

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

C.H., Appellant)	
)	
and)	Docket No. 18-0300
)	Issued: July 13, 2018
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PATROL, Yuma, AZ,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 22, 2017 appellant filed a timely appeal from an August 24, 2017 merit decision 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has established that he is entitled to an additional schedule award due to scarring of his left wrist.

FACTUAL HISTORY

On December 1, 2015 appellant, then a 29-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a left wrist injury in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. OWCP accepted the claim for left wrist sprain, left wrist carpal joint sprain, and left wrist radiocarpal joint subluxation. Appellant underwent authorized surgery for scapholunate interosseous ligament reconstruction with dorsal intercarpal capsulodesis, which was performed on May 4, 2016.

On August 19, 2016 appellant filed a claim for a schedule award (Form CA-7). In support of his claim, he submitted an August 18, 2016 report from Dr. Peter J. Campbell, a treating Board-certified orthopedic and hand surgeon. Dr. Campbell concluded that appellant had eight percent left upper extremity permanent impairment due to loss of wrist range of motion and grip strength.

In a September 2, 2016 report, a district medical adviser (DMA) reviewed and concurred with Dr. Campbell's impairment rating. He found August 15, 2016 as the date of maximum medical improvement (MMI) and provided an impairment rating of eight percent left upper extremity impairment using the tables set forth in the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*). Accordingly, OWCP granted appellant a schedule award for eight percent permanent impairment of the left upper extremity for 24.96 weeks to run during the period August 15 to December 10, 2016.

On September 13, 2016 appellant requested a schedule award/impairment rating for the scarring on his left wrist from the surgery for his accepted left wrist condition. In support of his request, he submitted an August 23, 2016 report from Dr. Campbell noting that appellant had a permanent five centimeter by three centimeter scar on the left wrist, dorsal aspect.

In a development letter dated October 6, 2016, OWCP noted that appellant may have sustained permanent disfigurement due to the accepted employment injury. It advised him that a schedule award was not to exceed \$3,500.00 for serious disfigurement of the face, head, or neck if such disfigurement was likely to handicap an individual in securing or maintaining employment. OWCP directed appellant to complete the enclosed Application for Disfigurement (Form CA-1094) and to attach two photographs to the application which showed different views of the disfigurement. It requested that the photographs be at least 4 inches by 5 inches in size and that his face, head, or neck should comprise at least 75 percent of the picture area. OWCP also provided appellant with an Attending Physician's Report for Disfigurement (Form CA-1094) requesting information from an attending physician.

Appellant completed the Form CA-1094 on October 12, 2016. He stated that neither physical therapy nor surgery would correct or improve the disfigurement. Appellant referred to Dr. Campbell's August 23, 2016 report describing his disfigurement and submitted photographs showing the scar on his left wrist.

On November 4, 2016 OWCP routed the case file, statement of accepted facts, and photographs to the DMA for review and a determination pertaining to disfigurement for permanent impairment and MMI. It noted the accepted conditions of left wrist sprain, left wrist carpal joint sprain, and left wrist radiocarpal joint subluxation.

² A.M.A., *Guides* (6th ed. 2009).

By decision dated August 24, 2017, OWCP denied appellant's schedule award claim for scarring/disfigurement, finding that 5 U.S.C. § 8107(c)(21) limits a schedule award for disfigurement to the face, head, or neck if it is "likely to handicap an individual in securing or maintaining employment." Additionally, it pointed out that FECA "makes no provision for scarring or disfigurement of any other part 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 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 or 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

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); *id.* Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017).

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).

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 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.”⁹

ANALYSIS

The Board finds that appellant is not entitled to a schedule award for disfigurement resulting from the scar located on his left wrist.¹⁰

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.¹¹ As the evidence of record pertains to a work-related scar on appellant's left wrist, and not disfigurement of the face, head, or neck, the evidence is insufficient to establish that he is entitled to a schedule award for disfigurement.¹²

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.¹³ A schedule award for the skin can be paid in addition to any disfigurement award.¹⁴

The Board finds that as there is no evidence of record establishing that appellant has a skin condition which impacts his ability to perform ADLs, he is not entitled to a schedule award for permanent impairment of the skin.¹⁵

⁹ *Id.*

¹⁰ *L.R.*, Docket No. 17-1654 (issued January 18, 2018); *M.H.*, Docket No. 07-2186 (issued February 25, 2008).

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

¹² *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).

¹³ *Supra* note 8 at § 10.404 (2011).

¹⁴ *See supra* note 4 at Chapter 2.808.5(4) (March 2017); *see also D.A.*, Docket No. 13-0718 (issued June 20, 2013).

¹⁵ *Id.*

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 that he is entitled to an additional schedule award due to scarring of his left wrist.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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