



## ISSUE

The issue is whether appellant has established greater than 66 percent permanent impairment of the left eye for which she received schedule award compensation.

## FACTUAL HISTORY

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

OWCP accepted that on September 17, 1999 appellant, then a 26-year-old criminal investigator, sustained a left corneal abrasion injury, left unspecified open wound of eyeball, torn iris, left hemophthalmos, left posterior subcapsular polar no senile cataract, and post-traumatic cataract when her left eye was hit with a rubber bullet during a training exercise while in the performance of duty.

On June 15, 2011 Dr. Bonnie Brooks, a Board-certified ophthalmologist, performed cataract surgery of the left eye which was approved by OWCP. In an April 9, 2012 report, she noted that appellant was myopic and would wear contact lenses to see clearly from a distance. Since her injury, appellant was provided with an artificial lens implant for the left eye to keep her myopic in an effort to avoid an uncomfortable imbalance between the two eyes. However, when wearing this contact lens for distance in the left eye, she could no longer see clearly up close. Therefore, appellant she adapted to wearing her distance correction lens in the right eye and leaving her left eye uncorrected so that she could read.

On April 2, 2012 appellant filed a claim for a schedule award (Form CA-7).

By decision dated June 28, 2013, OWCP granted appellant a schedule award for 10 percent permanent impairment of her left eye. Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated February 6, 2014, OWCP's hearing representative affirmed the June 28, 2013 decision.

Appellant appealed to the Board on March 17, 2014. By decision dated September 4, 2014, the Board set aside OWCP's February 6, 2014 schedule award decision and remanded the case for further development.<sup>4</sup> The Board found that the district medical adviser (DMA) incorrectly utilized appellant's corrected visual acuity to rate her left eye impairment and failed to use the uncorrected vision measurements in assessing the degree of vision loss. The Board noted that, although the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)<sup>5</sup> provides that impairment ratings should be based on the best-corrected visual acuity,<sup>6</sup> FECA provides at section 8107(c)(19) that the degree of loss of

---

<sup>3</sup> Docket No. 14-0948 (issued September 4, 2014).

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.* at section 12.2c, 287.

vision is to be determined without regard to correction.<sup>7</sup> The Board further noted that visual acuity loss may not account for all of appellant's left eye impairment as there were significant factors that affected her functional vision which were not accounted for through visual acuity loss.<sup>8</sup> The Board explained that the reports of the DMA failed to discuss whether there was evidence of visual field impairment or whether individual adjustments for functional vision were appropriate pursuant to the A.M.A., *Guides*. On remand OWCP was directed to further develop the medical evidence of record by referring appellant to an appropriate Board-certified ophthalmologist for a second opinion examination regarding the extent of her left eye permanent impairment.

On September 5, 2017 OWCP referred appellant to Dr. Sarah Darbandi, a Board-certified ophthalmologist, for a second opinion evaluation regarding the extent of permanent impairment to her left eye. Dr. Darbandi determined that appellant had no permanent impairment to the left eye. She opined that appellant had reached maximum medical improvement (MMI) on February 3, 2012 when Dr. Brooks noted that appellant had reached full potential in the left eye. Dr. Darbandi also opined that "[t]he patient does not have accommodation in the left eye due to the nature of the intraocular lens implant, however near vision is correctable to J1+ in both eyes. The right and left eyes do have different powers measured by our refraction, but I feel that it is low enough difference such that she can be treated with glasses, or contact lenses."

On October 30, 2017 Dr. Kevin Yuhan, a Board-certified ophthalmologist serving as an OWCP DMA, reviewed the medical evidence of record. He noted that prior ratings including that of Dr. Darbandi which provided an impairment score of zero percent for no permanent impairment to the left eye utilized the best corrected vision in the calculation of the rating. However, FECA allows for the use of the best uncorrected vision. Therefore, Dr. Yuhan indicated that appellant's vision dropped to approximately 20/500 in the right eye and 20/400 in the left eye. Since there was no impairment in the visual field, this decreased the functional acuity vision from 100 to 34. As such, the DMA found that appellant's impairment rating of zero increased to 66 percent. He also found that appellant had reached MMI on February 3, 2012.

On January 31, 2018 OWCP requested Dr. Darbandi comment on Dr. Yuhan's reports and impairment findings. Dr. Darbandi responded that she was unable to comment further on which impairment rating was more appropriate.

By decision dated September 12, 2018, OWCP awarded appellant a schedule award for 66 percent permanent impairment to the left eye, less than the 10 percent previously received, for an increased award of 56 percent.

On September 18, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

---

<sup>7</sup> For a total loss of use of an eye, an employee shall receive 160 weeks' compensation. 5 U.S.C. § 8107(c)(5). Compensation for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye. 5 U.S.C. § 8107(c)(14). The degree of loss of vision under this schedule is determined without regard to correction. 5 U.S.C. § 8107(c)(19).

