

FACTUAL HISTORY

OWCP accepted that appellant, then a 39-year-old sports specialist, sustained multiple injuries on April 26, 2008 when he was accidentally struck in the head by a softball bat.² He stopped work that day, received compensation, returned to modified duty on September 8, 2008 and to full duty on November 1, 2008. By decision dated November 8, 2010, appellant was granted a schedule award for 10 percent impairment of the right upper extremity. In a May 4, 2011 decision, an OWCP hearing representative affirmed the November 8, 2010 decision regarding entitlement to a schedule award for the right upper extremity and remanded the case to OWCP for a determination as to whether appellant was entitled to a schedule award for additional accepted conditions. In a July 18, 2011 decision, OWCP found that appellant was not entitled to a schedule award for additional conditions.

In July 2011 appellant filed an additional schedule award claim, with a form application for a disfigurement award and three photographs. In an August 1, 2011 report, Dr. Carl Claxton, an osteopath, noted that appellant had a healed longitudinal right temporal bone fracture and fracture through the zygomatic arch and inferolateral orbital wall with fracture of the right mandibular sinus which resulted in permanent anatomic abnormalities and loss of function and an additional four-centimeter healed surgical incision on the right anterior neck.

In an October 10, 2011 report, Dr. Daniel D. Zimmerman, Board-certified in internal medicine and pediatrics and an OWCP medical adviser, reviewed the record regarding appellant's claim for a disfigurement award. He indicated that he had reviewed photographs and that these did not show a facial disfigurement that would act as a hindrance to employability. Dr. Zimmerman concluded that the accepted facial fractures had not resulted in permanent disfigurement of a scheduled member and, as such, appellant was not entitled to a schedule award.

By decision dated October 17, 2011, OWCP denied appellant's claim. Appellant timely requested a hearing for the July 18 and October 17, 2011 decisions which was held on November 10, 2011. On January 26, 2012 an OWCP hearing representative affirmed the July 18, 2011 decision. In a separate decision, the hearing representative set aside the October 17, 2011 decision regarding appellant's disfigurement claim on the grounds that OWCP had not correctly followed its procedures. It found that Dr. Zimmerman had not addressed whether maximum medical improvement had been reached and there was no indication that the District Director had concurred with Dr. Zimmerman's conclusion, as required by OWCP procedures.

In a February 28, 2012 report, Dr. Zimmerman, an OWCP medical adviser, indicated that maximum medical improvement had been reached on July 27, 2011, the date of the three photographs. He stated that a minimally visible scar was not sufficient to entitle a monetary

² The accepted conditions are fracture other facial bones, closed; periocular bruising; black eye, not otherwise specified; concussion with loss of consciousness of 30 minutes or less; closed fracture of C7 cervical vertebral without spinal cord injury; acute and subacute iridocyclitis, not otherwise specified, right; closed fracture of base of skull without intracranial injury; multiple closed fracture of skull without intracranial injury, with brief loss of consciousness; closed fracture of mandible; traumatic subarachnoid hemorrhage without open wound, brief coma.

award and that the August 1, 2011 report from Dr. Claxton provided no further reason to consider one. On March 16, 2012 Lois Maxwell, the District Director, concurred with Dr. Zimmerman's conclusion.

By decision dated March 22, 2012, OWCP denied appellant's claim for a schedule award for disfigurement. Appellant again requested a hearing, which was held on June 13, 2012. At the hearing, he described his scars and testified that he had no feeling on the right side of his face and had trouble eating. Appellant indicated that he continued to work as a sports specialist at the employing establishment. On September 10, 2012 an OWCP hearing representative affirmed the March 22, 2012 decision. Appellant then filed an appeal with the Board.³

