

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

_____)
D.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
St. Louis, MO, Employer)

) **Docket No. 10-2095**
) **Issued: June 6, 2011**
)

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2010 appellant timely appealed the February 18, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which awarded compensation for facial disfigurement. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to more than \$150.00 for permanent facial disfigurement.

FACTUAL HISTORY

Appellant, a 59-year-old retired letter carrier, has an accepted occupational disease claim for left cheek melanoma, which arose on or about July 11, 1999.² He underwent two OWCP-

¹ 5 U.S.C. §§ 8101-8193.

² Appellant attributed his skin cancer to exposure to ultraviolet rays while delivering mail. He retired effective May 1, 2009.

approved surgical procedures, the latest of which involved a skin graft performed on April 17, 2006.

On December 22, 2009 appellant filed a claim for a schedule award (Form CA-7). By letter dated December 24, 2009, OWCP advised appellant that FECA provided up to \$3,500.00 for serious disfigurement of the face, head or neck. The procedures for submitting an application for a disfigurement award were outlined, including the need for photographs and an attending physician's report.

Appellant subsequently submitted four photographs of his face taken January 8, 2010, and a December 30, 2009 report from Dr. Christopher W. Kling, a Board-certified dermatologist, who indicated that further significant improvement of appellant's disfigurement was not probable. Dr. Kling also advised that no additional therapy, medical or surgical treatment would correct or improve the disfigurement. He described it as a 5mm x 2.5mm scarred plaque on the left cheek with permanent redness and blotchy linear discoloration. Dr. Kling also reported numbness of the left lateral cheek, mild swelling of the cheek and mild weakness of appellant's left facial muscles.

The district medical adviser, Dr. David D. Zimmerman, reviewed the claim on February 10, 2010. He noted that, while Dr. Kling described a 5mm x 2.5mm scarred plaque on the left cheek, appellant's January 8, 2010 photographs showed no plaque. The district medical adviser further noted that the scar was barely noticeable and the redness was minimal. He also noted no indication of a facial palsy in the area of the scarring. As to the reported numbness, the district medical adviser stated that it would have no bearing on a disfigurement claim. He concluded that appellant's degree of disfigurement was "very mild" and would have "no impact" on his employability. The district medical adviser recommended a disfigurement award of approximately \$100.00 to \$150.00.

On February 17, 2010 the district director reviewed the district medical adviser's report and concurred with his rationale. The district director approved an award of \$150.00.

By decision dated February 18, 2010, the Office awarded appellant \$150.00 for disfigurement.

LEGAL PRECEDENT

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.³ FECA's list of scheduled members includes the eye, arm, hand, fingers, leg, foot and toes.⁴ Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.⁵ By authority granted under FECA, the Secretary of Labor added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus

³ *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

⁴ 5 U.S.C. § 8107(c).

⁵ *Id.*

and tongue to the list of scheduled members.⁶ Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.⁷

FECA also provides 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.”⁸ OWCP’s procedures require that its medical adviser review such claims and evaluate the employee’s disfigurement.⁹ The medical adviser will determine if maximum medical improvement has been reached and review photographs submitted along with medical evidence of record.¹⁰ The concurrence of the district director or the assistant district director must be obtained.¹¹

In reviewing a claim for facial disfigurement, the question before the Board is whether OWCP’s decision to either grant or deny an award was based upon sound and considered judgment, and if it was proper and equitable under the circumstances.¹² As the only limitation on OWCP’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.¹³ The Board will not interfere with or set aside a disfigurement determination by OWCP unless it is clearly erroneous.¹⁴

ANALYSIS

The Office awarded appellant \$150.00 for permanent disfigurement. The Board finds that the Office followed its procedures and properly exercised its discretion in determining that appellant was entitled to \$150.00 for facial disfigurement.

Dr. Zimmerman, the district medical adviser, reviewed the case file, including Dr. Kling’s December 30, 2009 report and photographs of appellant’s face obtained on January 8, 2010. The district medical adviser found that the 5mm x 2.5mm left cheek “scarred plaque” Dr. Kling described was not evident on appellant’s January 8, 2010 photographs. He specifically noted that the photographs “show no plaque.” Whereas Dr. Kling reported permanent redness and blotchy linear discoloration, the district medical adviser indicated that appellant’s scar was barely noticeable and the redness was minimal. He also found no indication

⁶ 5 U.S.C. § 8107(c)(22); 20 C.F.R. § 10.404(a) (2010).

⁷ *Id.* at § 8107(c); *id.* at § 10.404(a); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

⁸ *Id.* at § 8107(c)(21).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.5 (January 2010).

¹⁰ *Id.*

¹¹ *Id.*

¹² *W.C.*, *supra* note 3; *Hylan Shelton*, 57 ECAB 617, 620 (2006).

¹³ *W.C.*, *supra* note 3.

¹⁴ *Id.*

of a facial palsy. Consequently, the district medical adviser determined that the degree of disfigurement was “very mild,” and he indicated it would have no impact on appellant’s employability. Based on his review of the relevant and pertinent evidence, the district medical adviser recommended a disfigurement award of approximately \$100.00 to \$150.00. Upon further review, the district director concurred with the district medical adviser’s rationale and approved an award of \$150.00.

The Board finds that OWCP followed proper procedures and did not abuse its discretion in awarding \$150.00 for permanent disfigurement. Although appellant believes \$150.00 is insufficient compensation for an employment injury that necessitated two surgeries, he has not demonstrated any permanent impairment of a scheduled member and has not established entitlement to a greater award for permanent disfigurement.

CONCLUSION

The Board finds that appellant has not established entitlement to more than \$150.00 for permanent disfigurement.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2010 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: June 6, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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

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