

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARTHUR SHANNONHOUSE and U.S. POSTAL SERVICE,  
POST OFFICE, Stamford, CT

*Docket No. 02-1959; Submitted on the Record;  
Issued January 10, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant was totally disabled on or after June 1, 1999 due to his accepted work injury; and (2) whether the claimant is entitled to a schedule award for impairment of the right eye.

On March 27, 1999 appellant, then a 59-year-old letter carrier, filed a notice of traumatic injury alleging that his eye was struck by a tree branch while delivering the mail in the performance of duty. Appellant was seen at the Greenwich Hospital emergency room on March 29, 1999, complaining of right eye pain and blurred vision. He was referred to and began treatment with Dr. Glenn Ostriker on March 30, 1999. The Office of Workers' Compensation accepted the claim for the condition of right eye iritis.

In an undated attending physician's report (CA-20), it was noted that appellant was "hit with a tree branch on Saturday" and sustained iritis and conjunctival hemorrhage. Under the "remarks" portion of the form, the physician wrote: "possibly glaucoma."

In a May 29, 1999 report, Dr. Ostriker stated that appellant had extensive vision loss from glaucoma exacerbated by an injury which occurred on March 27, 1999.

In a (CA-20) attending physician's report dated July 7, 1999, Dr. Ostriker diagnosed traumatic iritis resolved and primary open angle glaucoma. He noted that the iritis "may have aggravated the glaucoma." He also opined that appellant was totally disabled from work due to advanced visual field loss.

On August 2, 1999 appellant filed CA-7 claim for wage loss from March 29 to June 1, 1999.

In an August 11, 1999 report, Dr. Peter Libre, an ophthalmologist, noted that appellant had a history of glaucoma, which reportedly was suspected three years ago, but only began in March 1999 after trauma by tree limb caused iritis in the right eye. He noted that glaucoma

surgery was performed in the left eye and that visual loss has occurred in the left eye. Dr. Libre concluded that the visual loss resulted from longer standing glaucoma than any glaucoma secondary to the injury in question.

On September 29, 1999 the Office advised appellant that he needed to file medical evidence supporting his disability from work. The Office noted that compensation would be paid for doctor's appointments on March 29 and 30, 1999.

On December 27, 1999 appellant filed (CA-7) claim for wage-loss compensation beginning June 1, 1999, the effective date of his retirement. In an accompanying note, the claimant stated he was no longer able to perform his duties at work and was forced to retire.

On January 10, 2000 appellant filed a (CA-7) for a schedule award.

On June 23, 2000 an Office medical adviser reviewed the medical record and stated:

“In my considered medical opinion, the claimant suffers from a preexisting history of glaucoma. As the current diagnosis is one of open angle glaucoma, it is unlikely that this condition resulted from trauma to the right eye. Glaucoma surgery performed in the left eye (not damaged by the tree branch) the month following the diagnosis of traumatic uveitis. As visual loss has occurred in the traumatically undamaged left eye it is more likely than not that the current visual loss resulted from the longer standing underlying glaucoma than any glaucoma secondary to the injury in question.”

In a decision dated September 8, 2000, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record failed to establish a permanent impairment causally related to the employment injury.

The claimant disagreed with that decision and requested an oral hearing.

A note dated May 19, 1999 from Dr. Ostriker was submitted subsequent to the hearing request. He related appellant's "extensive vision loss" to glaucoma exacerbated by the March 27, 1999 work injury.

In a January 22, 2001 decision, an Office hearing representative vacated the Office's September 8, 2000 decision and remanded the claim for further development to include an examination with a Board-certified ophthalmologist for an opinion as to whether appellant's work injury resulted in a permanent impairment. The Office was also directed to determine whether appellant was entitled to continuing compensation for disability related to the accepted work injury.

Appellant was referred to Dr. Steven Rabinowitz, Board-certified ophthalmic surgeon, who examined appellant on May 2, 2001. In a May 3, 2001 report, Dr. Rabinowitz noted appellant's history of injury and vision complaints. He performed a complete eye examination and diagnosed open angle glaucoma with increased pressure. Dr. Rabinowitz stated the pressure was not in control and required treatment by an ophthalmologist. He also indicated that he was

“unable to find a reasonable etiology” for appellant’s current loss of vision. Dr. Rabinowitz recommended that appellant be seen by a neuroophthalmologist.

