

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

M.H., Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, Norfolk, VA, Employer**

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**Docket No. 07-2186
Issued: February 25, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On August 24, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 8, 2007 decision denying his schedule award claim for disfigurement and a March 5, 2007 decision granting a schedule award for 20 percent impairment of the right arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has more than a 20 percent permanent impairment of the right upper extremity for which he received a schedule award; and (2) whether he is entitled to a schedule award for disfigurement.

FACTUAL HISTORY

On June 8, 2005 appellant, then a 31-year-old painter, sustained injury when an industrial vacuum hose sucked his right hand and arm into the machine causing injury. The Office accepted his claim for open wound of the right shoulder with complications and authorized

surgery on June 8 and 14 and August 22, 2005. Appellant stopped work on June 8, 2005. He returned to limited duty on November 23, 2005 and full-time duty with restrictions on July 11, 2006.

Appellant submitted a physical examination prepared by Dr. Aaron L. Marlow, a Board-certified orthopedist, dated June 8, 2005, who noted a history of injury and diagnosed impending compartment syndrome and recommended performing a complete fasciotomy on both dorsal and volar aspects. In an operative report dated June 8, 2005, Dr. Marlow performed a forearm fasciotomy with arterial exploration and diagnosed impending compartment syndrome of the right forearm. In reports dated October 25 to November 22, 2005, he noted findings upon physical examination revealed a right forearm which was neurologically intact, with full range of motion and improving strength. Dr. Marlow recommended physical therapy and returned appellant to light duty with restrictions on lifting. In work capacity evaluations dated August 30 and November 22, 2005, he returned appellant to work full time with a lifting restriction. An x-ray report of the right hand, forearm and elbow dated June 8, 2005 revealed no abnormalities. Appellant came under the treatment of Dr. Tad E. Grenga, a Board-certified orthopedic surgeon, who treated appellant from June 8 to July 25, 2005. Dr. Grenga diagnosed fasciotomy wounds of the right arm and forearm. In an operative report dated June 14, 2005, he performed a debridement and complex closure of multiple wounds of the right arm and diagnosed open wound of the right arm and right forearm.

On August 22, 2005 Dr. Ronny Ghazal, a Board-certified orthopedic surgeon, performed a left shoulder arthroscopy and resection of superior labrum, anterior and posterior capsular release, release of the rotator interval, endoscopic subacromial decompression and debridement of small partial thickness rotator cuff tear.

On November 15, 2006 appellant filed a claim for a schedule award. He submitted a November 8, 2006 report from Dr. Richard D. Knauff, a Board-certified orthopedic surgeon, who noted a history of injury and subsequent treatment for impending compartment syndrome in the right forearm. Dr. Knauff noted findings of well-healed wounds about the forearm, secondary to the fascia release, good range of motion of the elbow and wrist, mild loss of pronation and supination of five degrees each side and Jamar grip testing revealed the grip strength on the right side half of the left hand grip strength. He opined that appellant sustained permanent impairment of the right arm due to the work-related compartment syndrome. Dr. Knauff opined that in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ (A.M.A., *Guides*) appellant had 20 percent impairment of the right upper extremity due to loss of grip strength.²

The Office referred the medical evidence to an Office medical adviser. In a report dated January 3, 2007, he advised that appellant sustained 20 percent permanent impairment of the right arm in accordance with the A.M.A., *Guides*. The Office medical adviser noted that

¹ A.M.A., *Guides* (5th ed. 2001).

² *Id.* at 509, Table 16-34.

appellant had a 50 percent strength loss index which resulted in 20 percent impairment to the right arm.³ The date of maximum medical improvement was June 8, 2006.

In a decision dated March 5, 2007, the Office granted appellant a schedule award for 20 percent permanent impairment of the right upper extremity. The period of the award was from June 8, 2006 to August 18, 2007.

