

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

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**S.G., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, Conway, NH, Employer**

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**Docket No. 10-1405  
Issued: February 17, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 27, 2010 appellant filed a timely appeal from the January 19, 2010 merit decision of the Office of Workers' Compensation Programs, which denied an increased schedule award for his left eye. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant has more than a 50 percent impairment of his left eye.

**FACTUAL HISTORY**

On October 24, 2001 appellant, then a 25-year-old seasonal forestry technician, sustained an injury in the performance of duty when, while notching out a base log with the butt end of an axe, a chunk of wood struck him in the left eye. The Office accepted his claim for foreign body in left eye, open angle glaucoma with borderline findings, left, after-cataract obscuring vision, contusion of eyeball and hyphema.

The Office issued a schedule award for 20 percent impairment of the left eye. It later issued a schedule award for an additional 30 percent impairment of the left eye, reflecting a total impairment rating of 50 percent.

Dr. Richard J. Lasonde, a Board-certified ophthalmologist and an impartial medical specialist who would continue following appellant, made clear on April 8, 2003 that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* was cumbersome to use and “could not accurately describe the loss of [appellant’s] vision.” He estimated appellant’s visual loss in the left eye to be “at least 75 percent.”

Dr. Lasonde examined appellant on January 24, 2005 and recorded visual acuity in the left eye at 20/40. On October 27, 2005 he recorded 20/50. Dr. Lasonde stated: “Based on the A.M.A., *Guides*, I believe [appellant] has suffered at least 85 percent loss of vision if not more in his left eye.”

On August 30, 2006 Dr. Lasonde recorded visual acuity at 20/40 in the left eye. On November 6, 2007 he estimated appellant’s loss of vision to be “80 percent or more given the 20/200 near visual acuity, the metamorphopsia, the complete loss of accommodation and the loss of stereo vision.”<sup>1</sup> On November 28, 2007 Dr. Lasonde reported visual acuity of 20/50 in the left eye at distance and 20/200 near. He noted a +2 posterior capsular opacification and recommended a YAG capsulotomy, which he explained should bring visual improvement.

After a congressional inquiry into the status of his case and the extent of his impairment, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. William M. Marsh, a Board-certified ophthalmologist, for a current evaluation.

On April 21, 2009 Dr. Marsh related appellant’s history of injury and reviewed the medical record. He noted that appellant had apparently undergone cataract surgery after it was recommended on November 28, 2007, as there was now no opacity in the visual axis. A physical examination revealed, among other things, uncorrected visual acuity of 20/100 in the left eye. Dr. Marsh did not repeat visual field testing, as the medical record provided several normal tests and appellant did not claim peripheral vision loss. Uncorrected visual acuity for the unaffected right eye was 20/20. Uncorrected binocular acuity was 20/20.

Dr. March determined that appellant had 50 percent loss of distance vision and 85 percent loss of near vision in the left eye, which combined for 84 percent loss of central vision. This corresponded, he stated, to 21 percent disability to the visual system.

An Office medical adviser attempted to combine the visual acuity scores for each eye<sup>2</sup> to a single functional acuity score for the person, and then used that score as a visual acuity score to

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<sup>1</sup> Near-vision measurements are often inaccurate and are now an optional consideration. A.M.A., *Guides* 282 (6<sup>th</sup> ed. April 2009). If reading acuity is significantly worse than letter chart acuity, the functional acuity score may be adjusted to the average of the distance acuity score and the near-vision acuity score. *Id.* at 290.

<sup>2</sup> He found that 20/20 vision in the right eye gave a visual acuity score of 20, that 20/100 vision in the left eye gave a visual acuity score of 100, and that 20/20 binocular vision gave a visual acuity score of 20. In fact, such scores are 100, 65 and 100 respectively.

find impairment. A second Office medical adviser, unable to explain what the first had done, found that appellant's 20/100 vision, as reported by Dr. March, gave a visual acuity score of 65 and an impairment of 35 percent for the left eye.

On July 16, 2009 the Office denied an increased schedule award. In a decision dated January 19, 2010, an Office hearing representative affirmed. The hearing representative found that the weight of the medical evidence rested with the second medical adviser, who provided his opinion with regard to the left eye, rather than the entire visual system and as Dr. Marsh's evaluation of appellant's vision did not show more than 50 percent impairment of the left eye, for which appellant already received compensation, the hearing representative found that appellant was not entitled to an increased award.

