

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTINE A. KNECHT and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 00-2313; Submitted on the Record;
Issued July 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
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 \$2,500.00 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 December 18, 1998 appellant, then a 35-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a laceration to her face when she lost her balance on stairs and fell into a bush. Appellant did not stop working or lose any time from work due to this injury. On November 1, 1999 the Office accepted appellant's claim for an open wound of face.

By letter dated November 4, 1999, the Office advised appellant that the medical evidence indicated that she might have sustained a permanent disfigurement as a result of her employment-related injury. It instructed appellant to complete an enclosed application for a disfigurement award and to submit photographs of her disfigurement and a medical report from her treating physician. Appellant was also advised that a Form CA-7, claim for compensation on account of traumatic injury or occupational disease, must be filed before an award for disfigurement could be approved.

By decision dated December 23, 1999, the Office denied appellant's claim for disfigurement on the basis that appellant failed to submit any evidence to support her claim.

In a January 21, 2000 letter, appellant requested reconsideration and submitted the requested evidence. By letter dated April 12, 2000, the Office confirmed an examination of disfigurement on April 19, 2000 at 9:00 a.m.

The April 19, 2000 report filed by the Office medical adviser, which was cosigned by a senior claims examiner revealed that appellant presented for examination of disfigurement on April 19, 2000. Regarding appellant's laceration, the report indicated a laceration on appellant's left cheek over zygomatic arch 1 inch below eye, 7/8 inches long. The scar was healed but edges were more than 1/16 inches apart and discolored. The report revealed that the scar was not in line of cleavage and was apparent from 20 feet away. The report stated that this could not be hidden by z-plasty. The report recommended an award of \$2,500.00 on the basis that it would cost more to attempt to repair the scar and it probably would not be any more successful. The senior claims examiner concurred with the award of \$2,500.00.

By decision dated April 19, 2000, the Office modified its prior decision to reflect a schedule award for facial disfigurement in the amount of \$2,500.00.

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."¹

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).² 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 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.³

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.

¹ 5 U.S.C. § 8107(c)(21).

² *Matthew Leonka*, 38 ECAB 119 (1986); *Ada Fauntleroy*, 26 ECAB 406 (1975).

³ *Alfred T. Baldwin*, 30 ECAB 734 (1979).

“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.”⁴

In the instant case, the Office failed to follow its procedures in granting appellant a \$2,500.00 schedule award for facial disfigurement. The record reveals that the April 19, 2000 interview was conducted by a senior claims examiner of the Office 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 \$2,500.00 for appellant’s facial disfigurement.⁵ 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 April 19, 2000 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, DC
July 23, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8.d-.8(e) (March 1995).

⁵ *Harold B. Wright*, 48 ECAB 289 (1997).