<sup>8</sup> Gary A. Guillory, Docket No. 03-1872 (issued November 21, 2003).

A hearing was held on February 15, 2019. Appellant testified that her 2011 left eye cataract surgery removed her natural lens which had the cataract and replaced it with an artificial lens. Counsel argued that appellant should have been awarded 100 percent permanent impairment for loss of her left eye because she no longer had the original lens in her eye and rather, had a prosthetic device via the artificial lens. In this instance, the physicians were improperly calculating her uncorrected vision after the implant surgery, when they should have factored loss of vision prior to the cataract surgery implant. Counsel asserted that appellant should be compensated for 100 percent loss of the eye as any remaining visual acuity was only a representation of corrected vision using a prosthetic device.

By decision dated May 7, 2019, OWCP's hearing representative affirmed the September 12, 2018 decision.

### **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>9</sup>

The schedule award provisions of FECA<sup>10</sup> and its implementing regulations<sup>11</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>12</sup> For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.<sup>13</sup> A loss of 80 percent or more of the vision of an eye is considered the same as loss of the eye.<sup>14</sup> Partial losses are compensated proportionately.<sup>15</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>16</sup>

---

<sup>9</sup> See *T.O.*, Docket No. 18-0659 (issued August 8, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>10</sup> 5 U.S.C. § 8107.

<sup>11</sup> 20 C.F.R. § 10.404.

<sup>12</sup> *Supra* note 10.

<sup>13</sup> *Id.* at § 8107(c)(5).

<sup>14</sup> *Id.* at § 8107(c)(14).

<sup>15</sup> *Id.* at § 8107(c)(19).

<sup>16</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).

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity.<sup>17</sup> FECA mandates that the degree of loss of vision must be determined without regard to correction.<sup>18</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). 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).<sup>19</sup> 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.<sup>20</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>21</sup>

### ANALYSIS

The Board, having duly considered the matter, concludes that this case is not in posture for decision.

On prior appeal the Board explained that, although the A.M.A., *Guides* provide that impairment ratings should be based on the best-corrected visual acuity, FECA provides at section 8107(c)(19) that the degree of loss of vision is to be determined without regard to correction.<sup>22</sup> The Board further found that visual acuity loss may not account for all of appellant’s left eye impairment.<sup>23</sup> In appellant’s case, it appeared that significant factors remained that affected her functional vision which were not accounted for through visual acuity loss.<sup>24</sup> The Board remanded the claim for a second opinion evaluation and further medical development pertaining to appellant’s left eye impairment.

The Board notes that a complete evaluation of appellant’s left eye permanent impairment, which fully considers permanent impairment of uncorrected visual acuity and visual field, has not

---

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

<sup>18</sup> 5 U.S.C. § 8107(c)(19).

<sup>19</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009) at 282, 285; *see also D.M.*, Docket No. 18-0285 (issued September 26, 2019).

<sup>20</sup> *Id.* at 305.

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

<sup>22</sup> *Supra* note 6.

<sup>23</sup> *Supra* note 2.

<sup>24</sup> *Michele Tousley*, Docket No. 05-1156 (issued October 12, 2005) (the Board held that appellant was entitled to an increase of 15 percent impairment for individual adjustments because of her monocular pseudophakia, glare disability, and decreased contrast sensitivity which were not accounted through visual acuity or visual field loss).

yet been conducted. As Dr. Darbandi concluded that appellant had no permanent impairment of the left eye, it is obvious that her opinion was not based on appellant's uncorrected vision, without the lens implant. She therefore did not provide rating of appellant's left eye permanent impairment under the relevant standards. Furthermore, while she opined that appellant did not have impairment of the visual field of the left eye, Dr. Darbandi did not provide a clear explanation for this opinion, based upon 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.<sup>25</sup> It has an obligation to see that justice is done.<sup>26</sup> 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.<sup>27</sup> The Board determined that a second opinion evaluation was necessary to fully evaluate appellant's uncorrected vision of the left eye to determine her permanent impairment. OWCP thereafter referred appellant to Dr. Darbandi for a second opinion evaluation. After receiving Dr. Darbandi's reports which were insufficient, it was incumbent upon OWCP to refer appellant for another second opinion evaluation. As the DMA did not examine appellant, his report could not resolve the issues noted in the Board's prior remand of his case.

The Board will set aside OWCP's May 7, 2019 decision and remand the case for referral of appellant for a new second opinion evaluation for resolution of the issues that the Board first raised in its September 4, 2014 decision.<sup>28</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's left eye impairment for schedule award purposes.

### CONCLUSION

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

---

<sup>25</sup> 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).

<sup>26</sup> 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).

<sup>27</sup> *B.W.*, Docket No. 19-0965 (issued December 3, 2019); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

<sup>28</sup> *J.H.*, Docket No. 15-0546 (issued May 20, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2019 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.<sup>29</sup>

Issued: February 19, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>29</sup> Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.