lamellar keratoplasty of the left eye and diagnosed central corneal scar of the left eye.

On November 13, 2014 appellant filed a claim for a schedule award (Form CA-7).

On February 24, 2015 OWCP referred appellant for a second opinion to Dr. Thomas P. Dowhan, a Board-certified ophthalmologist, for a determination of whether appellant had permanent impairment attributable to his accepted conditions. In a report dated April 20, 2015, Dr. Dowhan noted a history of appellant's work-related condition and subsequent treatment. He indicated that appellant was struck in the left eye by a tree branch while working. Dr. Dowhan noted the injury left appellant with a superficial scar causing visual impairment. He advised that appellant underwent lamellar keratoplasty to correct the condition and restore vision. Appellant reported a significant decrease in vision in the left eye and photophobia on days when the sun was bright. Dr. Dowhan indicated that maximum medical improvement (MMI) occurred on August 7, 2013. He noted physical findings of corrected visual acuities of 20/20 oculus dexter (OD) and 20/600 oculus sinister (OS); intraocular pressures were 17 oculus uterque (OU); pupils were equal, round, and reactive to light OU; ocular motility was normal; slit lamp examination revealed the anterior segment OD to be normal; the slit lamp examination OS showed multiple punctuate epithelial and subepithelial spots scattered across the central corneal graph region; there was some general depression of the field OS without significant loss in any quadrant; and overall the field was generally normal. Dr. Dowhan noted that following surgery appellant showed signs of graft rejection, but after medical management his condition stabilized. He diagnosed corneal scar and central opacities. Dr. Dowhan indicated that he had no records predating the injury, but based on a history from appellant he had uncorrected visual acuities of 20/20 in each eye following a Lasik procedure 10 years prior to the left eye injury. He opined that pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*

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<sup>3</sup> Docket No. 17-0038 (issued June 8, 2017).

(A.M.A., *Guides*),<sup>4</sup> Table 12-2<sup>5</sup> and Table 12-3,<sup>6</sup> Impairment of Visual Acuity, appellant had 75 percent impairment of the left eye. The impairment rating for the right eye was zero. Dr. Dowhan further opined that the acuity-related impairment rating for both eyes was 15.

In a September 30, 2015 report, Dr. David I. Krohn, Board-certified in internal medicine and serving as a district medical adviser (DMA), indicated that Dr. Dowhan failed to provide letter chart acuity specifically for binocular vision. He requested that Dr. Dowhan provide a visual acuity score (VAS) so that acuity-related impairment could be accurately rated.

On October 5, 2015 OWCP requested that Dr. Dowhan provide a VAS for both eyes. On November 19, 2015 Dr. Dowhan noted that the best corrected acuities OU was 20/20, OD was 20/20, and OS was 20/600. Dr. Dowhan opined that, pursuant to the A.M.A., *Guides*, Table 12-2 and Table 12-3, the functional acuity score (FAS) was 85. He diagnosed visual loss of left eye due to corneal opacity. Dr. Dowhan calculated 15 percent permanent visual impairment.

In a January 18, 2016 report, the DMA noted that lamellar keratoplasty was performed to the left eye on August 7, 2013 and postoperatively a low level rejection of the corneal graft was documented. He agreed with Dr. Dowhan's impairment rating determination of 15 percent visual impairment of the left eye. The DMA applied Table 12-2 and Table 12-3 of the A.M.A., *Guides* to find a VAS of 25 for the left eye, 100 for the right eye, and 100 binocularly. To obtain the FAS, he multiplied the right eye VAS of 100, by 1 to equal 100, he multiplied the left eye VAS of 25 by 1 to equal 25. The DMA multiplied the binocular VAS of 100 by 3 to equal 300. He then added the sum of each VAS (100 + 25 + 300) to equal 425, which was divided by 5 to attain the final FAS of 85. Subtracting the FAS of 85 from 100 resulted in 15 percent permanent impairment of the left eye pursuant to page 289 of the A.M.A., *Guides*. The DMA opined that MMI occurred on May 2, 2014, the date the condition of graft rejection of the left eye stabilized.

By decision dated February 10, 2016, OWCP granted appellant a schedule award for 15 percent permanent impairment of the left eye. The period of the award ran for a period of 24 weeks from May 2 to October 16, 2014.

Appellant submitted a March 9, 2016 report from Dr. Dowhan who treated him for left eye pain, sticky left eye, and headaches from blurred vision which was worse over the preceding week. Dr. Dowhan diagnosed pain in the left eye, foreign body in cornea of left eye, blurred vision, history of cornea transplant, history of photophobia of the left eye, and cornea edema. He noted removing the exposed part of a suture.

On August 9, 2016 appellant, through counsel, requested reconsideration. Counsel submitted a report from Dr. Ronald H. Krasney, a Board-certified ophthalmologist, and noted that based on this new evidence an increased schedule award was warranted. In his July 5, 2016 report, Dr. Krasney noted a history of appellant's injury and medical treatment. He noted that appellant experienced a difficult postoperative course with early signs of graft rejection which explained his

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

<sup>5</sup> Table 12-2, page 288 of the A.M.A., *Guides* is titled Impairment of Visual Acuity.

<sup>6</sup> Table 12-3, page 289 of the A.M.A., *Guides* is titled Calculation of the Acuity-Related Impairment Rating.

persistent photophobic symptoms and persistent corneal opacities. Dr. Krasney referenced the DMA's note which considered permanent impairment based on visual acuity in both eyes. He advised, however, that this rating method was insufficient to rate the impairment in the left eye which includes loss of stereopsis. Dr. Krasney indicated that his "own personal comment on this matter is how anyone would feel if they had two of something and now only had one that is functioning." He further noted that, "to most anyone, this would be at least 50 percent loss and if it were one's own personal situation this loss might be considered even more severe."