LEGAL PRECEDENT

Section 8107(c)(21) of FECA provides that payment of compensation not to exceed \$3,500.00 may be made for disfigurement of the face, head or neck which is likely to handicap the claimant in securing or maintaining employment.⁴ OWCP procedures further indicate that the medical adviser will be asked to review such claims and to evaluate the employee's disfigurement. If the medical adviser finds that maximum medical improvement has occurred, the medical adviser shall review the photographs submitted along with the medical evidence of record. The concurrence of the District Director or the Assistant District Director must be obtained. Following the file review, the medical adviser and District Director or the Assistant District Director will write a memorandum to the file which contains a complete description of the disfigurement. If the medical adviser does not find that maximum medical improvement has occurred, but has submitted a statement as to whether plastic surgery may improve the appearance and decrease the degree of disfigurement and the claimant is amenable, the medical adviser should include in his or her statement information concerning arrangements for treatment.⁵

In an appeal involving disfigurement, the question before the Board is whether the amount awarded by OWCP was based upon sound and considered judgment and was proper and equitable under the circumstances as provided by section 8107(c)(21) of FECA.⁶

³ By order dated March 25, 2013, the Board remanded the case to OWCP because three photographs, relied upon by Dr. Zimmerman were not in the case record forwarded to the Board. OWCP was to obtain the photographs and other development deemed necessary, to be followed by a *de novo* decision on appellant's schedule award claim. Docket No. 13-104 (issued March 25, 2013). On April 18, 2013 the Director of OWCP petitioned the Board to reconsider the March 25, 2013 order. The Director noted that the photographs had been scanned into the record, and attached copies with the petition. On August 20, 2013 the Board granted the Director's petition for reconsideration and directed that the appeal proceed to a decision.

⁴ 5 U.S.C. § 8107(c)(21).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disfigurement*, Chapter 2.808.10 (February 2013); Part 3 -- Medical, *Disfigurement*, Chapter 3.700.5 (January 2010); see *D.H.*, Docket No. 10-2095 (issued June 6, 2011).

⁶ *W.P.*, Docket No. 12-1677 (issued March 12, 2013).

ANALYSIS

The Board finds that appellant has not established that he sustained facial disfigurement so as to warrant a schedule award. The accepted conditions in this case include fractures of facial bones, including the mandible. As noted above, OWCP procedures provide that the medical adviser will be asked to review such claims and to evaluate the employee's disfigurement, to be followed by concurrence of the District Director or Assistant District Director.⁷ OWCP followed these procedures in this case.

In reports dated October 10, 2011 and February 28, 2012, Dr. Zimmerman, the medical adviser, reviewed the record regarding appellant's claim for a disfigurement award, including Dr. Claxton's report and photographs. He indicated that these did not show a facial disfigurement that would act as a hindrance to employability and that maximum medical improvement was reached on July 27, 2011, the date of three photographs. Dr. Zimmerman concluded that the accepted facial fractures with a minimally visible scar had not resulted in permanent disfigurement of a scheduled member and, as such, appellant was not entitled to a schedule award. On March 16, 2012 the District Director concurred with Dr. Zimmerman's conclusion.

Appellant submitted an August 1, 2011 report in which Dr. Claxton, an attending osteopath, noted a healed longitudinal right temporal bone fracture and fracture through the zygomatic arch and inferolateral orbital wall with fracture of the right mandibular sinus which resulted in permanent anatomic abnormalities and loss of function and an additional four centimeter healed surgical incision on the right anterior neck. Dr. Claxton, however, did not describe any disfigurement or indicate how these conditions would handicap appellant in securing or maintaining employment.

As OWCP properly followed its procedures in determining that appellant was not entitled to monetary compensation for facial disfigurement,⁸ its decision was based upon sound and considered judgment and was proper and equitable under the circumstances as provided by section 8107(c)(21) of FECA.⁹ OWCP therefore did not abuse its discretion in denying monetary compensation for permanent facial disfigurement.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established that he has a permanent impairment due to facial disfigurement caused by the accepted conditions.

⁷ *Supra* note 5.

⁸ *See J.C.*, 58 ECAB 258 (2007).

⁹ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board