In accordance with Dr. Rabinowitz’s recommendation, the Office referred appellant to Dr. Robert Lesser, a Board-certified neuroophthalmologist. In a report dated July 26, 2001, Dr. Lesser described the claimant’s current symptoms of intermittent blurred vision and severe right eye ache. Among the tests he performed was the “Mirror Narcissus Test” in which the claimant was asked if he could see his eye within the mirror that was held in front of him. The claimant stated he could not see his eye, but when the mirror was moved, he did follow the mirror in any direction that it was moved. In another test, the claimant was asked if he could see animals on an optico kinetic nystagmus tape, and he replied that he could not, yet when the tape moved vertically or horizontally the claimant’s eyes responded, indicating he had vision in the eye. Finally, the claimant was asked to walk to the end of the room and, despite his claim that he had hand motions vision, he was able to avoid barriers that were placed in front of him. Dr. Lesser concluded that the claimant’s vision was significantly better than he claimed, and that his visual loss was not secondary to his glaucoma or iritis. He stated that the “glaucoma is not responsible for his decreased vision. [Appellant] has no evidence of optic neuropathy.” Dr. Lesser opined that the claimant “has no disability related to the injury.”

In an August 14, 2001 decision, the Office denied appellant’s claim for a schedule award on the grounds that his vision loss was not causally related to his work injury. The Office further determined that appellant’s disability from work was due to his preexisting, nonwork-related glaucoma.

Appellant requested a hearing, which was held on February 25, 2002.

In a decision dated May 15, 2002, an Office hearing representative affirmed the Office’s August 14, 2001 decision.

The Board finds that appellant’s disability on or after June 1, 1999 was not causally related to his work injury.

A person who claims benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that an injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result.

The Office accepted that appellant sustained right eye iritis as a result of the March 27, 1999 work injury and he received continuation of pay for that traumatic injury. Appellant filed a CA-7 claim for continuing wage loss beginning on June 1, 1999, the effective date of his retirement. Although the Office accepted the claim, appellant maintains the burden of proving his disability for work through the submission of CA-7 and CA-8 claim forms along with corroborating, rationalized medical evidence establishing his disability for work.<sup>1</sup>

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<sup>1</sup> See generally, *Barbara A. Roberson*, 45 ECAB 797 (1994); *Gary L. Fowler*, 45 ECAB 365 (1994).

The medical report of May 29, 1999 from Dr. Ostriker that is contemporaneous with appellant's retirement on June 1, 1999 does not establish that appellant was disabled from work due to his accepted condition of iritis. He also subsequently stated that on July 7, 1999 appellant's iritis had resolved. In the absence of any medical evidence to support appellant's claim for compensation for wage loss beginning June, 1 1999, the Office properly denied compensation.

The Board also finds that appellant has no permanent impairment of the right eye causally related to the March 27, 1999 work injury that would entitle him to a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>2</sup> and its implementing federal regulation,<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>4</sup> However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup>

Before application of the A.M.A, *Guides*; however, the Office must determine appellant's entitlement to a schedule award by finding that the impairment of the scheduled member is causally related to the alleged work injury. In this case, appellant seeks a schedule award for right eye impairment, but he has submitted no rationalized medical opinion evidence to support a causal relationship between his diagnosed condition of glaucoma and his March 27, 1999 eye injury. The Board notes that, while Dr. Ostriker indicated that appellant's diagnosed condition of glaucoma was "possibly" aggravated by his work injury, this opinion is speculative at best and is therefore not entitled to little probative value. Dr. Lesser specifically opined that appellant was exaggerating his vision problems, and felt that any visual loss appellant suffered was not secondary to glaucoma or iritis due to the work injury. Because appellant's glaucoma is not causally related to his work injury, and his accepted condition of iritis has resolved without any residual permanent impairment, the Board concludes that the Office properly denied appellant's claim for a schedule award.

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

<sup>5</sup> See 20 C.F.R. § 10.404 (1999).

The decision of the Office of Workers' Compensation Programs dated May 15, 2002 is hereby affirmed.

Dated, Washington, DC  
January 10, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member