

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

L.R., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Pine Knot, KY, Employer**

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**Docket No. 17-1654
Issued: January 18, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 25, 2017 appellant filed a timely appeal from April 10 and July 13, 2017 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 has established permanent impairment of a scheduled member for schedule award purposes.

FACTUAL HISTORY

On November 9, 2010 appellant, then a 31-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on November 8, 2010 he was stabbed several times in the

¹ 5 U.S.C. § 8101 *et seq.*

chest area by an inmate with a homemade knife. He sought emergency medical treatment at UK Chandler Medical Center.

In a November 8, 2010 emergency department report, Dr. David P. Turley, Board-certified in emergency medicine, reported that appellant was stabbed with a shank in the upper chest, at a prison facility where he was working. He diagnosed status post chest wound superficial laceration, ear laceration, superficial left arm laceration, and soft tissue injury to the left upper abdomen and chest. Appellant underwent various laceration repairs.

In a November 8, 2010 diagnostic report, Dr. Andres Ayoob, a Board-certified radiologist, reported that a computerized tomography (CT) scan of the aorta revealed no traumatic aortic injury or pneumothorax. He reported that the lungs demonstrated mild bibasilar dependent atelectasis and further noted findings of soft tissue stranding and subcutaneous gas in the left lateral chest wall consistent with known penetrating injury.

By decision dated February 16, 2011, OWCP accepted the claim for left contusion of chest wall, superficial chest laceration, left ear superficial laceration, and left shoulder superficial injury.

On October 31, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated November 1, 2016, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² It afforded him 30 days to submit the requested impairment evaluation.

In a November 29, 2016 medical report, Dr. Truman Perry, Board-certified in family medicine, reported that appellant was working as a prison guard on November 8, 2010 when he was stabbed multiple times by a prison inmate. Appellant suffered wounds to his left ear, left chest, left arm, back, and scalp, and was seen and evaluated multiple times for this injury. Dr. Perry reported that appellant had reached maximum medical improvement (MMI) for his injuries. He noted that appellant also had permanent nerve damage to his left ear as it continued to tingle and burn and could not be touched secondary to pain. Dr. Perry reported that appellant healed from the stab wound to the left chest wall, but continued to have rib pain due to scar tissue. He also had stab wounds to the left arm and back which had resolved. Dr. Perry concluded that appellant suffered from post-traumatic stress disorder as a result of the fight and injuries.

OWCP routed the case file and a statement of accepted facts (SOAF) to Dr. David I. Krohn, Board-certified in internal medicine serving as an OWCP district medical adviser (DMA), for review and a determination pertaining to a disfigurement assessment for permanent impairment and date of MMI. It noted the accepted conditions of left contusion of chest wall, other and unspecified superficial injury to head, neck, and scalp without infections left, other and unspecified superficial injury of shoulder and upper arm without infection, other and unspecified superficial injury of left trunk without infection, and left open wound of chest wall without

² A.M.A., *Guides* (6th ed. 2009).

complications. OWCP further provided the DMA two photos showing a picture of appellant's scar on the left side of his chest, as well as the scar along his head/ear.

In a February 13, 2017 medical report, Dr. Krohn reported that he reviewed the two photographs and Dr. Perry's November 29, 2016 report. He reported an apparent superficial vertical scar just anterior to the left ear, and a superficial scar to the superior external ear. Dr. Krohn noted that the left external ear did not appear significantly deformed. He also noted another photo displaying an area of scarring associated with a large tattoo. Dr. Krohn noted that the anatomic location of this scar was not apparent from the photograph and there appeared a thin superficial lightly pink colored abrasion-like scar. He reported that none of the areas described and viewed in the color photographs demonstrated ulceration, depression, elevation, or keloid formation, there was no atrophy or hypertrophy seen, and no apparent attachment to bone, joint, muscle, or other tissue. Dr. Krohn concluded that the date of MMI was November 29, 2016 and no additional medical or surgical intervention was likely to improve appellant's condition.

On April 7, 2017 the district director reviewed the photographs and medical evidence of record, finding that appellant's scarring to the ear was superficial in nature and not of a character that would likely handicap an employee from seeking and maintaining employment. As such, appellant was not entitled to an award for disfigurement of the face, neck, and head. The district director further found that the scarring/deformity to the chest area would not qualify for a disfigurement award as FECA provisions only pertained to disfigurement of the face, head, or neck.

By decision dated April 10, 2017, OWCP denied appellant's schedule award claim finding that the evidence of record was insufficient to establish permanent impairment to a scheduled member or function of the body. It found that the scarring/deformity to the chest area would not qualify for a disfigurement award as the applicable provisions only pertained to the face, head, or neck. OWCP also found that the scarring/deformity to the ear did not demonstrate ulceration, depression, elevation, or keloid formation, as well as no atrophy or hypertrophy.

On April 14, 2017 appellant requested reconsideration of OWCP's decision. He argued that he was not only filing a schedule award for disfigurement from scarring, but also for nerve damage to his ear and damage to his lungs caused by the November 8, 2010 employment injury. Appellant further reported that he had constant pain as a result of this employment incident. He resubmitted medical reports of record in support of his claim.

By decision dated July 13, 2017, OWCP affirmed the April 10, 2017 decision finding that evidence of record failed to establish any permanent impairment to a scheduled member or function of the body.

