

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BIKKI E. TUMEY-QUEEN and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, OK

*Docket No. 98-313; Submitted on the Record;
Issued August 9, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in determining that appellant is entitled to a schedule award in the amount of \$500.00 for facial disfigurement.

In the instant case, on January 18, 1985 appellant filed a claim for a traumatic injury occurring on December 31, 1984 when a steel bar swung around through her windshield while she was driving through the gate. The Office accepted appellant's claim for multiple contusions and lacerations of the face and fingers. By decision dated October 15, 1997, the Office issued appellant a schedule award for \$500.00 for facial disfigurement resulting from her accepted employment injury.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in determining that appellant is entitled to a schedule award in the amount of \$500.00 for facial disfigurement.

The Federal Employees' Compensation Act¹ 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."²

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

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8107(c)(21).

judgment and equitable evaluation must be exercised as to the likely economic effect of appellant's disfigurement in securing and maintaining employment.³

The Board has recognized that the Office Deputy Commissioners, Office Assistant Deputy Commissioners, Office Chief of Branch of Claims, Office District Director and similar officials, because of their expertise, have the status of experts in evaluating disfigurement for schedule award purposes so long as they personally view the disfigurement.⁴

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 deductions from established facts.⁵ The Board will not interfere with or set aside a disfigurement determination of the Office unless it is clearly in error.⁶

By letter dated September 18, 1997, an Office senior claims examiner confirmed appellant's appointment on September 30, 1997 with both the district director and the district medical director regarding her claim for disfigurement resulting from her December 31, 1984 employment injury. The Office district medical director examined appellant on September 30, 1997, noted her complaint of a slight lisp and found that appellant had "a 4 cm [centimeters] linear scar extending from the philtrum laterally and downward to the upper lip. Also there is a scar approximately 3 cms. in length along the nasal septum." The Office medical director further noted that "claimant has scars on her upper lip and nose as a result of the injury of 1984; however, they have had a minor effect on her appearance. Close inspection is required for their detection" and that he could not discern any voice abnormality in her conversation

In a memorandum for file incorporated into the Office's October 15, 1997 decision, the district director who interviewed appellant indicated that appellant remains at the employing establishment. The Office district director found, based upon photographs submitted by appellant and her interview with himself and the Office medical director, that appellant was entitled to an award of \$500.00 for disfigurement causally related to her employment injury.

On appeal appellant contends that she should receive a greater schedule award. The Office, in granting appellant a schedule award in the amount of \$500.00 for facial disfigurement based on the recommendation of the Office district director and Office medical director, took into consideration the proper factors and circumstances and made a sound and considered judgment, which did not demonstrate clear error. Therefore, the Office did not abuse its

³ *Gary W. Blanch*, 44 ECAB 865 (1993).

⁴ *Alfred T. Baldwin*, 30 ECAB 734 (1979).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁶ *Gary W. Blanch*, *supra* note 3.

discretion in its determination of the amount of appellant's schedule award for facial disfigurement.

The decision of the Office of Workers' Compensation Programs dated October 15, 1997 is hereby affirmed.⁷

Dated, Washington, D.C.
August 9, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The Board notes that the record contains some evidence relevant to another appellant.