On appeal, appellant urges the Board to review the medical evidence, read the numerous signed documents and award the correct compensation.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>3</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. For 100 percent loss of an eye, as with blindness, the Act provides a maximum 160 weeks of compensation.<sup>4</sup> Compensation for loss of binocular vision is the same as for loss of the eye.<sup>5</sup> Partial losses are compensated proportionately.<sup>6</sup>

Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>7</sup> For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition and to report findings in accordance with those guidelines.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> *Id.* at § 8107(c)(5).

<sup>5</sup> *Id.* at § 8107(c)(14). *But see Russell E. Wageneck*, 46 ECAB 653 (1995) (holding there is no provision under section 8107 of the Act for the combination of each eye into a schedule award for both eyes together, as there is for loss of hearing in both ears; therefore, schedule awards are issued for each eye individually).

<sup>6</sup> *Id.* at § 8107(c)(19).

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

Although the A.M.A., *Guides* provides that impairment ratings should be based on the best-corrected visual acuity,<sup>9</sup> the Act mandates that the degree of loss of vision must be determined without regard to correction.<sup>10</sup>

### ANALYSIS

The Office has issued formal schedule awards for 50 percent total impairment of appellant's left eye, amounting to 80 weeks of compensation out of a maximum 160. The issue on appeal is whether appellant is entitled to an increased award.

The only current visual examination comes from Dr. Marsh, the Board-certified ophthalmologist and Office referral physician, who found that appellant's uncorrected visual acuity was 20/100 in the left eye. Using Table 12-2, page 288 of the sixth edition of the A.M.A., *Guides*, visual acuity of 20/100 gives a visual acuity score of 65 and thus an impairment rating of 35 percent for the left eye.<sup>11</sup> There was no evidence of visual field impairment and no individual adjustments for functional vision.<sup>12</sup> As appellant's impairment rating does not exceed his previous rating of 50 percent, he is not entitled to an increased award. The Board will therefore affirm the Office's January 29, 2010 decision.

As appellant requested, the Board has reviewed his record and has determined that he currently has no more than 35 percent impairment of his left eye according to the weight of the medical evidence, which rests with Dr. Marsh's findings on examination and the second medical adviser's correct application of the A.M.A., *Guides*.

Estimates of appellant's impairment have varied over the years which have caused him to question the correctness of the Office's decision. Some of these estimates came from Dr. Lasonde, who did not believe the A.M.A., *Guides* could accurately describe the loss of appellant's vision. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the standard for determining the percentage of impairment, and the Board has concurred in such adoption.<sup>13</sup> Estimates of impairment that do not follow the protocols of the A.M.A., *Guides*, therefore, carry no weight in establishing a claimant's entitlement to schedule compensation.

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<sup>9</sup> A.M.A., *Guides* 283, 284, Chapter 12.2b.

<sup>10</sup> 5 U.S.C. § 8107(c)(19).

<sup>11</sup> Uncorrected visual acuity of 20/100 in the left eye, 20/20 in the right eye and 20/20 in binocular vision demonstrated no more than seven percent functional acuity-related impairment in appellant's ability to perform acuity-related daily living tasks. A.M.A., *Guides* 289 (Table 12-3).

<sup>12</sup> Adjustments for such functions as contrast sensitivity, glare sensitivity, color vision defects and binocularity, stereopsis, suppression and diplopia must be well documented and should be limited to an increase in impairment by, at most, 15 points. A.M.A., *Guides* 305. Thus, appellant's acuity-related impairment of 35 percent could not be adjusted by other functions to more than the 50 percent rating he previously received. Optional near-vision acuity of 20/200, as reported by Dr. Lasonde on November 28, 2007, would not raise the impairment to more than 43 percent, still below the 50 percent rating previously given. *See supra* note 1.

<sup>13</sup> *E.g.*, *J.B.*, 61 ECAB \_\_\_ (Docket No. 09-2191, issued May 14, 2010).

The Board will affirm the Office's January 19, 2010 decision to deny an increased award.

**CONCLUSION**

The Board finds that appellant has no more than 50 percent impairment of his left eye, for which the Office has issued schedule awards.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board