LEGAL PRECEDENT

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has

vested the authority to implement the FECA program with the Director of OWCP.³ Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁴ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁵ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁶

OWCP regulations provide that, pursuant to the authority provided by 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 if the claimant is employed or employable. With respect to disfigurement or scarring of the skin, FECA also provides: For 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.⁷

Section 8107(c)(22) of FECA also provides that skin has been added to the list of scheduled members for which FECA provides compensation for loss.⁸

ANALYSIS

Appellant's claim was accepted for left contusion of chest wall, superficial injury to head, neck, and scalp, superficial left ear laceration, superficial injury of left shoulder and upper arm, superficial injury of left trunk, and left open wound of chest wall.

The Board finds that appellant has not established that he is entitled to a schedule award.

In his February 13, 2017 medical report, Dr. Krohn reported that the photograph of appellant's left ear revealed a superficial external vertical scar which did not appear significantly deformed. He also noted another photograph displaying an area of scarring associated with a

³ See 20 C.F.R. §§ 1.1-1.4.

⁴ 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁶ *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ 5 U.S.C. § 8107(c)(21).

⁸ *Id.* at § 8107(c)(22); see also 20 C.F.R. § 10.404 (2011).

large tattoo. Dr. Krohn noted that the anatomic location of this scar was not apparent from the photograph and there appeared a thin superficial lightly pink colored abrasion-like scar. He reported that none of the areas described and viewed in the color photographs demonstrated ulceration, depression, elevation, or keloid formation, no atrophy or hypertrophy, and no apparent attachment to bone, joint, muscle, or other tissue. On April 7, 2017 OWCP concurred with Dr. Krohn's findings.

The Board finds that OWCP properly followed its procedures by allowing the DMA to evaluate appellant's disfigurement followed by concurrence of the district director.⁹ Section 8107(c)(21) of FECA provides that compensation shall be awarded for serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, not to exceed \$3,500.00, in addition to any other compensation payable under the schedule. The DMA and district director properly explained that appellant's scarring of the ear was superficial in nature and not of a character that would likely handicap an employee from seeking and maintaining employment. As such, appellant failed to establish entitlement to a schedule award for facial disfigurement.¹⁰

The Board also finds that appellant is also not entitled to a schedule award for the scar located on his chest.¹¹ Under 5 U.S.C. § 8107(c)(21), a schedule award for disfigurement is limited to the face, head, or neck. FECA makes no provision for scarring or disfigurement of any other part of the body.¹² The district director properly explained that appellant's chest scar would not qualify for a disfigurement award. The record establishes that appellant is not entitled to a schedule award for the work-related scar located on his chest.¹³

The Board also notes that 5 U.S.C. § 8107(c)(22) provides that skin has been added to the list of scheduled members for which FECA provides compensation for loss.¹⁴ A schedule award for the skin can be paid in addition to any disfigurement award.¹⁵

OWCP's procedures explain the criteria for determining entitlement to a schedule award for a permanent impairment of the skin. The procedures relate that:

"Chapter 8 in the A.M.A., *Guides* outlines specific criteria to be considered when calculating permanent impairment of the skin. In assessing skin impairment, the

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.10 (February 2013).

¹⁰ *Id.*

¹¹ *M.H.*, Docket No. 07-2186 (issued February 25, 2008).

¹² *Y.K.*, Docket No. 11-1623 (issued June 25, 2012).

¹³ See *William Tipler*, 45 ECAB 185 (1993); *Norma Jean Polen*, 24 ECAB 64 (1972) (finding no award payable for disfigurement of the breast, abdomen, thighs or right arm).

¹⁴ 20 C.F.R. § 10.404 (2011).

¹⁵ *Supra* note 10 at Chapter 2.808.5(4); see also *D.A.*, Docket No. 13-718 (issued June 20, 2013).

physician must evaluate the severity of the condition; the frequency, intensity, and complexity of the medical condition and treatment regimen; and the impact of the condition on the ability to perform Activities of Daily Living (ADLs). ADLs include bathing, dressing, eating, personal hygiene, etc. Burden of Treatment Compliance (BOTC) must also be considered, as it can be significant for skin disorders. BOTC includes, but is not limited to, the following kinds of activities: soaking affected skin daily; applying topical medications on a regular basis; avoiding sun exposure; and attending phototherapy sessions on a routine basis.”¹⁶

The Board finds that as there is no evidence of record that appellant has a skin condition which impacts his ability to perform activities of daily living, OWCP properly determined that appellant has not established entitlement to a schedule award for a permanent impairment of his skin.¹⁷

On appeal appellant argues that he was not just filing a schedule award for disfigurement from scarring, but also for nerve damage to his ear and damage to his lungs caused by the November 8, 2010 employment injury. The Board notes that these are not accepted conditions. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁸

The evidence of record therefore does not establish that appellant has a permanent impairment of a scheduled member, entitling him to a schedule award.

Appellant may request a schedule award or increased schedule award at any time 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 permanent impairment of a scheduled member for schedule award purposes.

¹⁶ *Id.*

¹⁷ *Supra* note 15.

¹⁸ *N.W.*, Docket No. 17-0427 (issued June 20, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 13 and April 10, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 18, 2018
Washington, DC

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

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

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