

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

L.C., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
U.S. COAST GUARD, Portsmouth, VA,
Employer**

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) **Docket No. 23-0293**
) **Issued: June 9, 2025**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 28, 2022 appellant filed a timely appeal from a December 19, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.²

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 33 percent permanent impairment for vision loss, for which he previously received schedule award compensation.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 19, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 30, 2014 appellant, then a 47-year-old attorney adviser, filed an occupational disease claim (Form CA-2) alleging that on March 25 and 28, 2014 he sustained strokes due to factors of his federal employment. He asserted that extended work-related air travel in reduced pressurization, which aggravated his atrial fibrillation and caused strokes to his right occipital lobe on those dates. He explained that the effects of the two strokes resulted in partial vision loss in the left eye, partial paralysis in the left arm, partial paralysis of the tongue, and diminished speaking ability. Appellant noted that he first became aware of his condition on March 25, 2014 and first realized its relation to his federal employment on June 4, 2014. He stopped work on March 25, 2014 and returned on April 21, 2014.

On December 15, 2014 appellant underwent visual field testing with Dr. Jay C. Starling, a Board-certified ophthalmologist.

By decision dated January 28, 2016, OWCP accepted appellant's claim for precipitation of atrial fibrillation. By decision dated December 13, 2017, it expanded the acceptance of his claim to include stroke, resolved.³

On June 14, 2018 appellant filed a Form CA-7 for a schedule award.

On December 26, 2019 OWCP referred appellant, the case file, a statement of accepted facts (SOAF), and a series of questions to Dr. David Eisenberg, a Board-certified ophthalmologist, for a second opinion evaluation regarding the extent of permanent impairment to his vision under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

In a January 9, 2020 report, Dr. Eisenberg indicated that appellant underwent visual field testing on examination. On examination, he determined that vision in each eye without correction was 20/60 and that vision was correctable in each eye to 20/20. Dr. Eisenberg determined that there was no visual limitation resulting in visual impairment under the sixth edition of the A.M.A., *Guides*. He explained that visual field testing revealed a dense left homonymous superior quadrantanopia respecting the horizontal line and vertical midline with sparing of central vision of 10 degrees. Dr. Eisenberg opined that this amounted to a minimal field limitation of approximately 90 for his functional acuity score, a number that essentially meant there was no limitation.

On February 25, 2020 Dr. Eric L. Singman, a Board-certified ophthalmologist serving as an OWCP district medical adviser (DMA), conducted a review of Dr. Eisenberg's report. He determined that appellant had visual system impairment because there was definite and substantial reduction of the functional field score. Dr. Singman referred to the sixth edition of the A.M.A., *Guides* and opined that appellant sustained 22 percent permanent vision impairment. He

³ On February 9, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated September 18, 2019, OWCP granted him a schedule award for one percent permanent impairment of the left upper extremity and one percent permanent impairment of the right upper extremity. The award ran for six weeks from April 26 through June 6, 2019. By decisions dated July 15 and 22, 2020, OWCP denied entitlement to a schedule award for permanent partial impairment of the larynx or the tongue.

⁴ A.M.A., *Guides* (6th ed. 2009).

concluded that maximum medical improvement (MMI) was reached on December 15, 2014 the date appellant underwent formal visual field testing.

In an April 3, 2020 addendum report, Dr. Eisenberg agreed with Dr. Singman's impairment assessment based on prior field testing performed on December 15, 2014.

On April 9, 2020 Dr. Kevin Yuhan, a Board-certified ophthalmologist serving as a DMA, reviewed the SOAF and medical evidence of record. He determined that appellant had a functional acuity score of 75 and a functional field score of 90, resulting in a total impairment of 32.5 percent vision loss. Dr. Yuhan concluded that MMI was reached on March 28, 2014.

By decision dated July 22, 2020, OWCP granted appellant a schedule award for 22 percent loss of vision. The award ran for 35.2 weeks from March 28 through June 29, 2014.

On August 17, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on November 9, 2020. Appellant argued that each eye should be assessed individually and that he was entitled to separate schedule awards for each eye. He further argued that the visual field test dated December 15, 2014 constituted the only objective medical evidence pertaining to his eyes, establishing 25 percent vision loss in each eye.