On April 11, 2007 appellant filed a claim for a schedule award for disfigurement. In a March 19, 2007 narrative statement, he noted that, as a result of the work injury and surgical treatment, he developed a 21.5 centimeter crescent shaped scar on the right arm along the palmar and a 18 centimeter scar to the dorsal forearm. Appellant noted that he was disabled from performing his daily tasks, he lacked mobility in the right arm which interfered with him performing his job duties and prevents him from playing sports. As a result of the scars, he was the recipient of sarcastic remarks and negative reactions from coworkers. In an attending physician's report dated April, 17, 2007, Dr. Grenga noted that there was no further improvement in the scar on appellant's arm. He indicated that appellant reached maximum medical improvement on July 12, 2006. Dr. Grenga recommended an excision of the dorso radial portion of the forearm scar which would improve the appearance of the scar and disfigurement. He noted that the disfigurement was two centimeters wide and spanned the right ulnar upper extremity between the mid-arm and distal forearm and a second scar spanned the entire right radial forearm.

In a decision dated August 8, 2007, the Office denied appellant's claim for a disfigurement award. It found that he did not sustain serious disfigurement of the face, head or neck pursuant to 5 U.S.C. 8107(c)(21).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

³ *Id.*

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for open wound of the right shoulder and complications and authorized surgery which was performed on June 8 and 11 and August 22, 2005.

Appellant submitted a November 8, 2006 report from Dr. Knauft, a Board-certified orthopedic surgeon, who noted well-healed wounds about the forearm, secondary to the fascia release, good range of motion of the elbow and wrist, mild loss of pronation and supination of five degrees each side and Jamar grip testing revealed the grip strength on the right side half of the left hand grip strength. Dr. Knauft opined that appellant's weakness was primarily muscular and that, in accordance with the A.M.A., *Guides*, he sustained a 20 percent impairment to the right arm due to loss of grip strength.⁶

The medical adviser agreed with the impairment rating by Dr. Knauft, who noted that appellant had a 50 percent strength loss index which results in 20 percent impairment to the right upper extremity.⁷ Dr. Knauft opined that maximum medical improvement was on February 21, 2007. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 20 percent impairment of the right upper extremity.

Appellant did not submit any medical evidence supporting a greater impairment than 20 percent of the right upper extremity.

LEGAL PRECEDENT -- ISSUE 2

The Act⁸ 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."⁹ In a case involving 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. In determining what constitutes "proper and equitable compensation" for disfigurement, sound judgment and equitable evaluation must be exercised as to the likely economic effect of appellant's disfigurement in securing and maintaining employment.¹⁰

⁶ A.M.A., *Guides* 509, Table 16-34.

⁷ *Id.*

⁸ 5 U.S.C. § 8101 *et seq.*

5 U.S.C. § 8107(c)(21).

¹⁰ *Mark A. Wages*, 39 ECAB 282, 287 (1987); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (August 2002).

ANALYSIS -- ISSUE 2

Appellant contends that he is entitled to an award for disfigurement for scarring on his right arm. The Office accepted his claim for open wound of the right shoulder and complications and authorized surgery which was performed on June 8 and 11 and August 22, 2005.

Appellant noted that, as a result of the work injury and surgical treatment, he developed a 21.5 centimeter crescent shaped scar on the right arm along the palmar and an 18 centimeter scar to the dorsal forearm. He stated that the scars disabled him from performing his job, that he experienced sarcastic remarks and negative reactions from coworkers and hides his arm when he is in public. On April, 17, 2007 Dr. Grenga noted that appellant reached maximum medical improvement on July 12, 2006. He noted that the disfigurement was two centimeters wide and spanned the right ulnar upper extremity between the mid-arm and distal forearm and a second scar spanned the entire right radial forearm.

By the terms of section 8107(c)(21), a schedule award for disfigurement is limited to the face, head or neck. The Act makes no provision for scarring or disfigurement of any other part of the body. Neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute or regulations.¹¹ The record establishes that appellant's work-related scars are located on his mid-arm and distal forearm and span the entire right radial forearm. They were not located on his face, head and neck as required by the Act. The Board finds that appellant is not entitled to an award for scarring or disfigurement of his right arm.¹²

CONCLUSION

The Board finds that appellant sustained a 20 percent permanent impairment of the right arm. It further finds that he is not entitled to a schedule award for disfigurement.

¹¹ *Richard T. DeVito*, 39 ECAB 668 (1988).

¹² *See William Tipler*, 45 ECAB 185 (1993); *Norma Jean Polen*, 24 ECAB 64 (1972) (finding no award payable for disfigurement of the breast, abdomen, thighs or right arm).

ORDER

IT IS HEREBY ORDERED that the August 8 and March 5, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 25, 2008
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