

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 22 percent permanent impairment of his right eye, for which he previously received a schedule award.

FACTUAL HISTORY

On August 24, 2018 appellant, then a 43-year-old air interdiction agent, filed a traumatic injury claim (Form CA-1) alleging that on August 22, 2018 he injured his head, eye socket, and right front tooth when he was involved in an airplane crash while in the performance of duty. He stopped work on the date of injury and returned to full-time, limited-duty work on September 20, 2018. OWCP accepted the claim for ocular laceration without prolapse or loss of intraocular tissue, right eye, initial encounter; laceration without foreign body of other part of head, initial encounter; laceration without foreign body of lip, initial encounter; cracked tooth; right shoulder and right elbow contusions; right elbow ulnar nerve entrapment; perforated corneal ulcer, right eye; traumatic cataract and other secondary cataract, right eye; posterior capsular opacification, right eye; lesion of ulnar and median nerves, right upper limb; epiretinal membrane, right eye; iris prolapse, right eye; diplopia; pseudophakia, right eye; irregular astigmatism, right eye; and vertical heterophoria, right eye. On February 7, 2019 appellant underwent OWCP-authorized cataract surgery, pupilloplasty, and placement of corneal glue. He returned to full-time, limited-duty work on February 25, 2019. OWCP paid appellant wage-loss compensation on the supplemental rolls from February 7 through March 25, 2019.

On September 3, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a report dated September 22, 2021, Dr. Kamden R. Kopani, appellant's attending Board-certified ophthalmologist, related that during the past three years appellant had been seen for dozens of medical appointments to improve his vision for the best outcome. In May 2021, he determined that appellant was at a point of maximum medical improvement (MMI). Dr. Kopani related that he was not familiar with the permanent impairment rating process and requested that another physician perform appellant's permanent rating evaluation.

On November 23, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Duncan F. Winter, a Board-certified ophthalmologist, for a second opinion examination and evaluation of his vision impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

In a December 21, 2021 report, Dr. Winter discussed his examination findings, and provided assessments of other localized visual field defect, right eye; puckering of macula, right eye; and other corneal scars and opacities.

³ A.M.A., *Guides* (6th ed. 2009).

On August 2, 2022 OWCP requested that Dr. Winter provide an addendum report responding to its questions regarding the date appellant reached MMI and his need for further medical treatment, and a vision impairment rating based on the sixth edition of the A.M.A., *Guides*.

Subsequently, OWCP received an August 18, 2022 report by Dr. Kopani in which he recounted that on August 22, 2018 appellant underwent emergency surgery to repair some of the trauma he sustained to his right eye. He remained blinded following the surgery, but approximately seven months later the eye stabilized and appellant underwent wound revision and cataract surgery. This surgery overall was successful, but appellant required additional procedures to stop corneal leaking and clouding. Appellant now required glasses to read and a scleral lens to focus distant. Due to his severed iris, his vision remained very limited with low or bright light. He also referenced his September 22, 2021 report in which he advised that appellant had reached MMI on May 4, 2021.

Dr. Winter, in a supplemental report dated January 5, 2023, indicated that appellant had reached MMI on December 21, 2021, the date of his permanent impairment evaluation. He noted that appellant had oculus dexter (OD) of 20/25 vision with correction. Dr. Winter advised that appellant had 20 percent permanent impairment based on his clinical findings and the sixth edition of the A.M.A., *Guides*.

On January 13, 2023 OWCP routed Dr. Winter's December 21, 2021 and January 5, 2023 reports, along with the case record, and a SOAF, to Dr. Eric L. Singman, a Board-certified ophthalmologist serving as an OWCP district medical adviser (DMA), for review and a determination of appellant's date of MMI and any permanent impairment of vision under the sixth edition of the A.M.A., *Guides*. It noted that for impairment due to loss of vision, FECA requires that the percentage of impairment be based on the best uncorrected vision. Therefore, if vision was surgically corrected, the medical report which represents maximum vision prior to surgical correction should be used for evaluation of permanent impairment.

In a January 14, 2023 report, Dr. Singman noted his review of Dr. Kopani's August 18, 2022 report, as well as Dr. Winter's December 21, 2021 and January 5, 2023 reports. He then recounted appellant's vision scores from Dr. Winter's January 5, 2023 report and determined that appellant had 22 percent total visual system impairment based on the sixth edition of the A.M.A., *Guides*. The DMA found that MMI was reached on December 21, 2021, the date of Dr. Winter's impairment evaluation. He noted that he could not comment on Dr. Winter's 20 percent visual system impairment rating because Dr. Winter did not explain how he derived at his impairment rating and, therefore, was unable to explain the difference in their impairment ratings.

