

landed on her face. She filed a traumatic injury claim (Form CA-2) for benefits on September 27, 2007, which OWCP accepted for left eye socket fracture, left rotator cuff tear, concussion, left side facial nerve damage, back strain, left knee strain, left facial nerve paralysis, adjustment reaction with physical symptoms and depression, and consequential closed fractures of left toes one, two, three, and five and left index finger sprain.

On August 30, 2010 appellant filed a claim for a schedule award (Form CA-7) due to facial disfigurement.

In an April 26, 2012 report, Dr. Norman Mindrebo, Board-certified in orthopedic surgery, advised that on physical examination appellant showed extreme hypersensitivity to stimuli to the left side of her face. He noted that waving his hand in front of her face so that the air hit the left side of her face caused her extreme pain. Dr. Mindrebo further advised that when her hair touched the front side of her face, she would immediately try to push it out of the way. He reported that he was unable to touch the left side of her face without producing significant discomfort. Appellant constantly guarded the left side of her face, which led to neck stiffness. He opined that this had probably led to chronic migraine headache discomfort due to overcompensating for her facial hypersensitivity. Dr. Mindrebo reported that she had a drooping left side of her face, a drooping eyelid, and drooping left lip. He noted that she was able to drink from a straw while using only the right side of her mouth and lip; at other times, the liquid would pour out the left side of her mouth. Dr. Mindrebo advised that it was difficult to get appellant to flex or extend her neck past 25 degrees as this produced increased headache pain and left-sided facial discomfort.

By letter dated October 1, 2012, OWCP advised appellant of the evidence required to establish her schedule award claim. Appellant was afforded 30 days to submit additional factual and medical evidence.

In a report dated November 2, 2012, Dr. Gary Sharp, a family practitioner and appellant's treating physician, completed an OWCP attending physician's disfigurement form. He advised that she had trauma to the face, hyperesthesia, some scarring, and a tic involving the left periorbit and left cheek. Dr. Sharp reported that appellant had a three millimeter scar on the left side of her face.

In an application form for disfigurement award dated November 29, 2012, appellant advised that the left side of her face drooped and had facial tics. She reported that her face burned constantly and hurt worse in cold, heat, wind, and water. Appellant asserted that she had trouble drinking because her lips did not seal, her smile was crooked, and that some words were hard to pronounce. She had a scar on the left side of her face and believed the disfigurement was likely to handicap her in securing or maintaining employment due to increased pain in winter and summer, which caused frequent absences.

In a January 16, 2014 report, Dr. Morley Slutsky, a Board-certified occupational medicine specialist and an OWCP medical adviser, reviewed reports from Dr. Sharp and Dr. Mindrebo in addition to photographs and medical records. He described appellant's disfigurement and opined that her facial scars would not pose a handicap to her ability to participate in work-related duties. He noted her partial facial paralysis, drooping left side of the face, drooping eyelid, drooping left lip, ability to drink from a straw using only the right side of her mouth and lip, and difficulty

wrinkling the forehead on the left. Dr. Sharp had opined that these traits might limit an employer's desire to have appellant work with the public and might limit her ability to concentrate and cause her to be self-conscious. Dr. Slusky noted Dr. Mindrebo's finding that appellant displayed extreme discomfort when her face was touched, even lightly by wind or by her hair and found that related to nerve damage associated with the facial paralysis and extreme sensitivity. Dr. Slusky asserted that this might limit appellant's ability to work for prolonged periods of time, unless she worked in a strictly regulated environment; he opined that even the slightest air pressure past her face could cause pain. He opined that these factors; *i.e.*, her increased facial sensitivity, her limited ability to concentrate, and her inability to work in a comfortable manner for prolonged periods of time constituted a handicap as it related to performing work-related duties. Dr. Slusky found that April 26, 2012, the date of Dr. Mindrebo's report, was the date of maximum medical improvement.

