

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

_____)	
J.R., Appellant)	
)	
and)	Docket No. 24-0293
)	Issued: May 9, 2024
DEPARTMENT OF THE ARMY, MONTANA)	
ARMY NATIONAL GUARD, Helena, MT,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 25, 2024 appellant filed a timely appeal from a December 29, 2023 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 is entitled to an additional schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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

This case was previously before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 10, 1960 appellant, then a 23-year-old artillery repairman helper, filed a traumatic injury claim (Form CA-1) alleging that on October 7, 1960 a metal chip broke off a hammer head and struck him in the right eye while in the performance of duty. He stopped work that day. Appellant's federal employment was terminated on September 1, 1961 due to his inability to maintain his military status. OWCP accepted the claim for blindness, right eye, normal vision left eye, right presbyopia and unspecified acute inflammation of the orbit.

Appellant's right eye was replaced with a prosthetic eye. By decision dated July 24, 1961, OWCP granted him a schedule award for 100 percent loss of use of his right eye. Appellant received 160 weeks of schedule award benefits from March 9, 1961 through April 1, 1964.

On March 28, 2023 appellant requested compensation for an additional permanent impairment.

In a March 28, 2023 development letter, OWCP requested that appellant obtain a report from an attending physician which addressed whether he had reached maximum medical improvement (MMI) with respect to his right eye. It advised that, if the physician determined that MMI had been reached, an opinion should be provided on the extent of the permanent impairment of his eye under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ OWCP afforded appellant 30 days to respond.

In a May 1, 2023 letter, Dr. Vance P. Lewis, an optometrist, reported that appellant had utilized a prosthetic artificial right eye since his October 7, 1960 employment accident. Therefore, appellant's right eye had reached a maximum and fixed state without any possible medical improvement since that time. He included copies of office visits dated October 25, October 31, and December 20, 2022, which diagnosed bilateral hypermetropia.

On November 24, 2023 OWCP referred appellant's case and a statement of accepted facts (SOAF) to Dr. Eric L. Singman, a Board-certified ophthalmologist serving as an OWCP district medical adviser (DMA). It requested that the DMA review the evidence of record and provide an opinion regarding appellant's permanent impairment due to loss of vision under the standards of the sixth edition of the A.M.A., *Guides*.

In a December 1, 2023 report, the DMA reviewed the SOAF and appellant's medical record, including Dr. Lewis's reports. He noted that appellant's right eye, was replaced with a prosthetic eye, which was nonseeing with no light perception, but which maintained the

³ Docket No. 95-2588 (issued October 16, 1997).

⁴ A.M.A., *Guides* (6th ed. 2009).

architecture of the orbit. The DMA indicated that Dr. Lewis made no mention of any visual acuity or visual field loss in the left eye. He indicated that presuming appellant's left eye was normal, then there was 100 percent permanent impairment of the right eye. The DMA also evaluated the permanent impairment of appellant's eyes under Table 12-2 on page 289 of the A.M.A., *Guides*, and found a functional acuity score (FAS) of 80. He also found that appellant had a visual system impairment or whole person impairment of 20 percent by subtracting 100 – FAS (80). The DMA noted that up to 15 percent visual system impairment can be applied with discretion for non-acuity, non-field vision losses. He indicated that, in appellant's situation, there was a substantial reduction of stereopsis at near, for which he would suggest an extra 10 percent visual impairment considering that appellant has to repair artillery, for a total whole person permanent impairment of 30 percent.

By decision dated December 29, 2023, OWCP denied an increased schedule award as appellant had previously received a schedule award for 100 percent permanent impairment of the right eye.

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 *Supra* note 1.

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 Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Chapter 3.700, 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.

without regard to correction.¹⁰ For 100 percent loss of an eye, as with blindness, FECA provides a maximum 160 weeks of compensation.¹¹

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).¹² 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.¹³ 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.”¹⁴

Neither FECA nor OWCP regulations provide for the payment of a schedule award for a whole person. A claimant is not entitled to such an award.¹⁵

ANALYSIS

The Board finds that appellant is not entitled to an additional schedule award.

The FECA compensation schedule provides that total loss of an eye equals 160 weeks of compensation.¹⁶ Both Dr. Lewis and the DMA acknowledged that appellant had a prosthetic right eye which had no light perception which equated to 100 percent permanent impairment. Thus, appellant is entitled to the full 160 weeks of compensation for total loss of his right eye.¹⁷

While Dr. Singman, the DMA, also provided an opinion regarding appellant’s percentage of whole person impairment, as previously noted a schedule award is not payable under FECA for whole person permanent impairment.¹⁸

¹⁰ 5 U.S.C. § 8107(c)(19).

¹¹ *Id.* at § 8107(c)(5).

¹² A.M.A., *Guides* 282, 285; *see also D.M.*, Docket No. 18-0285 (issued September 26, 2019).

¹³ *Id.* at 305.

¹⁴ *Id.* at 287.

¹⁵ *J.T.*, Docket No. 17-0686 (August 1, 2017); *S.K.*, Docket No. 08-848 (issued January 26, 2009).

¹⁶ 20 C.F.R. § 8107(c)(5).

¹⁷ *Supra* note 11; *R.A.*, Docket No. 19-0098 (issued January 24, 2020). *F.C.*, Docket No. 18-0975 (issued January 10, 2019).

¹⁸ *Id.*

The record reflects that, by decision dated July 24, 1961, appellant received a schedule award for the period March 9, 1961 to April 1, 1964, which equaled 160 weeks of compensation. Thus, appellant previously received his full entitlement to schedule award compensation for his right eye. Accordingly, he is not entitled to an additional schedule award for the right eye.¹⁹

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ On appeal appellant acknowledged that he had received a schedule award for the loss of his right eye from March 9, 1960 to April 1, 1964 as well as expenses incurred for travel to and from an out-of-state hospital. While he appears to question his entitlement to compensation for "disfigurement of the face" and "the loss of wage earning" these issues are not presently before the Board.