In a January 23, 2023 after-visit summary, Dr. Kopani noted that appellant was treated for ocular laceration with rupture/prolapse of the right eye. He related that immediately following the employment injury appellant had poor decreased vision in the right eye, and appellant was only able to see shadows, sometimes fingers.

In a January 24, 2023 letter, appellant noted his review of the reports from Dr. Winter and Dr. Singman and contended that according to OWCP his vision impairment rating should be based on his best uncorrected vision rather than his corrected vision, as apparently used by

Dr. Winter, the second opinion physician, and Dr. Singman, the DMA, in rating his vision impairment.

On March 6, 2023 OWCP requested that the DMA, Dr. Singman, provide an addendum report including the date of MMI and an eye impairment rating based on appellant's uncorrected vision. It again noted that FECA required that the percentage of impairment be based on best uncorrected vision. Therefore, if vision had been surgically corrected, the medical report which represented maximum vision prior to surgical correction should be used for evaluation of permanent impairment. It also requested that he refer to appellant's January 24, 2023 letter and Dr. Kopani's January 23, 2023 reports.

In a response dated March 7, 2023, Dr. Singman related that section 12.1A, page 284, of the sixth edition of the A.M.A. *Guides*, specifically instructed the use of the best corrected vision to rate impairment. Regarding appellant's suggestion that uncorrected vision be utilized, he noted that it must be recognized that his impairment rating at the time of MMI was based on his vision after surgical repair of a ruptured globe and extraction of secondary cataract with replacement by an intra-ocular lens. The DMA related that this was appellant's new baseline, and it would not be considered a correction. Thus, he advised that the new baseline vision was by no means perfect. The DMA related that was why he included not just the reduced acuity, but also the concerns of glare and diplopia to derive his impairment rating. He concluded that the new records did not include any data which would change his previous 22 percent right eye visual impairment rating or date of MMI.

OWCP, by decision dated March 23, 2023, granted appellant a schedule award for 22 percent permanent impairment of the right eye. The period of the award ran for 35.20 weeks from December 21, 2021 to August 24, 2022, and was based on the impairment rating provided by Dr. Singman, the DMA.

On February 29, 2024 appellant requested reconsideration.

On September 3, 2024 OWCP referred appellant, along with a SOAF, the case record, and a series of questions, to Dr. Kelly M. Lee, a Board-certified ophthalmologist, for a second opinion examination and permanent impairment evaluation under the standards of the sixth edition of the A.M.A., *Guides*. A referral letter dated April 11, 2024 requested that the narrative report provide the current status of the injured eye, indicating measurable defects to uncorrected vision, including central acuity, far and near; visual field constriction; ocular motility loss; and ability to fuse vision without glasses.

In a September 30, 2024 second opinion report, Dr. Lee noted a history of appellant's August 22, 2018 employment injury and medical treatment. She presented findings on examination of both eyes. The injured eye uncorrected vision was 20/50 and with correction with glasses was 20/30. In summary, Dr. Lee related that her examination showed corneal scarring leading to irregular astigmatism of the right eye, presence of an intraocular lens of the right eye, a nonreactive pupil secondary to his injury and subsequent repair of the iris and an epiretinal membrane or puckering of the macula of the right eye. She provided assessments of the accepted conditions of ocular laceration and rupture with prolapse or loss of intraocular tissue, right eye, subsequent encounter; and puckering of macula, right eye. Dr. Lee also

provided assessments of dry eye syndrome of bilateral lacrimal glands; presence of intraocular lens; and irregular astigmatism, right eye.

In determining appellant's functional acuity score (FAS), Dr. Lee reported a visual acuity score (VAS) OD of 20/30, appellant's corrected vision score. She then determined appellant's functional field score (FFS) based on Dr. Winter's December 21, 2021 visual field scores (VFS). Dr. Lee determined that appellant's visual system impairment was 13 percent. She opined that appellant was entitled to an additional 10 percent impairment due to other findings, which included photophobia secondary to iris prolapse and tear that needed to be sutured, resulting in a fixed and nonreactive iris, slight distortion of the right eye secondary to an epiretinal membrane, totaling 23 percent visual system impairment. She concluded that since some of the clinical data she was drawing from was based on his recent visit, appellant had reached MMI on September 30, 2024, the date of her impairment evaluation.