In a February 19, 2014 memorandum, Helen Boberek, an OWCP Acting District Director, noted that, pursuant to 5 U.S.C. 8107(c)(21), if an injury causes serious disfigurement of the face, head or neck of a character likely to handicap a claimant in securing or maintaining employment, a schedule award is payable. She reviewed Dr. Slusky's reports and concluded that, based on the above factors, a schedule award of \$1,000.00 was appropriate. Ms. Boberek found appellant had reached maximum medical improvement on April 26, 2012.

By decision dated March 5, 2014, OWCP awarded OWCP awarded appellant compensation in the amount of \$1,000.00 for facial disfigurement.

On March 26, 2014 appellant requested an oral hearing before an OWCP hearing representative, which was held on December 9, 2014. At the hearing, appellant described her disfigurement, extreme facial sensitivity and constant pain. She noted that she required Lidoderm patches to deaden the facial tissue enough to be able to sleep. Appellant asserted that an award of \$1,000.00 was not a sufficient amount of compensation for her disfigurement. She was going to look like that the rest of her life, she was not going to be able to seal her lips together or be able to have anyone touch the left side of her face. Appellant also testified that she was in constant pain and, because she looked mad all the time, it impeded her relationships with everyone.

By decision dated February 26, 2015, an OWCP hearing representative affirmed the March 5, 2014 decision.

LEGAL PRECEDENT

Section 8107(c)(21) of FECA provides that payment of compensation not to exceed \$3,500.00 may be granted for disfigurement of the face, head, or neck which is likely to handicap the claimant in securing or maintaining employment.² OWCP procedures further provide that an OWCP 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 with the medical evidence of record. The concurrence of the District Director or the Assistant District Director must be obtained.

² 5 U.S.C. § 8107(c)(21).

Following the file review, the medical adviser and District Director or the Assistant District Director will write a memorandum which contains a description of the disfigurement.³

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.⁴

ANALYSIS

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.⁵ The Board finds that OWCP properly followed its procedures in determining that appellant was entitled to \$1,000.00 for facial disfigurement.⁶

Dr. Slutsky, an OWCP medical adviser, reviewed the record, including Dr. Minbrego's April 26, 2012 report and Dr. Sharp's November 2, 2012 report. He described her disfigurement and opined that her facial scars would not pose a handicap to appellant's ability to participate in work-related duties. Dr. Sharp noted the paralysis on the left side of her face might limit an employer's desire to have her work with the public and might also cause her to be self-conscious and limit her ability to concentrate. Dr. Slutsky noted Dr. Minbrego's finding that appellant displayed extreme discomfort and sensitivity to having her face touched and which was related to nerve damage. He asserted that this might limit her ability to work for prolonged periods of time unless she worked in a strictly regulated environment. Dr. Slutsky opined that these factors constituted a handicap as it related to performing work-related duties. He found that April 26, 2012, the date of Dr. Mindrebo's report, was the date of maximum medical improvement.

On February 19, 2014 Acting District Director Boberek advised that appellant's visible facial disfigurement, as reviewed by Dr. Slutsky, could impair her ability to obtain employment. She found that \$1,000.00 was the proper disfigurement award in this case.

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 taken which are contrary to both logic and probable deduction from established facts. The Board will not interfere with or set aside a disfigurement determination of OWCP unless it is clearly in error.⁷

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

⁴ *W.P.*, Docket No. 12-1677 (issued March 12, 2013).

⁵ 5 U.S.C. § 8107(c)(21).

⁶ *Supra* note 3; *see also A.M.*, Docket No. 14-787 (issued July 15, 2014).

⁷ *Jonathan P. Daniels*, Docket No. 04-0771 (issued June 28, 2004).

The Board finds that OWCP did not abuse its discretion in awarding \$1,000.00 for permanent facial disfigurement. Although appellant believes \$1,000.00 is insufficient compensation for her disfigurement, the Board finds that OWCP properly evaluated the medical evidence and followed OWCP procedures in rendering its decision.⁸

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 OWCP did not abuse its discretion by granting appellant \$1,000.00 for facial disfigurement.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *D.H.*, *supra* note 3.