

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

M.C., Appellant	)	
	)	
and	)	Docket No. 23-0301
	)	Issued: September 6, 2023
U.S. POSTAL SERVICE, WARWICK POST	)	
OFFICE, Warwick, RI, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On December 28, 2022 appellant filed a timely appeal from a December 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because he should be entitled to more money as his disfigurement is on his face. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the caserecord. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish entitlement to greater than \$650.00 for a disfigurement schedule award.

## FACTUAL HISTORY

On February 6, 2022 appellant, then a 55-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2022 he sustained a concussion and laceration of the forehead when he struck his head on a steel pole in the loading area while in the performance of duty. He stopped work on February 4, 2022 and returned to work on April 2, 2022. OWCP accepted the claim for laceration without foreign body of other parts of head and concussion without loss of consciousness.

On August 10, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award due to his accepted employment conditions. An August 10, 2022 report signed by a provider with an illegible signature, indicated that the forehead laceration appellant sustained on February 4, 2022 was 36 millimeters (mm) by 2 mm and that the scar had reached maximum medical improvement (MMI).

In a September 21, 2022 development letter, OWCP advised appellant that FECA provided a schedule award, 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. It further provided instructions for submitting photographs of the claimed disfigurement. OWCP requested that appellant complete and submit an attached disfigurement award application form, and that he arrange for an attending physician to complete and submit the form.

On October 5, 2022 a physician with an illegible signature completed the disfigurement report form provided by OWCP, noting that there were no changes in the scar since the last evaluation of August 10, 2022 when appellant reached MMI. The physician further advised that no significant improvement in the disfigurement, which was described as a scar over the right brow, was probable.

On October 5, 2022 appellant also completed the disfigurement award application form. He described his scar as a very large forehead scar. Appellant reported being very self-conscious of his scar and that he was constantly asked about it when he met new people, which occurred every day in his job. He indicated that if he were to have a job interview, he would feel uncomfortable as people always asked him about his scar.

In an October 5, 2022 report, the physician with the illegible signature, reported that there had been no change in appellant's scar since August 10, 2022.

On October 28, 2022 OWCP received two photographs of appellant's forehead.

On October 31, 2022 OWCP referred appellant's case to Dr. David I. Krohn, a Board-certified internist and an OWCP district medical adviser (DMA), requesting that he review the evidence of record and provide an opinion regarding appellant's claim for a disfigurement schedule award.

In a November 2, 2022 report, the DMA, Dr. Krohn, reviewed the October 5, 2022 attending physician's reports, along with appellant's October 3, 2022 statement. Based on the color photographs included with the medical record, he indicated that appellant had a linear scar somewhat vertical to the right eyebrow. It was highly visible, narrow, well-healed, very slightly raised, slightly hyperpigmented, and involved only cutaneous structures. The DMA indicated that there was no evidence of loss of supporting structures either on inspection of the photographs or by report of the head computerized tomography (CT) scan. He noted that there was no report either by the examining physician or appellant of any interference with activities of daily living; however, appellant had expressed concern regarding his appearance and how others viewed his facial scar. The DMA indicated that the date of MMI was October 5, 2022, the date of the attending physician's report for disfigurement, and that, by that date, there was no further surgical intervention that was likely to improve appellant's condition.

OWCP's district director then reviewed the evidence of record and, in a December 13, 2022 memorandum, determined that appellant's scarring was related to the accepted work injury, and that the disfigurement was "of a character likely to handicap an individual in securing or maintaining employment." Given the size of the scar and location, he determined that appellant was entitled to a disfigurement schedule award in the amount of \$650.00.

By decision dated December 21, 2022, OWCP granted appellant a disfigurement schedule award in the amount of \$650.00.

### **LEGAL PRECEDENT**

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.<sup>3</sup> To support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred, describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>4</sup>

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.<sup>5</sup> OWCP procedures further provide that a DMA will be asked to review such claims and to evaluate the employee's disfigurement. If the DMA finds that MMI has occurred, he or she will review the photographs submitted along with the medical evidence of record and place a memorandum in the file describing the disfigurement and stating whether MMI has occurred. If the DMA finds MMI has occurred, the concurrence of the district director or assistant district director must be obtained. Following the file review, the

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<sup>3</sup> *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>4</sup> *B.J.*, Docket No. 19-0960 (issued October 7, 2019).

<sup>5</sup> 5 U.S.C. § 8107(c)(21).

district director or assistant district director will also write a memorandum which contains a description of the disfigurement.<sup>6</sup>

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.<sup>7</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

As noted above, 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.<sup>8</sup> In a November 2, 2022 report, the DMA indicated that, based on his review of the color photographs in the case record, there was a highly visible, narrow, well-healed, very slightly raised, slightly hyperpigmented and involved only cutaneous structures. He indicated that there was no evidence of loss of supporting structures either on inspection of the photographs or by report of the head CT scan. OWCP's district director then reviewed the evidence of record. In a December 13, 2022 memorandum, he discussed appellant's medical condition and concluded that his disfigurement was "of a character likely to handicap an individual in securing or maintaining employment." However, OWCP's district director concluded that OWCP should grant appellant a disfigurement schedule award in the minimum amount of \$650.00.

However, while the determination as to what constitutes "proper and equitable compensation" is initially one for the Director, his memorandum fails to explain a basis for the determination of the schedule award in the minimum amount of \$650.00. Consequently, the Board is prevented from making an informed decision in this matter.<sup>9</sup> The case will, therefore, be remanded for reevaluation of the amount of compensation which is proper and equitable and for a *de novo* decision which sufficiently explains the determination of the amount of the schedule award.<sup>10</sup>

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.10 (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.5 (January 2010); *see T.B.*, Docket No. 20-0158 (issued March 18, 2022); *J.S.*, Docket No. 19-1226 (issued December 23, 2019); *see L.J.*, Docket No. 13-0104 (issued October 21, 2013).

<sup>7</sup> 5 U.S.C. § 8107(c)(21); *J.S.*, *id.*; *A.M.*, Docket No. 14-0787 (issued July 15, 2014).

<sup>8</sup> *See supra* note 5.

<sup>9</sup> *See Harold B. White*, 48 ECAB 289 (1997) (Groom, Alternate Member, concurring); *Carlisle Leonard Vincent*, 5 ECAB 186 (1952).

<sup>10</sup> *Id.*

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 6, 2023  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board