On February 6, 2025 OWCP routed Dr. Lee's September 30, 2024 report, along with the case record, and a SOAF, to its DMA, Dr. Singman, for review and a determination of appellant's date of MMI and permanent impairment under the sixth edition of the A.M.A., *Guides*. It further requested that Dr. Singman review Dr. Lee's September 30, 2024 report and provide an opinion addressing whether he agreed with its findings. It again advised that FECA required that the percentage of impairment be based on best uncorrected vision. Therefore, if vision had been surgically corrected, the medical report which represented maximum vision prior to surgical correction should be used for evaluation of permanent impairment.

In a February 12, 2025 report, Dr. Singman noted his review of the SOAF and the medical record, including Dr. Lee's September 30, 2024 report. In determining the FAS, he utilized appellant's corrected VAS OD of 20/30. In determining the FFS, he reported normal visual field, no defects. The DMA calculated appellant's visual system impairment system resulting in five percent visual impairment. Referring to section 12.1b (Interpretation of Symptoms and Signs), page 285 of the A.M.A., *Guides*, he found that appellant had an additional 15 percent vision impairment due to diplopia and metamorphopsia from his epiretinal membrane and photosensitivity in the right eye, discomfort from dry eye, a common problem after severe ocular trauma, being required to wear a scleral contact lens for best corrected visual acuity, and experiencing a reduction of normal stereopsis due to the reduced vision in the left eye and because the brain has difficulty fusing dissimilar images from the two eyes, totaling 20 percent visual system impairment. The DMA noted that as appellant previously received a schedule award for 22 percent permanent visual system impairment, he was not entitled to additional schedule award compensation.

By decision dated February 18, 2025, OWCP denied modification of its March 23, 2023 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ 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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁶ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁷

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,⁸ FECA mandates that the degree of loss of vision must be determined without regard to correction.⁹ For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.¹⁰

The sixth edition of the A.M.A., *Guides* indicates that the evaluation of visual impairment is based on the functional vision score (FVS). FVS 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).¹¹ The A.M.A., *Guides* also allows for individual adjustments for other functional deficits, such as contrast and glare sensitivity, color vision defects and binocularity, stereopsis, suppression and diplopia, only if these deficits are not reflected in a visual acuity or visual field loss.¹² The A.M.A., *Guides*, however, specifically limits adjustment of the impairment rating for these deficits to cases which

⁴ *Supra* note 1.

⁵ 20 C.F.R. § 10.404.

⁶ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ A.M.A., *Guides* 287.

⁹ 5 U.S.C. § 8107(c)(19).

¹⁰ *Id.* at § 8107(c)(5).

¹¹ A.M.A., *Guides* 282, 285; *see also D.M.*, Docket No. 18-0285 (issued September 26, 2019).

¹² *Id.* at 305.

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.”¹³

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP’s DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁴

ANALYSIS

The Board finds that this case is not in posture for decision.

By decision dated March 23, 2023, OWCP granted appellant a schedule award for 22 percent permanent impairment of the right eye. Appellant subsequently requested reconsideration, asserting additional impairment. OWCP thereafter referred the record to Dr. Lee for a second opinion. It specifically requested that she provide the current status of the injured eye, indicating measurable defects to uncorrected vision, including central acuity, far and near; visual field constriction; ocular motility loss; and ability to fuse vision without glasses. In a September 30, 2024 report, Dr. Lee opined that appellant had 23 percent visual system impairment. She related that appellant’s injured eye uncorrected vision was 20/50, however she utilized appellant’s corrected vision of 20/30 in applying the formula for vision system impairment. On February 6, 2025 OWCP routed Dr. Lee’s September 30, 2024 report, along with the case record and a SOAF, to its DMA, Dr. Singman. In his report dated February 12, 2025, Dr. Singman opined that appellant had 20 percent visual system permanent impairment, utilizing appellant’s corrected VAS OD of 20/30.

As explained above, although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity, FECA specifically provides that the degree of loss of vision is to be determined without regard to correction.¹⁵ Neither Dr. Lee’s nor Singman’s impairment ratings were based on appellant’s uncorrected vision.

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁶ It has an obligation to see that justice is

¹³ *Id.* at 287.

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017); see also *R.A.*, Docket No. 19-0098 (issued January 24, 2020); *J.C.*, Docket No. 18-0466 (issued July 27, 2018).

¹⁵ *Supra* note 9.

¹⁶ See, e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

done.¹⁷ Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.¹⁸

As neither Dr. Lee nor Dr. Singman provided a final impairment rating of appellant's right eye permanent impairment using the appropriate standard, the case must be remanded for further development. On remand, OWCP shall refer the case record to a new DMA for an opinion which determines appellant's degree of loss of vision without regard to correction in accordance with FECA. Following this and such other further development as deemed necessary, including possible referral to a new second opinion, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2025 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 8, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁷ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁸ *B.W.*, Docket No. 19-0965 (issued December 3, 2019); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).