



In a December 12, 2003 report, Dr. Robert A. Weissman, a Board-certified otolaryngologist, noted the history of injury and noted that x-rays were consistent with a left malar fracture. He opined that appellant could have “possible permanent facial numbness” and difficulty opening her mouth.

On March 4, 2004 the Office accepted the claim for nose fractures of the left maxillary involving the anterior and lateral walls of the maxillary sinus and broken teeth. On December 29, 2004 the Office approved appellant’s request for authorization for dental work, including porcelain crowns.

On August 3, 2005 appellant filed a claim for a schedule award. By decision dated August 31, 2005, the Office denied appellant’s request for a schedule award, on the grounds that neither the nose nor teeth are scheduled members or functions of the body and are, therefore, not subject to a schedule award.

Appellant submitted a September 9, 2005 report from Dr. Robert A. Weisman, a Board-certified otolaryngologist. He stated that, although she had a small area of numbness in the distribution of the branches of the second division of the trigeminal nerve, appellant had healed well from her facial fracture. Dr. Weisman opined that she would not regain any further sensation in that area, but that the numbness would cause no disability and would not impair her ability to work.

By letter dated September 15, 2005, appellant requested reconsideration of the Office’s denial of a schedule award.

By decision dated November 25, 2005, the Office denied appellant’s request for reconsideration, on the grounds that she “neither raised substantive legal questions nor included new and relevant evidence,” and thus the request was insufficient to warrant further review of the merits.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.<sup>2</sup> For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8107 *et seq.*

<sup>2</sup> *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

<sup>3</sup> *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>4</sup> The Act identifies members such as the arm, leg, hand, foot, thumb and finger; functions such as loss of hearing and loss of vision; and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of “any other important external or internal organ of the body as determined by the Secretary of Labor.”<sup>5</sup> The Secretary of Labor has made such a determination, and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant’s claim was accepted for closed fractures of her left nasal bone and broken teeth. Dr. Weisman’s December 12, 2003 report reflected that appellant would have possible permanent facial numbness. However, Dr. Weisman made no mention of any facial disfigurement. The Board finds that appellant is not entitled to a schedule award for loss of sensation to her nose.

As noted, no schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>7</sup> If there is permanent disability involving the loss, or loss of use, of a member or function of the body so specified, or involving disfigurement, the employee is entitled to basic compensation for the disability.<sup>8</sup> The Act does not identify the nose as a member warranting compensation. As the Secretary has not determined, pursuant to the discretionary authority granted in section 8107(c)(22) of the Act, that the nose or sense of smell or taste constitutes “any other important external or internal organ of the body,” section 8107(c)(22) provides no statutory basis for the payment of a schedule award for loss of sensation to the nose.<sup>9</sup>

The Board notes that section 8107(c)(21) of the Act provides that compensation shall be awarded for serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment, not to exceed \$3,500.00, in addition to any other compensation payable under the schedule.<sup>10</sup> However, appellant has not claimed or shown entitlement to an award for facial disfigurement. Therefore, section 8107(c)(21) is inapplicable to this case.

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<sup>4</sup> *George E. Williams*, 44 ECAB 530, 533 (1993); *William Edwin Muir*, 27 ECAB 579, 581 (1976).

<sup>5</sup> 5 U.S.C. § 8107(c)(22).

<sup>6</sup> 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB 220 (2001).

<sup>7</sup> *George E. Williams*, *supra* note 4; *William Edwin Muir*, *supra* note 4.

<sup>8</sup> 5 U.S.C. § 8107(a).

<sup>9</sup> *See Leroy M. Terska*, 53 ECAB 247 (2001); *see also Billie Sue Barnes*, 47 ECAB 478, 480 (1996).

<sup>10</sup> 5 U.S.C. § 8107(c)(21).

**LEGAL PRECEDENT -- ISSUE 2**

The refusal of the Office to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

Under 20 C.F.R. § 10.606 a claimant may obtain review of the merits of her claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and which:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law;

“(ii) Advances relevant legal argument not previously considered by [the Office];  
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”<sup>11</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs 10.606(b)(2)(i) through (iii) of that section will be denied by the Office without review of the merits of the claim.<sup>12</sup>

**ANALYSIS -- ISSUE 2**

The Board finds that the Office's refusal to reconsider its merit decision of August 31, 2005 did not constitute an abuse of discretion.

In order for appellant to obtain review of the merits of her claim, it was necessary for her either: to show that the Office erroneously applied or interpreted a point of law; to advance a relevant legal argument not previously considered by the Office; or to submit relevant and pertinent new evidence not previously considered by the Office.<sup>13</sup>

By letter dated September 15, 2005, appellant requested reconsideration of the Office's August 31, 2005 denial of her request for a schedule award. Appellant did not allege that the Office erroneously applied or interpreted a point of law, or advance a relevant legal argument not previously considered by the Office. She did submit a September 9, 2005 medical report from Dr. Weisman. However, the Board finds that Dr. Weisman's report was not relevant to the issue in this case, namely, whether there is a statutory basis for the payment of a schedule award for loss of sensation to appellant's nose. Therefore, Dr. Weisman's report is insufficient to warrant a

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<sup>11</sup> 20 C.F.R. § 10.606.

<sup>12</sup> 20 C.F.R. § 10.608(b).

<sup>13</sup> 20 C.F.R. § 10.606.

reopening of appellant's claim for a review of the merits.<sup>14</sup> Because appellant did not meet any of the requirements of section 16.608(b), the Office was within its rights to deny her request for reconsideration.

**CONCLUSION**

The Board finds that appellant is not entitled to a schedule award for loss of sensation in her nose. The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration on the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 25 and August 31, 2005 are affirmed.

Issued: April 10, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).