By decision dated September 23, 2016, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

Appellant, through counsel, appealed to the Board on October 17, 2016. By decision dated June 8, 2017, the Board set aside the September 23, 2016 decision finding that OWCP had improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).<sup>7</sup> The Board remanded the case for OWCP to perform any further development deemed necessary, complete a merit review, and issue an appropriate decision on his claim.

Appellant submitted additional reports from Dr. Dowhan dated March 27 to July 17, 2017. In these reports Dr. Dowhan diagnosed epidemic keratoconjunctivitis of the left eye improving, pain of left eye improving, corneal epithelial defect improving, foreign body in cornea of left eye, sequela improving, blurred vision left eye stable, history of cornea transplant stable, and cornea edema stable. He removed sutures and prescribed a prednisone taper.

In an undated report received by OWCP on August 29, 2017, Dr. Dowhan noted appellant's history of injury and indicated that at appellant's last visit his uncorrected visual acuities was 20/25 in the right eye and he was legally blind in the left eye with visual acuities of 20/600. Appellant reported continued symptoms of chronic pain of the left eye and photophobia. Dr. Dowhan opined that pursuant to the A.M.A., *Guides* his impairment using the FAS showed that appellant had 15 percent visual impairment, but he advised that a FAS did not address the fact that appellant had no depth perception. He noted that appellant would score zero on the stereopsis test and he has diminished visual field in the left eye and this was not reflected in the FAS. Dr. Dowhan noted that to address appellant's actual disability he believed that account should be taken of the specific requirement of an individual's job. He noted that appellant's job as a border patrol agent was significantly compromised because of the loss of the left eye and made it unsafe for him to continue in his present job given his functional disability and disability with respect to the physical demands of his job.

By decision dated November 3, 2017, OWCP performed a merit review and denied modification of the February 10, 2016 decision.

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<sup>7</sup> *Supra* note 3.

## LEGAL PRECEDENT

It is the claimant's burden of proof to establish that he or she sustained permanent impairment of a scheduled member or function of the body as a result of any employment injury.<sup>8</sup>

The schedule award provisions of FECA<sup>9</sup> and its implementing regulations<sup>10</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>11</sup> For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.<sup>12</sup> A loss of 80 percent or more of the vision of an eye is considered the same as loss of the eye.<sup>13</sup> Partial losses are compensated proportionately.<sup>14</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>15</sup>

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,<sup>16</sup> FECA mandates that the degree of loss of vision must be determined without regard to correction.<sup>17</sup>

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.<sup>18</sup> The A.M.A., *Guides* also allows for individual adjustments for other functional deficits, such as contrast and glare sensitivity, color

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<sup>8</sup> See *T.O.*, Docket No. 18-0659 (issued August 8, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404.

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

<sup>12</sup> *Id.* at § 8107(c)(5).

<sup>13</sup> *Id.* at § 8107(c)(14).

<sup>14</sup> *Id.* at § 8107(c)(19).

<sup>15</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>16</sup> A.M.A., *Guides* 287, Chapter 12.2c.

<sup>17</sup> 5 U.S.C. § 8107(c)(19).

<sup>18</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009) at 282, 285.

vision defects and binocularity, stereopsis, suppression and diplopia, only if these deficits are not reflected in a visual acuity or visual field loss.<sup>19</sup> The A.M.A., *Guides*, however, specifically limits adjustment of the impairment rating for these deficits to cases which are well documented and provides, the “adjustment should be limited to an increase in the impairment rating of the visual system (reduction of the FVS) by, at most, 15 points.”<sup>20</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than 15 percent permanent impairment of the left eye, for which he previously received a schedule award.

Following remand to OWCP appellant submitted additional medical evidence. In an undated report received on August 29, 2017, Dr. Dowhan indicated that at appellant’s last visit his uncorrected visual acuities was 20/25 in the right eye and 20/600 in the left eye. He indicated that appellant was legally blind in the left eye and opined that pursuant to the A.M.A., *Guides* his impairment using the FAS showed that appellant had 15 percent visual impairment. However, Dr. Dowhan advised that a FAS did not address the fact that appellant had no depth perception. He noted that appellant would score zero on the stereopsis test with diminished visual field in the left eye which was not reflected in the FAS. Dr. Dowhan noted that to address appellant’s actual disability he believed that you had to take into account specific requirements of appellant’s job as a border patrol agent. He opined that appellant was significantly compromised because of the loss of the left eye and made it unsafe for him to continue in his present job given his functional disability. However, the Board finds that, while Dr. Dowhan reported a left eye impairment and the impact on appellant’s ability to perform the duties of his employment, he did not provide a rating of impairment in accordance with the standards adopted by OWCP and approved by the Board for evaluating schedule losses. Although the A.M.A., *Guides* allows for individual adjustments for other functional deficits such as stereopsis, it is only in cases where the deficits are not reflected in a visual acuity or visual field loss<sup>21</sup> and is limited to cases which were well documented. The relevant standards of the A.M.A., *Guides* do not take into account specific requirements of a claimant’s job description in rating impairment as proposed by Dr. Dowhan.<sup>22</sup> This interpretation of the A.M.A., *Guides* is inconsistent with the standards adopted by OWCP.

The Board finds that there is no medical evidence of record, which conforms to the A.M.A., *Guides*, which establishes that appellant has more than 15 percent permanent impairment of the left eye. The Board therefore finds that appellant has not met his burden of proof to establish his claim for an increased schedule award.

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<sup>19</sup> *Id.* at 305.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

Appellant may request a schedule award or increased schedule award at any time 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 has not met his burden of proof to establish more than 15 percent permanent impairment of the left eye, for which he previously received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2019  
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