United States Department of Labor
Employees' Compensation Appeals Board

LON E. GRINAGE, Appellant	)	
and	)	**Docket No. 05-517**
	)	**Issued: October 26, 2005**
DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, TX, Employer	)	

Appearances:
Lon E. Grinage, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 3, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 16, 2004.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

[1] With his appeal papers, appellant indicated that he was also appealing file No. 16-2005740, which was previously appealed to the Board in Docket No. 02-673 (issued October 7, 2002). The Board affirmed the October 19 and July 9, 2001 decisions of the Office granting appellant a schedule award for 11 percent hearing loss in the left ear. On May 16, 2005 appellant filed a claim for an additional schedule award. In an accompanying undated letter, he requested an additional schedule award for hearing loss in both ears. However, it appears from the record that the Office did not issue a final decision and, therefore, the Board does not have jurisdiction over the matter. *See* 20 C.F.R. § 501.2(c).

ISSUE

The issue is whether the Office abused its discretion in issuing a schedule award of $1,500.00 for appellant's employment-related facial disfigurement.

FACTUAL HISTORY

On September 20, 2002 appellant, then a 44-year-old dog trainer, filed a claim for traumatic injury alleging that, on that same day, while grooming a dog, he was hit on the upper lip and nose by a muzzle of a dog causing a laceration. The Office accepted that he sustained a laceration of the upper lip and paid appropriate compensation. Appellant stopped work on September 20, 2002 and returned to a light-duty position on September 23, 2002.

Appellant was treated in the emergency room on September 20, 2002 by Dr. Christopher C. Medley, Board-certified in oral maxillofacial surgery, who noted that appellant sustained a complete avulsion of the mid one-third portion of the upper lip while at work. He indicated that appellant preserved the tissue piece. Dr. Medley performed a soft tissue repair of the upper lip and reattached the upper lip under local anesthesia. Appellant also sought treatment from Dr. Daron C. Praetzel and Dr. John Hultquist, employing establishment physician's and Board-certified oral maxillofacial surgeons, who indicated in treatment notes dated October 2 to December 19, 2002, that appellant sustained an injury to the nerve supply of the upper lip which caused tingling and pain.

In a letter dated January 6, 2003, the Office requested that Dr. Medley provide an evaluation as to the extent of impairment of the upper lip and nose in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*).[2]

In an attending physician's report dated January 10, 2003, Dr. Medley noted that on September 20, 2002 while working as a dog handler, appellant sustained an injury to his upper lip when a dog lurched back and tore a segment of his upper lip. He noted that the segment of appellant's upper lip was surgically reattached. Dr. Medley opined that appellant has permanently altered sensation in the upper lip which was occasionally mildly painful and for which there was no specific treatment. He noted a minor scar and soft tissue defect in the upper lip.

On January 21, 2003 appellant filed a claim for a schedule award.

In a letter dated March 18, 2003, the Office informed appellant that he may have sustained permanent disfigurement as a result of his employment-related injury and that he could be entitled to a schedule award of compensation, not to exceed $3,500.00, for serious disfigurement of the face, head or neck if such disfigurement was likely to handicap an employee in securing or maintaining employment.[3] The Office enclosed an application for disfigurement

[2] A.M.A., *Guides* (5th ed. 2001).

[3] 5 U.S.C. § 8107(c)(21).

award and advised appellant to submit two photographic views of his upper lip. The Office also advised him to submit a Form CA-7, claim for compensation on account of traumatic injury or occupational disease.

In a report dated March 28, 2003, Dr. Medley noted that he did not expect any further significant improvement in appellant's facial disfigurement. He advised that the visual appearance of the upper lip was good; however, sensation was altered and decreased due to nerve injury. Dr. Medley did not anticipate improvement in the nerve/sensation deficit. He further noted that therapy, medical or surgical intervention would not correct or improve the disfigurement. Dr. Medley advised that appellant's upper lip was decreased in size, there was a small residual scar on the top of his nose, there was decreased sensation and minor thickening of the upper lip due to scar tissue.

The record indicates that appellant also submitted photographs to the Office. However, the photographs are not in the record transmitted to the Board.

Thereafter, appellant submitted employing establishment medical records dated September 20, 2002 which noted a history of injury and indicated that he experienced an avulsed one and a half to two centimeter portion of the mid to upper lip. Dr. Praetzel noted that the avulsed portion was reattached. He indicated that there was a two-millimeter superficial laceration to the tip of his nose. Appellant was treated in follow-up on September 22 and 24, 2002 and Dr. Praetzel advised that the sutures were in place and noted mild edema on the right side of the upper lip. On September 27, 2002 he reported that there was necrotic tissue at the mucous margin and on October 2, 2002 Dr. Praetzel surgically trimmed the tissue. Appellant was seen again on October 8 and 17, 2002 and he addressed an upper lip tingling sensation. On December 19, 2002 and January 10, 2003 he was treated by Dr. David B. Powers, a Board-certified oral maxillofacial surgeon, who advised that the scar was healing well; however, appellant experienced persistent paresthesias of the site contained to the dimensions of the original injury. On March 7, 2003 Dr. Medley noted good cosmetic result of the surgical repair of the upper lip but appellant continued to complain of shooting pain and tightness in the lip.

