

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICK G. HYDE and DEPARTMENT OF THE TREASURY,  
CUSTOMS SERVICES, AIRPORT OPERATIONS, Miami, FL

*Docket No. 99-836; Submitted on the Record;  
Issued December 5, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in issuing a schedule award of \$1,500.00 for appellant's employment-related facial disfigurement; and (2) whether the Branch of Hearings and Review abused its discretion in denying appellant's request for a review of the written record as untimely.

The Board has duly reviewed the case on appeal and finds the case not in posture for decision.

Appellant, a customs agent, filed a claim alleging that, on August 21, 1995 he sustained lacerations to his head and nose due to a work-related altercation. The Office accepted his claim for facial and dental injuries, concussion, tooth removal, depression and post-traumatic concussive disorder. Appellant filed a claim for compensation requesting a schedule award on October 1, 1996. By decision dated February 17, 1998, the Office granted him a schedule award for \$1,500.00 for facial disfigurement. Appellant requested a review of the written record on October 12, 1998. By decision dated October 28, 1998, the Branch of Hearings and Review denied appellant's request as untimely.<sup>1</sup>

If an injury causes serious disfigurement of the face, head, or neck of a character likely to handicap a claimant in securing or maintaining employment, a schedule award is payable under the Federal Employees' Compensation Act in the amount of up to \$3,500.00.<sup>2</sup> In an appeal involving a disfigurement, the question before the Board is whether the amount awarded by the Office was based upon sound and considered judgment and was "proper and equitable" under the

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<sup>1</sup> By decision dated September 9, 1998, the Office terminated appellant's compensation benefits finding that he was no longer disabled due to his accepted employment-related injuries. He did not indicate disagreement with this decision in his appeal to the Board and the Board will not address this issue.

<sup>2</sup> 5 U.S.C. § 8107(c)(21).

circumstances as provided by 5 U.S.C. § 8107(c)(21).<sup>3</sup> In determining what constitutes a “proper and equitable” award for disfigurement, an evaluation must be made as to the likely economic effect of appellant’s disfigurement in securing and maintaining employment.<sup>4</sup> As the only limitation on the Office’s authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.<sup>5</sup>

The Office’s procedure manual provides the steps for the Office to follow in evaluating disfigurement cases.<sup>6</sup> The Office will provide the claimant with notification of the right to apply for an award, with the proper forms for both the claimant and his physician and with notification of the need for photographs.<sup>7</sup> After the Office has collected the required evidence, the district medical Director or assistant medical Director will examine the claimant and place a memorandum in the record describing the disfigurement and stating whether maximum medical improvement has occurred.<sup>8</sup> Thereafter, the claimant should be interviewed and observed by the appropriate Office personnel on the same day including; Office deputy commissioners, Office assistant deputy commissioners, Office chief of branch of claims, Office district Directors and similar officials. The Board has held that because of their expertise these officials have the status of experts in the evaluation of disfigurement for schedule award purposes so long as they personally view the disfigurement.<sup>9</sup>

In this case, the Office provided appellant with an application for a schedule award for facial disfigurement on December 17, 1996. Appellant and his attending physician completed this application on January 6, 1997 and submitted photographs. In a memorandum dated March 26, 1997, the assistant district Director informed appellant’s claims examiner that the case was in posture for consultation with the district medical adviser. The claims examiner stated on April 14, 1997 that there was “no need to set up an appointment, most likely can determine the award by evaluating the *photos* in file.” In a memorandum dated February 17, 1998, the district Director stated that his calendar did not include travel to Miami, Florida in the near future. He stated that he was preparing a schedule award for appellant’s facial disfigurement based on the evidence in the file and the pictures presented.

In the instant case, the appropriate personnel from the Office did not personally view appellant. Rather, the determination of his disfigurement schedule award was based primarily upon photographs. Once all of the relevant evidence had been gathered, the Office, in

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<sup>3</sup> *John F. Critz*, 44 ECAB 788, 791-92 (1993).

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

<sup>5</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (March 1995).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Alfred T. Baldwin, Jr.*, 30 ECAB 734, 735 (1979).

accordance with its procedures, should have referred the case and appellant to the district medical adviser for an appropriate report and then on the same day appellant should have been interviewed and observed personally by an appropriate Office official. On remand the Office should follow its procedures in evaluating appellant's permanent impairment for schedule award purposes regarding his facial disfigurement. After the necessary factual and medical development, the Office should issue an appropriate decision.<sup>10</sup>

The October 28 and February 17, 1998 decision of the Office of Workers' Compensation Programs is hereby set aside, and the case remanded for further development and a *de novo* decision.

Dated, Washington, DC  
December 5, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> Due to the disposition of merits of appellant's claim, it is not necessary for the Board to address whether the Branch of Hearings and Review properly denied appellant's request for a review of the written record.