

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA WILLIS and DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTE,  
Yazoo City, MS

*Docket No. 00-992; Submitted on the Record;  
Issued February 7, 2001*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in issuing a schedule award of \$1,000.00 for appellant's employment-related disfigurement to her head and neck.

On August 21, 1997 appellant, then a utility repair operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that, on August 20, 1997, while priming the chemical injection pump, she was accidentally sprayed with Ancocide 4070, a biocide, and was burned in her upper chest area. Appellant filed a claim for a schedule award for disfigurement on December 24, 1997. By decision dated January 30, 1998, the Office accepted appellant's claim for chemical burns to the chest due to the August 20, 1997 work injury. However, the Office found that, as appellant did not suffer any burns to her face, she was not entitled to a schedule award of compensation.

On March 4, 1998 appellant requested reconsideration. In support of her request, appellant submitted a medical report, copies of notes from the pain clinic and several photographs of the burn area. In a decision dated September 24, 1998, the Office found that the evidence did not support appellant's contention that she was entitled to a schedule award for permanent partial impairment to her lungs. However, the Office noted that it erred in its earlier decision denying appellant's claim for disfigurement, as that award would be within the discretion of the district Director of the Office. Accordingly, the Office forwarded appellant's claim for disfigurement to the district Director for handling.

In response to an August 19, 1999 request by the Office, appellant submitted pictures of the disfigurement and an application for disfigurement award. By decision dated January 3, 2000, the district Director noted that appellant sustained personal injuries that resulted in the disfigurement of her neck, noting that there was a large scar on the front of her neck, that the scar was very pronounced and located in the right center of appellant's neck, and was significantly

darker than the surrounding skin. He awarded appellant the sum of \$1,000.00 for the serious disfigurement of her neck resulting from her injury on August 20, 1997.

The Board finds that this case is not in posture for decision.

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 Employee's Compensation Act in the amount up to \$3,500.00.<sup>1</sup> There is no provision in the Act for a schedule award for a disfigurement of any part of the body other than the face, head or neck.<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 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, and 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>

The Board has recognized that Office deputy commissioners, Office assistant deputy commissioners, Office chiefs of branch of claims, Office district Directors 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.<sup>9</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *William Tipler*, 45 ECAB 185, 186 (1993); *Arlonia B. Taylor*, 44 ECAB 591, 596 (1993).

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

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

<sup>5</sup> *Daneil 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> *Gary W. Blanch*, 44 ECAB 865 (1993).

In the instant case, however, appellant was not personally viewed by the appropriate personnel from the Office nor was she interviewed. Rather, the determination of her disfigurement schedule award was based primarily upon photographs. The Board notes that there is no indication that appellant was personally examined by the Office official. Although the district Director alleges that appellant agreed to using the photographs as opposed to a personal visit, there is no signed indication in the record of appellant's intention to do so.

The Board notes that the Office clearly erred by reaching a determination regarding appellant's entitlement to a schedule award for disfigurement without providing for personal examination of appellant in accordance with the relevant Board precedent and Office procedure.<sup>10</sup> Therefore, the case will be remanded to the Office for the purpose of compliance with this precedent and procedure to be followed by issuance of an appropriate decision regarding appellant's entitlement to a schedule award for disfigurement.

The decision of the Office of Workers' Compensation Programs dated January 3, 2000 is vacated and this case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC  
February 7, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> See *Mathew Leonka*, 38 ECBA 119, 121 (1986).