By decision dated January 25, 2021, OWCP's hearing representative set aside the July 22, 2020 schedule award decision and remanded the case to OWCP for further development. She found that the medical evidence of record demonstrated impairment in each eye, and further review was needed to determine whether the impairment should be calculated for each eye. The hearing representative remanded the claim for further development to be followed by a *de novo* decision.

In a supplemental report dated March 3, 2021, Dr. Yuhan, serving as the DMA, reported that appellant's final impairment rating was 33 percent for vision loss. He explained that FECA required the percentage of impairment to be based on the best uncorrected vision and that loss of binocular vision or loss of 80 percent or more was considered the same as loss of the eye. Dr. Yuhan determined that, based on the January 9, 2020 examination, appellant had uncorrected vision of 20/60 in each eye. The visual acuity score for 20/60 was 75, amounting to an impairment of 24. Dr. Yuhan further calculated the functional acuity score as 75. He reported that appellant's examination revealed a bilateral left superior quadrantanopia sparing the central 10 degrees in both eyes. Based on the distribution of grid points, Dr. Yuhan opined that appellant had loss of 10 points per eye. Since both eyes had an overlap between the left and right superior fields, he calculated the functional field score as 90. Dr. Yuhan reported that the evaluation of permanent impairment of the entire visual field system (acuity and field) was calculated using the functional visual system $(75 \times 90)/100$ amounting to 67.5. Therefore, appellant had a total impairment of $100 - 67.5$ equaling 32.5 percent, rounded up to 33 percent permanent impairment of visual field loss.

On March 17, 2021 OWCP requested that Dr. Eisenberg comment on Dr. Yuhan's report and impairment findings. In an April 5, 2021 report, Dr. Eisenberg opined that appellant had no visual impairment based on best corrected vision as stipulated in his initial report.

In an April 30, 2021 addendum, Dr. Yuhan reviewed Dr. Eisenberg's report and explained that FECA guidelines require calculations to be based on uncorrected vision.

By decision dated May 13, 2021, OWCP granted appellant a schedule award for an additional 11 percent permanent impairment of vision loss, for a total of 33 percent.

On May 28, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 2, 2021, OWCP's hearing representative set aside the May 13, 2021 schedule award decision and remanded the case for further development. It found that Dr. Yuhan, the DMA, failed to explain whether the rating was to be awarded for each eye. The hearing representative also found that Dr. Yuhan failed to address whether his impairment rating included the prior percentage awarded.

On August 5, 2021 OWCP referred the case to Dr. Yuhan for an addendum report, requesting that he review all second opinion and DMA reports regarding loss of vision before providing a final impairment rating and detailed explanation of appellant's entitlement to schedule award compensation.

In an August 31, 2021 report, Dr. Yuhan provided the same rating of 33 percent permanent impairment of vision loss.

On September 7 and October 27, 2021 OWCP referred the case back to Dr. Yuhan for clarification, asserting that he failed to address the additional questions posed in its earlier request.

In a November 22, 2021 report, Dr. Yuhan calculated 33 percent permanent impairment for loss of vision using uncorrected vision. He also provided impairment calculations for loss of vision using best corrected vision.

By decision dated December 9, 2021, OWCP denied the claim for an additional schedule award beyond the 33 percent permanent impairment of vision loss previously awarded, finding that the weight of the medical evidence rested with Dr. Yuhan serving as the DMA.

On January 11, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 7, 2022, OWCP's hearing representative set aside the December 9, 2021 schedule award decision and remanded the case for further development. The hearing representative found that Dr. Yuhan failed to clarify the issues posed in the prior two remands by the Branch of Hearings and Review and remanded the case for referral to Dr. Yuhan, to be followed by a *de novo* decision.

