

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVE DAHL and U.S. POSTAL SERVICE,
OVERLAND BRANCH, Overland, MO

*Docket No. 98-2264; Submitted on the Record;
Issued May 12, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
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 \$375.00 for facial disfigurement.

The Board has duly reviewed the case record in this appeal and finds that the Office abused its discretion in this case.

On July 22, 1995 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained lacerations of the left arm, left cheek and left ear when he was attacked by two dogs while delivering the mail. He stated that his left ear was bitten off. Appellant stopped work on July 22, 1995.

By letter dated August 7, 1995, the Office accepted appellant's claim for lacerations of the left arm, left side of face and left ear.¹ Appellant returned to limited-duty work on September 6, 1995 with certain physical restrictions.

On December 31, 1996 appellant filed a claim for a schedule award (Form CA-7). By letter dated January 6, 1997, the Office advised appellant to indicate whether he was filing a claim for disfigurement of the face, head or neck. Alternatively, the Office advised appellant to indicate whether he was claiming any other permanent impairment.² Based on the receipt of medical evidence, the Office advised appellant in a letter dated February 21, 1997 that it appeared he was claiming a disfigurement award for the head area.

¹ In an August 7, 1995 letter, the employing establishment advised the Office that appellant telephoned to correct the nature of his injuries. The Office indicated that appellant stated he sustained injuries to his left arm, left index finger, left side of face and right ear. The employing establishment indicated that the manager mistakenly listed the left ear.

² In a February 11, 1997 letter, the Office advised appellant to respond to its January 6, 1997 letter.

In a January 12, 1998 letter, the Office advised appellant to complete an enclosed application for a disfigurement award and to submit photographs of his disfigurement and a medical report from his treating physician. In response, appellant submitted a Form CA-7 dated February 9, 1998. By letter dated February 23, 1998, the Office again advised appellant to submit the additional requested evidence. On February 27, 1998 appellant submitted the requested evidence.

On March 13, 1998 an Office medical adviser reviewed the evidence of record and determined that appellant had reached maximum medical improvement and that he should seek a face to face evaluation as soon as it became convenient.

The April 21, 1998 report filed by the Office medical adviser which was cosigned by Mr. Swierczek, an Office claims manager, revealed that appellant presented for examination of disfigurement on April 20, 1998 at 2:00 p.m. Regarding appellant's right ear, the report revealed a one and one-half inch repaired portion of the pinna which showed scarring with notable disfigurement. The report also revealed that appellant had a four inch scar over the posterosotateral right neck, below the collar bone, which was noticeable but not distracting. Further, the report revealed that appellant had a two and one-half inch scar over the left cheek somewhat in a normal facial wrinkle plane which was noticeable. Additionally, the report revealed that appellant had a three quarter inch length scar near the incision cartilage on the left side of the neck which was insignificant and undetected until appellant pointed it out. The report concluded that by far the most noticeable residual was to appellant's right ear and that maximum medical improvement had been achieved when appellant was seen.

By decision dated April 28, 1998, the Office granted appellant a schedule award for facial disfigurement in the amount of \$375.00.

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."³

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).⁴ In determining what constitutes a "proper and equitable" award for disfigurement, an evaluation must be made as to the likely economic effect of the appellant's disfigurement in securing and maintaining employment. The Board has recognized that the Office deputy commissioner, assistant deputy commissioner, the Chief of Branch of Claims, the district Director or similar officials because of their experience, have the status of experts in evaluating disfigurement for schedule award purposes so long as they personally view the disfigurement.⁵

³ 5 U.S.C. § 8107(c)(21).

⁴ *Matthew Leonka*, 38 ECAB 119 (1986); *Ada Fauntleroy*, 26 ECAB 406 (1975).

⁵ *Alfred T. Baldwin*, 30 ECAB 734 (1979).

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 CE [claims examiner] has gathered the required evidence, the case will be referred to the assistant district Director, who will consult with the DMA [district medical adviser]. If the claim is in order the claimant will be instructed to report to the DMA for examination. Following this evaluation, the DMA 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 DMA 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 DMA’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 CE for payment of the award or denial of the application.”⁶

In the instant case, the Office failed to follow its procedures in granting appellant a \$375.00 schedule award for facial disfigurement. The record reveals that the April 21, 1998 interview was conducted by Mr. Swierczek, an Office claims manager, rather than an Office district Director or an Office assistant 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 \$375.00 for appellant’s facial disfigurement.⁷ 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.

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

⁷ *Harold B. Wright*, 48 ECAB 289 (1997).

The April 28, 1998 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.
May 12, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member