

1 **United States Department of Labor**
2 **Employees' Compensation Appeals Board**
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4

L.E., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
OFFICE OF DISABILITY ADJUDICATION &)
REVIEW, Birmingham, AL, Employer)
_____)

Docket No. 09-1431
Issued: January 11, 2010

5 *Appearances:*

6 *Alan J. Shapiro, Esq., for the appellant*
7 *Office of Solicitor, for the Director*
8
9

Case Submitted on the Record

10 **DECISION AND ORDER**

11 Before:

12 ALEC J. KOROMILAS, Chief Judge
13 DAVID S. GERSON, Judge
14 COLLEEN DUFFY KIKO, Judge
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18 **JURISDICTION**

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20 On May 18, 2009 appellant filed a timely appeal from April 1, 2009, September 4 and
21 July 30, 2008 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 20
22 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

23 **ISSUE**

24
25 The issue is whether appellant established permanent impairment of her lip and
26 permanent disfigurement of her face causally related to her accepted January 12, 2007
27 employment injury sufficient to warrant a schedule award.

28 **FACTUAL HISTORY**

29
30 On February 12, 2007 appellant, a 59-year-old legal assistant, filed a traumatic injury
31 claim (Form CA-1) alleging that on January 12, 2007 she tripped during a fire drill on a speed
32 breaker and fell, sustaining severe abrasions on her forehead, nose, upper lip and knees.

1 Appellant submitted evidence supporting her claim and on April 28, 2008 the Office accepted
2 appellant's claim for left knee and facial abrasions, without infection.

3 On April 3, 2008 appellant filed a schedule award claim.

4 Appellant submitted a report (Form CA-20), dated April 25, 2008, in which Dr. John
5 Croushorn, Board-certified in emergency medicine, reported findings on examination and
6 diagnosed facial contusions and abrasions.

7 By letter dated June 9, 2008, the Office notified appellant that the evidence of record did
8 not demonstrate she sustained permanent impairment due to her accepted employment injury. In
9 a June 17, 2008 note, appellant related that she did not sustain any permanent knee damage but
10 that her facial abrasions left her with a scar over her lip.

11 Responding to appellant's June 17, 2008 letter, the Office, by letter dated June 26, 2008,
12 forwarded appellant an application for a disfigurement award. By separate letter dated July 30,
13 2008, the Office notified appellant that it would hold the record open for 30 days, permitting
14 appellant to submit the disfigurement application.

15 The record reflects that appellant did not submit a completed application for a
16 disfigurement award.

17 By decision dated July 30, 2008, the Office denied appellant's schedule award claim
18 because appellant had not established she sustained permanent impairment to a scheduled
19 member as defined by the Federal Employees' Compensation Act.

20 By decision dated September 4, 2008, the Office denied appellant's disfigurement award
21 claim because appellant had not established she sustained permanent disfigurement due to her
22 accepted employment injury.

23 On September 8, 2008 appellant, through her attorney, requested an oral hearing.

24 Appellant submitted copies of reports already of record.

25 Following a hearing the Office, by decision dated April 1, 2009, affirmed the
26 September 4, 2008 decision finding appellant had not established she sustained permanent
27 disfigurement due to her accepted employment injury. The hearing representative noted that
28 appellant had not submitted the required application for disfigurement award or submitted the
29 required photographs.

30 **LEGAL PRECEDENT**

31
32 Pursuant to section 8107 of the Act and section 10.404 of the implementing federal
33 regulations,¹ schedule awards are payable for permanent impairment of specified body members,
34 functions or organs. The Act, however, does not specify the manner in which the percentage of

¹ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

1 impairment shall be determined. For consistent results and to ensure equal justice under the law
2 for all claimants, good administrative practice necessitates the use of a single set of tables so that
3 there may be uniform standards applicable to all claimants. The American Medical Association,
4 *Guides to the Evaluation of Permanent Impairment*² has been adopted by the Office and the
5 Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

6 The Act identifies members such as the arm, leg, hand, foot, thumb and finger; functions
7 such as loss of hearing and loss of vision; and organs to include the eye. Section
8 8107(c)(22) provides for the payment of compensation for permanent loss of any other important
9 external or internal organ of the body as determined by the Secretary of Labor.⁴ The Secretary of
10 Labor has made such a determination and, pursuant to the authority granted in section
11 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to
12 the schedule.⁵ A schedule award is not payable for the loss or loss of use, of a member or
13 function of the body not specifically listed in the Act or in its implementing regulations.

14 The Board notes that section 8107(c)(21) of the Act provides that compensation not to
15 exceed \$3,500.00 shall be awarded for serious disfigurement of the face, head or neck of a
16 character likely to handicap an individual in securing or maintaining employment, in addition to
17 any other compensation payable under the schedule.⁶

18 ANALYSIS

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20 The Board finds that appellant has not established that she is entitled to a schedule award.
21 Appellant's claim was accepted for left knee and facial abrasions, without infection.⁷ As noted,
22 no schedule award is payable for a member, function or organ of the body not specified in the
23 Act or its implementing regulations.⁸ The Act does not specify the lip as a scheduled member
24 warranting compensation. Furthermore, the Secretary has not determined, pursuant to the
25 discretionary authority granted in section 8107(c)(22) of the Act, that the lip constitutes any
26 other important external or internal organ of the body.

² A.M.A., *Guides* (5th ed. 2001).

³ See *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁴ 5 U.S.C. § 8107(22).

⁵ 20 C.F.R. § 10.404; see *Anna V. Burke*, 57 ECAB 521 (2006).

⁶ 5 U.S.C. § 8107(c)(21).

⁷ Appellant submitted reports signed by a registered nurse. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence. (5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Therefore these reports have no evidentiary value.

⁸ 5 U.S.C. § 8107; 20 C.F.R. § 10.404. See *Anna V. Burke*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2009, September 4 and July 30, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 11, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board