In an April 1, 2022 supplemental report, Dr. Yuhan advised that the 33 percent impairment rating provided was for the loss of vision in both eyes since it included calculations for the bilateral functional acuity score and the bilateral functional field score, and that 33 percent was the total impairment. He opined that, based on the calculations of uncorrected vision using 20/60 in both eyes, the visual acuity score as noted in prior evaluations was 75 and the functional acuity score was also 75. Dr. Yuhan found that, since appellant also had left superior quadrantanopia sparing

the central 10 degrees in both eyes, the functional field score amounted to 90. The evaluation of permanent impairment of the entire visual system amounted to 67.5, resulting in 33 percent permanent impairment for the loss of vision in both eyes in total. Dr. Yuhan explained that the previous impairment rating, using the best corrected visual acuity, was calculated at 22 percent. He utilized the FECA guidelines to incorporate the best uncorrected visual acuity in calculating the impairment rating, explaining that, since 22 percent impairment was already awarded, the overall impairment rating of 33 percent should not be calculated in addition to the percentage. Dr. Yuhan concluded that the total percentage amounted to 33 percent, therefore, only an additional 11 percent should be awarded to appellant.

By *de novo* decision dated April 26, 2022, OWCP denied the claim for an additional schedule award beyond the 33 percent permanent impairment of vision loss previously awarded, finding that the weight of the medical evidence rested with Dr. Yuhan serving as the DMA.

On May 31, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on September 15, 2022.

By decision dated December 19, 2022, OWCP's hearing representative affirmed the April 26, 2022 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁵ and its implementing federal regulations,⁶ 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 2009.⁷ 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.⁸

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,⁹ FECA mandates that the degree of loss of vision must be determined

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ 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 Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2, Exhibit 1 (January 2010).

⁸ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁹ A.M.A., *Guides* 287, Chapter 12.2c.

without regard to correction.¹⁰ For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.¹¹ A loss of 80 percent or more of the vision of an eye is considered the same as loss of the eye.¹² Partial losses are compensated proportionately.¹³

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).¹⁴ 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.¹⁵ 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.”¹⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 33 percent permanent impairment for vision loss, for which he previously received schedule award compensation.

In an April 1, 2022 supplemental report, Dr. Yuhan advised that the 33 percent impairment rating provided was for the loss of vision in both eyes since it included calculations for the bilateral functional acuity score and the bilateral functional field score, and that 33 percent was the total impairment. He opined that, based on the calculations of uncorrected vision using 20/60 in both eyes, the visual acuity score as noted in prior evaluations was 75 and the functional acuity score was also 75. Dr. Yuhan found that, since appellant also had left superior quadrantanopia sparing the central 10 degrees in both eyes, the functional field score amounted to 90. The evaluation of permanent impairment of the entire visual system amounted to 67.5, resulting in 33 percent permanent impairment for the loss of vision in both eyes in total. Dr. Yuhan explained that the previous impairment rating, using the best corrected visual acuity, was calculated at 22 percent. He utilized the FECA guidelines to incorporate the best uncorrected visual acuity in calculating the impairment rating, explaining that, since 22 percent impairment was already awarded, the overall impairment rating of 33 percent should not be calculated in addition to the percentage.

¹⁰ 5 U.S.C. § 8107(c)(19).

¹¹ *Id.* at § 8107(c)(5).

¹² *Id.* at § 8107(c)(14).

¹³ *Id.* at § 8107(c)(19).

¹⁴ A.M.A., *Guides* 282, 285; *see also D.M.*, Docket No. 18-0285 (issued September 26, 2019).

¹⁵ *Id.* at 305.

¹⁶ *Id.*

Dr. Yuhan concluded that the total percentage amounted to 33 percent, therefore, only an additional 11 percent should be awarded to appellant.

Dr. Yuhan's April 1, 2022 supplemental report established that he properly applied the A.M.A., *Guides* to his examination findings. As it is detailed, well rationalized, and based on a proper factual background, his opinion represents the special weight of the medical evidence.¹⁷

As the medical evidence of record is insufficient to establish greater than the 33 percent permanent impairment for vision loss previously awarded, the Board finds that appellant has not met his burden of proof.

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 33 percent permanent impairment for vision loss, for which he previously received schedule award compensation.

¹⁷ See *A.T.*, Docket No. 25-0272 (issued March 17, 2025); *L.M.*, Docket No. 24-0620 (issued September 9, 2024); *K.M.*, Docket No. 23-1103 (issued February 6, 2024).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board