

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

R.G., Appellant	)	
	)	
and	)	Docket No. 18-1220
	)	Issued: February 5, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
Mooreville, NC, 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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On May 30, 2018 appellant filed a timely appeal from a May 1, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish an additional schedule award due to scarring of his right arm.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On May 17, 2017 appellant, then a 45-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that the repetitive nature of his job duties caused right elbow lateral epicondylitis. OWCP accepted the claim for right elbow lateral epicondylitis. Appellant underwent an OWCP approved right elbow common extensor tendon debridement and repair.

On November 27, 2017 appellant filed a claim for a schedule award (Form CA-7).

On March 9, 2018 OWCP granted appellant a schedule award for four percent permanent impairment of the right upper extremity for 12.48 weeks to run during the period November 20, 2017 to February 15, 2018.<sup>3</sup>

On March 19, 2018 appellant requested an additional schedule award due to the scarring and disfigurement on his right arm which resulted from the surgery for his accepted right elbow condition. In support of his request, he submitted six photographs.

By development letter dated March 27, 2018, OWCP noted that it had received appellant's claim for a schedule award for a permanent disfigurement as a result of his 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 appellant's 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 April 3, 2018. He stated that he had a large scar from the job-related surgery which extended from his elbow down the forearm. Appellant indicated that the scar was very noticeable with short sleeve shirts and that it was embarrassing.

A family nurse practitioner (FNP) completed the attending physician's report for disfigurement (Form CA-1094) on April 5, 2018. It was reported that appellant had a 3½ by 3 millimeter (mm) laceration with skin discoloration and hyperkeratotic tissue on the right arm surrounding the right elbow with noticeable change in pigmentation and surface of skin. The FNP noted that it was unlikely that there would be further significant improvement in the disfigurement and advised that therapy, medical, or surgical treatment would not correct or improve the disfigurement. Five photographs were also submitted, which showed a 3½ by 3 mm laceration with skin discoloration and hyperkeratotic tissue on the right arm by the elbow and a permanent tattoo on the right bicep above the laceration.

By decision dated May 1, 2018, OWCP denied appellant's claim for an additional schedule award for scarring/disfigurement, finding that 5 U.S.C. § 8107(c)(21) limited a schedule award for

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<sup>3</sup> Appellant did not appeal from OWCP's March 9, 2018 decision. Accordingly, the Board will not review that decision on appeal.

disfigurement to the face, head, or neck if it was of a character “likely to handicap an individual in securing or maintaining employment.”

### **LEGAL PRECEDENT**

It is the claimant’s burden of proof to establish that he or she sustained permanent impairment of a scheduled member or function as a result of any employment injury.<sup>4</sup>

The schedule award provisions of FECA<sup>5</sup> and its implementing regulations<sup>6</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>8</sup> 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.<sup>9</sup>

OWCP’s 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.”<sup>10</sup>

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.<sup>11</sup>

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<sup>4</sup> See *J.B.*, Docket No. 17-1907 (issued March 8, 2018).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(c)(4) (March 2017).

<sup>9</sup> See *C.H.*, Docket No. 18-0300 (issued July 13, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>10</sup> 5 U.S.C. § 8107(c)(21).

<sup>11</sup> *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.”<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an additional schedule award due to scarring of his right arm.<sup>13</sup>

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.<sup>14</sup> As the evidence of record pertains to a work-related scar on appellant's right arm, and not disfigurement of the face, head, or neck, the evidence is insufficient to establish that he is entitled to an additional schedule award for disfigurement.<sup>15</sup>

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.<sup>16</sup> A schedule award for the skin can be paid in addition to a disfigurement award.<sup>17</sup>

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.<sup>18</sup>

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<sup>12</sup> *Id.*; see *supra* note 8.

<sup>13</sup> See *C.H.*, *supra* note 9; *L.R.*, Docket No. 17-1654 (issued January 18, 2018); *M.H.*, Docket No. 07-2186 (issued February 25, 2008).

<sup>14</sup> See *C.H.*, *supra* note 9; *Y.K.*, Docket No. 11-1623 (issued June 25, 2012).

<sup>15</sup> See *C.H.*, *supra* note 9; see also *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).

<sup>16</sup> *Supra* note 6 at § 10.404 (2011).

<sup>17</sup> See *supra* note 8 at Chapter 2.808.5(c)(4) (March 2017); see also *D.A.*, Docket No. 13-0718 (issued June 20, 2013).

<sup>18</sup> *Id.*

On appeal, appellant contends that he underwent extensive surgery to repair his employment-related elbow condition and that he has a permanent disfigurement without hope of any visible improvement. For the reasons discussed above, he has not established entitlement to an additional schedule award under either section 8107(c)(21) or 8107(c)(22) of FECA.

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 met his burden of proof to establish that he is entitled to an additional schedule award due to scarring of his right arm.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2019  
Washington, DC

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

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

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