

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of BERNARD ROGERS and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, Ronkonkoma, N.Y.

*Docket No. 97-1388; Submitted on the Record;  
Issued January 19, 1999*

---

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in determining that appellant was entitled to a schedule award in the amount of \$750.00 for facial disfigurement.

On December 7, 1986<sup>1</sup> appellant, then a 45-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on October 6, 1986 he broke his nose and sustained abrasions on his leg and face. Appellant stated that he tripped over a line across a path and fell forward hitting his face on concrete.

By decision dated January 23, 1987, the Office accepted appellant's claim for a compound nasal fracture based on the medical evidence of record and, accordingly, vacated the November 21, 1986 decision finding the evidence of record insufficient to establish that appellant sustained an injury as alleged.<sup>2</sup>

On June 1, 1987 appellant filed a claim for a schedule award (Form CA-7). Appellant's claim was accompanied by an attending physician's report (Form CA-20) from Dr. Ronald C. Sullivan, a Board-certified otolaryngologist and appellant's treating physician, revealing that appellant had a septal deviation nasal fracture and that the anticipated permanent effects of appellant's injury was a bump on the nose and scars.

---

<sup>1</sup> It appears that appellant mistakenly indicated that the date of his claim was December 7, 1986 rather than October 7, 1986 inasmuch as an employing establishment manager whose signature is illegible, stated on the reverse of appellant's claim form that notice of the injury was received on October 6, 1986 and signed the claim form on that date. In addition, appellant's claim was received by the Office on October 14, 1986.

<sup>2</sup> The Office granted authorization for appellant to undergo an open submucous resection and nasal reconstruction which was performed on March 23, 1987.

By letter dated June 24, 1987, the Office advised appellant that he could file a schedule award for facial disfigurement inasmuch as the evidence indicated that he may have sustained some permanent disfigurement as a result of his employment-related injury and provided guidelines should he wish to file a claim.

On July 14, 1987, appellant filed an application for a disfigurement schedule award. In his application, appellant stated that he had a bump on his nose from the fall and scars underneath his nose. In response to the question why he believed that his disfigurement would likely handicap him in securing or maintaining employment, appellant indicated that this question was not applicable to his claim. Appellant concluded that he had not sustained any prior disfigurement of the head, face or neck and that he had not received any compensation for a prior disfigurement.

In support of his application, appellant submitted Dr. Sullivan's attending physician's report dated July 10, 1987. In this report, Dr. Sullivan stated that there was no probability of further significant improvement in the disfigurement. He further stated that therapy, medical or surgical treatment would not correct or improve the disfigurement. He also stated that there were no scars or blemishes present and that the surgical result was fine.<sup>3</sup> Dr. Sullivan concluded that there were no other scars, blemishes or disfigurement unrelated to the claimed injury. Additionally, appellant submitted two photographs.

By letter dated July 23, 1987, the Office advised appellant that he was being referred to a District Medical Adviser for examination and that he was going to be interviewed by the Chief of Claims and the District Director to further process his claim for a disfigurement award. The Office then advised appellant that the examination and interview would take place at 10:30 a.m. on Wednesday, August 12, 1987 at its office.

John E. Russo, Chief of the Branch of Claims, met with appellant and filed a report revealing a history of the October 1986 employment injury and appellant's medical treatment. Mr. Russo stated that appellant had no medical problems since his surgery except stiffness in his nose. Mr. Russo further stated that appellant believed that he was entitled to a disfigurement schedule award because of a scar, pain and suffering. Mr. Russo also stated that from a distance of six to nine feet appellant's scar was not visible and that from a distance of three feet it was barely visible.

The District Medical Advisor, Dr. Sidney M. Samis, submitted an August 14, 1987 medical report revealing the history of the October 6, 1986 employment injury and medical treatment. The District Medical Advisor stated that appellant was breathing without obstruction. The District Medical Advisor provided the following description of appellant's nose:

"0.25 x.10 centimeters vertical scar on left side of right nasal opening not visible unless head is lifted upwards, nontender.

---

<sup>3</sup> The Office granted authorization for appellant to undergo a rasping of the dorsum of the nose which was performed on June 14, 1988.

Smooth, nontender roughly V-shaped scar on bridge of nose 3 centimeters from tip skin is slightly lighter in color than normal skin. It measures 1 x 5/8 centimeters on right side of bridge, 1.2 x 5/8 centimeters on bridge extending towards top of nose and 0/5 x.25 centimeters on left side of bridge. Nasal bone beneath scar has a small pea size bump nontender which disfigures nasal profile slightly at site of fracture and scar.”

On March 13, 1996 appellant filed an application for a schedule award accompanied by an application for a disfigurement schedule award. In his application, appellant stated that he had a permanent scar and bump across the bridge of his nose which were very noticeable. Appellant also stated that he had constant pain in the front of his nose. Appellant further stated that the disfigurement would not handicap him in his position. Appellant concluded that he had not sustained any prior disfigurement of the head, face or neck and that he had not received any compensation for a prior disfigurements.

