

**United States Department of Labor  
Employees' Compensation Appeals Board**

HYLAN SHELTON, Appellant	)	
	)	
and	)	<b>Docket No. 06-618</b>
	)	<b>Issued: June 8, 2006</b>
TENNESSEE VALLEY AUTHORITY,	)	
PARADISE FOSSIL PLANT, Drakesboro, KY,	)	
Employer	)	
	)	

<i>Appearances:</i> Hylan Shelton, pro se Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 18, 2006 appellant filed a timely appeal of the August 19, 2005 decision of the Office of Workers' Compensation Programs, which determined that appellant was entitled to a schedule award for \$3,500.00 for facial disfigurement and a December 21, 2005 nonmerit decision, which denied appellant's request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of the case.

**ISSUES**

The issues are: (1) whether appellant is entitled to a schedule award of greater than the \$3,500.00 maximum allowable for facial disfigurement; and (2) whether the Office properly denied appellant's request for reconsideration.

**FACTUAL HISTORY**

On February 12, 2003 appellant, then a 47-year-old basement dust collection bin hopper, filed a traumatic injury claim alleging that on February 6, 2003 he burned his face and both of

his forearms while emptying the hopper. On February 9, 2003 Dr. W. Edward Shuttleworth, a Board-certified surgeon, performed a burn wound debridement with manipulation of the left elbow, right elbow and the wrist bilaterally. Dr. Shuttleworth listed the postoperative diagnosis as “burns, second degree, on the right arm and hand and facial area totaling approximately [nine percent] total body surface area plus beginning capsule formation of the elbows and [metacarpophalangeal and posterior interphalangeal] joints.” By letter dated May 13, 2003, the Office accepted appellant’s claim for second-degree burns on his arms and face.

On August 5, 2003 appellant filed a claim for a schedule award for facial disfigurement. In a March 15, 2004 report, Dr. Shuttleworth stated:

“[Appellant] of course suffered severe burns to his arms, hands and face and he required a couple months to get the burns healed. It has now been at least 14 [to] 15 months since the injury and he is left with hyperpigmentation of the face, hands and arms from the healing of the burns; however, he has reached maximum medical improvement. He in fact is back to work on unrestricted full-time activity.”

The Office accepted appellant’s claim for second-degree burns to the face and arms. The acting district medical director reviewed the medical evidence of record on July 22, 2004 and noted that appellant sustained burns on his face, arms and hands due to a work-related injury. Although he pointed out, based on photographs, that the scars beyond the face, head and neck could not be considered in the disfigurement award, the scars on appellant’s face “are of a character that would likely handicap an employee from seeking and maintaining employment.” He recommended a disfigurement award in the amount of \$2,000.00.

By decision dated July 22, 2004, the Office issued a schedule award of \$2,000.00 for permanent disfigurement of the face. The Office noted that, although appellant had scars beyond the face, head and neck, they could not be considered for the purpose of a disfigurement award.

On July 27, 2004 appellant requested a hearing. At the hearing on March 22, 2005 appellant testified with regard to the circumstances surrounding his injury. Appellant discussed the pain he sustained from the burns and his subsequent medical history. Appellant also noted that, as a result of the accident, the skin on his face was thin and dried out very easily.

On June 23, 2005 the hearing representative modified the July 22, 2004 schedule award to grant the maximum amount allowable, *i.e.*, \$3,500.00. The hearing representative noted that the initial award was based solely on a review of photographs, but that she personally observed the severity of the scars and determined that appellant was entitled to receive the maximum allowed for a facial disfigurement award. On August 19, 2005 the Office issued an award for an additional \$1,500.00 for permanent disfigurement of the face for a total award of \$3,500.00.

On October 26, 2005 appellant requested reconsideration of the August 19, 2005 decision. He submitted a medical report, dated November 4, 2005, from Dr. Lisle Wayne, II, a Board-certified plastic surgeon, who noted that appellant had some hyperpigmentation on his forearm, for which nothing could be done.

By decision dated December 21, 2005, the Office denied reconsideration without review of the merits.

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

The Federal Employees' Compensation Act<sup>1</sup> provides in section 8107(c)(21) that, "[f]or serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500.00 shall be awarded in addition to any other compensation payable under this schedule."<sup>2</sup> By the terms of the section, disfigurement to the face, head or neck is a prerequisite to entitlement. The Act makes no provisions for disfigurement to any other area of the body.<sup>3</sup> In a case involving facial 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) of the Act.

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 deduction from established facts.<sup>4</sup> The Board will not interfere with or set aside a disfigurement determination of the Office unless it is clearly in error.<sup>5</sup>

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

Dr. Shuttleworth, the attending physician, reported that appellant had sustained burns about the face and arms while in the performance of duty and had reached maximum medical improvement. After reviewing the medical evidence, including photographs of the affected areas, the acting district medical director set the schedule award at \$2,000.00. The Office hearing representative modified the award to reflect \$3,500.00 based on her observations of appellant at the hearing. Consequently, the Office has granted appellant the maximum amount allowable under the Act for disfigurement, *i.e.*, \$3,500.00.<sup>6</sup> There is no provision in the Act for a greater award for disfigurement. Although the evidence supports the fact that appellant sustained scars on his body other than to his face, these scars cannot be considered for purposes of a disfigurement schedule award under the Act.<sup>7</sup> Accordingly, the Office did not abuse its discretion in issuing a schedule award for the maximum allowable amount, \$3,500.00, for appellant's facial disfigurement.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 5 U.S.C. § 8107(c)(21); *see also Anna V. Burke*, 57 ECAB \_\_\_\_ (Docket No. 06-462, issued April 10, 2006).

<sup>3</sup> *William Tipler*, 45 ECAB 185 (1993).

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>5</sup> *Matthew Leonka*, 38 ECAB 119, 121 (1986).

<sup>6</sup> 5 U.S.C. § 8107(c)(21).

<sup>7</sup> *William Tipler*, *supra* note 3.

**LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>8</sup>

**ANALYSIS -- ISSUE 2**

Appellant did not make any argument that the Office erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by the Office. The only document submitted on reconsideration was a report from Dr. Wayne, who noted that appellant had some hyperpigmentation on his forearm. This evidence, pertaining to the forearm, is not relevant to the schedule award for facial disfigurement. The evidence does not alter the fact that appellant was awarded the maximum allowable amount under the statute for disfigurement. Accordingly, the report of Dr. Wayne is not relevant or pertinent to the issue at hand and the Office properly denied reconsideration.

**CONCLUSION**

Appellant is not entitled to a schedule award of greater than the \$3,500.00 for disfigurement of his face, which is the maximum allowable. Furthermore, the Office properly denied appellant's request for reconsideration.

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<sup>8</sup> 20 C.F.R. § 10.606(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 21 and August 19, 2005 are affirmed.

Issued: June 8, 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