The Office referred Dr. Medley's reports and the case record to an Office medical adviser for evaluation as to the extent of impairment of the upper lip and nose. In a report dated April 9, 2003, the Office medical adviser determined that appellant had reached maximum medical improvement. He indicated that reports from Dr. Medley noted an injury to the upper lip, avulsed upper lip segment, cleaned and reattached segment of the lip, minor scar and soft tissue defect. Dr. Medley noted that the visual appearance was good, sensation was altered and decreased, the upper lip was of decreased size and there was a small residual scar on the tip of the nose and minor thickening of the upper lip due to scar tissue. The medical adviser did not personally view appellant but noted that five facial photographs were submitted and four were out of focus. The photographs revealed whitened area on the tip of the nose and noted that the upper lip was completely obscured by a mustache. In a memorandum to the file dated July 11, 2003, the claims examiner advised that she spoke with the district director, who determined that appellant did not sustain disfigurement of the upper lip.

In a decision dated July 11, 2003, the Office denied appellant's request for an award of compensation. The Office noted that the weight of the medical evidence rested with the Office medical adviser who noted that his condition was not severe enough to warrant an award.

On July 27, 2003 appellant requested an oral hearing before an Office hearing representative. He contended that he experienced pain everyday and sustained nerve damage to his upper lip. Appellant further noted that he had no feeling in his upper lip. He submitted another photograph of his face which was received by the Office on September 11, 2003. On September 24, 2003 appellant withdrew his request for an oral hearing and requested a review of the written record.

By decision dated January 16, 2004, the hearing representative reversed the July 11, 2003 decision. The hearing representative indicated that appellant submitted a clear photograph of his face which was not available to the medical adviser and which revealed a moderate level of disfigurement to his upper lip due to the accepted work injury. He was granted a disfigurement award in the amount of $1,500.00.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[4] provides in section 8107(c)(21) that "[f]or serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed $3,500.00, shall be awarded in addition to any other compensation payable under this schedule."[5] In a case involving 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 circumstances as provided by section 8107(c)(21) of the Act. In determining what constitutes "proper and equitable compensation" for disfigurement, sound judgment and equitable evaluation must be exercised as to the likely economic effect of appellant's disfigurement in securing and maintaining employment.[6]

The Office's procedures provide:

> "d. [The Office] Medical Evaluation. After the [claims examiner] has gathered the required evidence, the case will be referred to the [d]istrict [m]edical [a]dvis[e]r. The district medical adviser will review the photographs submitted along with the medical evidence of record and place a memorandum in the file describing the disfigurement and stating whether maximum improvement has occurred. If not, final action on the application for disfigurement will be deferred.

[4] 5 U.S.C. § 8101 *et seq.*

[5] 5 U.S.C. § 8107(c)(21).

[6] *Mark A. Wages*, 39 ECAB 282, 287 (1987).

> If the [district medical adviser] finds maximum improvement has occurred, the concurrence of the [a]ssistant [d]istrict [d]irector or the [d]istrict [d]irector must be obtained. The parties evaluating the disfigurement will place a memorandum in the file which states their findings and decision with supporting rationale. The case will then be returned to the [claims examiner] for payment of the award or denial of the application."[7]

The Office has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time possible. 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 deduction from established facts.[8] The Board will not interfere with or set aside a disfigurement determination of the Office unless it is clearly in error.[9]

ANALYSIS

A review of the case record shows that the Office failed to follow its procedures. After denying appellant's claim on July 11, 2003, he requested a review of the written record and submitted an additional photograph depicting the disfigurement of his upper lip. However, after obtaining the new photograph, the Office did not refer this evidence to an Office medical adviser for review as contemplated by the Office procedures.[10] Rather, the determination of appellant's disfigurement schedule award was based upon the inspection of the new photograph by the hearing representative. The hearing representative reviewed both the medical and new photographic evidence and determined that appellant "has a moderate level of disfigurement to his upper lip due to the accepted work injury" and granted a disfigurement award of $1,500.00. The Board notes that the Office hearing representative did not consult a medical adviser regarding appellant's entitlement to a schedule award for facial disfigurement. As noted above, Office procedures contemplate that, after the claims examiner has gathered the required evidence, the case will be referred to an Office medical adviser who will review the photographs submitted, along with the medical evidence of record and place a memorandum in the file describing the disfigurement and stating whether maximum improvement has occurred. If not, final action on the application for disfigurement will be deferred. Therefore, the case will be remanded to the Office for further development consistent with this decision to be followed by an appropriate decision regarding appellant's entitlement to a schedule award for disfigurement.

The Board further notes that the record transmitted to the Board on appeal does not contain any of the photographs in question. For the Board to conduct a full and fair adjudication

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[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (August 2002).

[8] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[9] *Matthew Leonka*, 38 ECAB 119, 121 (1986).

[10] *Supra* note 7.

of an appeal, the case record must be complete and contain all evidence relied upon by the Office in reaching its decision.[11]

On remand the Office should follow its procedures in evaluating appellant's impairment for schedule award purposes regarding his facial disfigurement. The Office should also associate with the record all photographs that are considered in reaching any award decision. After the necessary factual and medical development, the Office should issue an appropriate decision.

CONCLUSION

The Board finds the case not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 16, 2004 is set aside and the case remanded for further development and a *de novo* decision.

Issued: October 26, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[11] *See* 20 C.F.R. §§ 501.2(c), 501.4(a) (these provisions contemplate that the Board's review will be based on the record which was before the Office at the time of its final decision and that the Office shall transmit the record to the Board).