In support of his application, appellant submitted Dr. Sullivan’s undated attending physician’s report indicating that there was a probability of further significant improvement in the disfigurement because appellant had dorsal hump with a slight twist of nose that can change with age. Dr. Sullivan also indicated that therapy, medical or surgical treatment would correct or improve the disfigurement. Dr. Sullivan provided a drawing of appellant’s nose indicating the dorsal hump on his nose. Dr. Sullivan stated that there were no other scars, blemishes or disfigurements unrelated to the claimed injury.

By letter dated January 23, 1997, the Office advised appellant that he was being referred to a District Medical Director for examination and that he was going to be interviewed by two supervisory claims examiners to further process his claim for a facial disfigurement award. The Office then advised appellant that the examination and interview would take place at 10:00 a.m. on Monday, February 3, 1997 at its office.

By decision dated February 7, 1997, the Office granted appellant a schedule award for facial disfigurement in the amount of \$750.00. An accompanying memorandum of the same date and prepared by two supervisory claims examiners provided:

“Claimant arrived at the District [o]ffice on Monday, February 3, 1997 at 10:00 a.m. for a face-to-face interview to determine entitlement to a schedule award for facial disfigurement.

Dr. Kalash, District Medical Director, conducted the medical portion of the interview and found no change from a prior examination. Annette Johnson and Howard Wallace, supervisory claims examiners, conducted the nonmedical portion of the interview and noted:

“[Appellant] scars on his face have healed well but are noticeably visible on the bridge of his nose. The discoloration is more visible than the photographs reflect. There is a pronounced bump at the fracture site.

“[Appellant] is retired but is active in community activities. He is self-conscious about the scar.

“Based on the interview by the supervisory claims examiners and the District Medical Director and after review of the medical evidence in file, it is determined that the claimant, ... is entitled to a schedule award for facial disfigurement of \$750.00.”

Section 8107(c)(21) of the Federal Employees’ Compensation Act provides for payment of “proper and equitable compensation” not exceeding \$3,500.00 for “serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment.”<sup>4</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 circumstances as provided by section 8107(c)(21).<sup>5</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.

The Board finds that the Office abused its discretion in determining that appellant was entitled to a schedule award in the amount of \$750.00 for facial disfigurement.

Chapter 2.808.8 of the Office procedure manual, describing procedures to be followed in disfigurement cases, provides in pertinent part as follows:

“d. OWCP Medical Evaluation. After the claims examiner has gathered the required evidence, the case will be referred to the Assistant District Director, who will consult with the District Medical Adviser. If the claim is in order the claimant will be instructed to report to the District Medical Adviser for examination. Following this evaluation, the District Medical Adviser will place a memorandum in the file describing the disfigurement and stating whether maximum improvement has occurred. If not, reexamination will be scheduled for a later date and final action on the application for disfigurement will be deferred.

“e. Interview in District Office. If the District Medical Adviser finds maximum improvement has occurred, the claimant will be interviewed and observed by the Assistant District Director or the District Director. This interview should occur on the same day as the District Medical Adviser’s examination. 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 examiner for payment of the award or denial of the application.”<sup>6</sup>

---

<sup>4</sup> 5 U.S.C. § 8107(c)(21).

<sup>5</sup> *Matthew Leonka*, 38 ECAB 119 (1986); *Ada Fauntleroy*, 26 ECAB 406 (1975).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8.d-.8.e (March 1995).

In the instant case, the Office failed to follow its procedures in granting appellant a \$750.00 schedule award for facial disfigurement. The record does not reveal that the District Medical Director, Dr. Kalash prepared a narrative report describing any of appellant's disfigurements and providing whether appellant had reached maximum medical improvement based on the February 3, 1997 examination of appellant. Although Dr. Kalash found no change from a prior examination, he did not perform the earlier evaluation and therefore does not have an independent evaluation reflecting his medical judgment. In addition, the February 3, 1997 interview of appellant was conducted by two supervisory claims examiner rather than the Assistant District Director or the District Director as provided in the Office's procedure manual. For these reasons, the Board finds that the Office abused its discretion in issuing a schedule award in the amount of \$750.00 for appellant's facial disfigurement.<sup>7</sup> The Board will remand the case to the Office for compliance with the procedures set forth in its procedure manual and to issue a *de novo* decision on appellant's entitlement to a schedule award for facial disfigurement.

The February 7, 1997 decision of the Office of Workers' Compensation Programs is hereby vacated and the case is remanded to the Office for further development in accordance with this decision.

Dated, Washington, D.C.  
January 19, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>7</sup> *Harold B. Wright*, 48 ECAB \_\_\_\_ (Docket No. 95-654, issued January 8, 1997).