

FACTUAL HISTORY

On August 3, 2005 appellant, then a 49-year-old tractor trailer operator, was injured when he was struck in the face by a service strap. The Office accepted his claim for a facial laceration and closed bone fracture. On November 23, 2005 appellant underwent surgery to reduce the appearance of a wide and indented scar on his right cheek.

On June 22, 2006 appellant requested a schedule award. In response, the Office notified him that he might be eligible for a schedule award of up to \$3,500.00 for facial disfigurement. It provided appellant with the appropriate application and a medical form for his physician to complete.

On July 11, 2006 appellant submitted a disfigurement award application, including photographs of his face. He stated that the normal functioning of his mouth was impaired because it was paralyzed on the right side. Appellant stated that there was also some cosmetic damage. On July 11, 2006 Dr. Hillary Johnson, an internist, stated that appellant's facial disfigurement would not improve unless he was evaluated and treated by a plastic surgeon. She stated that the laceration to the right cheek had healed asymmetrically and that plastic surgery might help equalize the tissue. Dr. Johnson stated that appellant's right zygomatic area had partially collapsed and contained a horizontal scar measuring one and a half inches from the infra-orbital position. She noted that he also had a decreased right nasolabial fold with partial paralysis on the right side of the face.

On August 2, 2006 the Office provided appellant's file to the Office medical adviser for an opinion on his entitlement to a schedule award. On August 10, 2006 Dr. Benjamin Crane reviewed the medical record and noted that appellant reported mild numbness around the scar. He stated that the date of maximum medical improvement was July 11, 2006. Dr. Crane opined that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed., 2001), appellant's facial disorder and disfigurement would be rated as three percent whole person impairment.

In a memorandum dated June 6, 2007, the Office determined that appellant was entitled to the maximum award for facial disfigurement based on the evidence of record. The district director concurred in this finding.

By decision dated June 14, 2007, the Office granted appellant a schedule award for facial disfigurement in the amount of \$3,500.00. It noted that appellant was still entitled to medical care for his employment injury.

On July 25, 2007 appellant requested reconsideration. He did not submit any additional evidence or statements.

By decision dated August 2, 2007, the Office denied reconsideration of the merits of appellant's claim on the grounds that he had submitted no relevant new evidence and presented no new legal contentions.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act¹ 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."² 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.³ 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 that are contrary to both logic and probable deduction from established facts.⁴ The Board will not interfere with or set aside a disfigurement determination of the Office unless it is clearly in error.⁵

Office's procedures require that the Office medical adviser review disfigurement claims and evaluate the employee's disfigurement. The Office medical adviser will determine if maximum medical improvement has been reached and review photographs submitted along with medical evidence of record. The concurrence of the district director or the assistant district director must be obtained.⁶

A schedule award is not payable for the loss or loss of use, of a member or function of the body not specifically listed in the Act and its implementing regulation.⁷

ANALYSIS -- ISSUE 1

The Office granted appellant a schedule award for his permanent facial disfigurement in the maximum amount of \$3,500.00. The issue to be determined is whether appellant is entitled to an additional schedule award.

The Board finds that the Office properly followed its procedures in determining that appellant was entitled to the maximum award for facial disfigurement. Dr. Crane, the district medical adviser, reviewed appellant's file, including his photographs and made medical findings. He determined that appellant had reached maximum medical improvement by July 11, 2006. The Office determined that Dr. Crane's opinion entitled appellant to a schedule award of

¹ 5 U.S.C. § 8101 *et seq.*

² 5 U.S.C. § 8107(c)(21).

³ *Hylan Shelton*, 57 ECAB ___ (Docket No. 06-462, issued June 8, 2006).

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁵ *Matthew Leonka*, 38 ECAB 119, 121 (1986).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.5 (November 1998).

⁷ *Veronica Williams*, 56 ECAB 367 (2005).

\$3,500.00. The Office's district director concurred with the Office's recommendation that appellant be awarded \$3,500.00, which represents the maximum award allowable under the schedule. The Office followed proper procedures and did not abuse its discretion in issuing a schedule award in the maximum allowable amount for appellant's facial disfigurement.

On appeal, appellant contends that the schedule award does not adequately compensate him for all the conditions caused by his accepted injury. The Board notes that the terms of the Act are specific as to the method and amount of payment of compensation for facial disfigurement; 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.⁸ Appellant has received the maximum award available for facial disfigurement and is not entitled to any additional sum for this impairment. Further, appellant has not established that he sustained permanent impairment to any other member, function or organ of the body specifically listed in the Act or the implementing federal regulation.⁹ Therefore, the Board finds that appellant has not established that he is entitled to a greater schedule award.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.¹⁰ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

ANALYSIS -- ISSUE 2

On July 25, 2007 appellant requested reconsideration. However, he did not submit anything along with his request. Because appellant did not raise new arguments or present new

⁸ See, e.g., *Wayne B. Kovacs (Cynthia A. Kovacs)*, 55 ECAB 133, 137 (2003) (the Board found that it could not change compensation requirements related to death benefits for minor dependents).

⁹ The schedule award provision of the Act identifies "members" as the arm, leg, hand, foot, thumb, finger and toe; "functions" as loss of hearing and loss of vision; and "organs" to include the eye. 5 U.S.C. § 8107. The Act also provides for payment of compensation for permanent loss of other important external or internal organ of the body as determined by the Secretary of Labor. 5 U.S.C. § 8107(c)(22). Under this authority, the Secretary of Labor has added the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina to the schedule. 20 C.F.R. § 10.404(5).

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² 20 C.F.R. § 10.608(b).

evidence that the Office erroneously applied or interpreted a specific point of law; advance any relevant legal arguments not previously considered by the Office; or present any relevant and pertinent new evidence, he is not entitled to further review of the merits of his claim under any of the criteria of section 10.606(b)(2).¹³

As appellant did not meet any of the regulatory requirements for review of the merits of his claim, the Office properly denied his July 25, 2007 request for reconsideration.

CONCLUSION

The Board finds that appellant was entitled to no more than the \$3,500.00 awarded by the Office for his permanent facial disfigurement, which is the maximum amount allowable under the schedule. Additionally, the Board finds that the Office properly denied further review of the merits of appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 2 and June 14, 2007 are affirmed.

Issued: March 5, 2008
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹³ 20 C.F.R. § 10.606(b)(2).