

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD J. SATTAZAHN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lebanon, PA

*Docket No. 97-1918; Oral Argument Held February 16, 2000;
Issued April 13, 2000*

Appearances: *Martin R. Cohen, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in issuing a schedule award of \$2,500.00 for appellant's employment-related facial disfigurement.

The Board finds that the Office did not abuse its discretion in issuing a schedule award of \$2,500.00 for appellant's employment-related facial disfigurement.

Appellant, a nursing aid, filed a claim on January 13, 1993 alleging that he sustained an injury to his left lower jaw when a patient struck him. The Office accepted his claim for bilateral mandibular fracture and resulting surgery. Appellant filed a claim for a schedule award for disfigurement on May 23, 1994. By decision dated January 24, 1995, the Office granted appellant a schedule award for disfigurement in the amount of \$2,500.00. Appellant requested an oral hearing and by decision dated February 21, 1997 and finalized on February 24, 1997, the hearing representative affirmed the Office's January 24, 1995 decision.

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 under the Federal Employees' Compensation Act in the amount of up to \$3,500.00.¹ In an appeal involving a disfigurement, the question before the Board is whether the amount awarded by the Office was based upon sound and considered judgment and was "proper and equitable" under the circumstances as provided by 5 U.S.C. § 8107(c)(21).² In determining what constitutes a

¹ 5 U.S.C. § 8107(c)(21).

² *John F. Critz*, 44 ECAB 788, 791-92 (1993).

“proper and equitable” award for disfigurement, an evaluation must be made as to the likely economic effect of appellant’s disfigurement in securing and maintaining employment.³ As the only limitation on the Office’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 deductions from established facts.⁴

The Office’s procedure manual provides the steps for the Office to follow in evaluating disfigurement cases.⁵ The Office will provide the claimant with notification of the right to apply for an award, with the proper forms for both the claimant and his physician and with notification of the need for photographs.⁶ After the Office has collected the required evidence, the district medical Director or assistant medical Director will examine the claimant and place a memorandum in the record describing the disfigurement and stating whether maximum medical improvement has occurred.⁷

Appellant completed the Office forms on July 5, 1994, described his disfigurement and submitted photographs. He stated that his lower lip draws in and that he is unable to move it. Appellant stated that he had difficulty with speech, eating and drinking as well as being affectionate with his spouse. Appellant’s attending physician, Dr. Donald R. Mackay, a plastic surgeon of professorial rank, completed the accompanying form report and stated that appellant reached maximum medical improvement on July 15, 1994. He stated that appellant had numbness in his lower lip and that he had a scar from plates in his submandibular area bilaterally.

Dr. Mackay submitted a supplemental report on October 17, 1994 and noted appellant’s history of injury. He stated that appellant underwent an open reduction internal fixation with plates and screws. Dr. Mackay stated appellant subsequently developed an infection which required removal of the plates and caused persistent draining sinuses and painful scars in the region of the incision lines. He stated that appellant experienced numbness in the anterior part of his mouth and lower lip resulting in some difficulty eating, drinking and with speech. Dr. Mackay found that appellant had nerve impairment resulting in 5 to 10 percent impairment of the whole person.

The district medical Director examined appellant on December 23, 1994. He stated that following surgery appellant’s internal fixation devices became infected resulting in draining sinuses. The district medical Director stated that appellant had wider than usual depressed scars submental. He stated that the major deformity was jaw movement when trying to speak which

³ *Id.*

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (March 1995).

⁶ *Id.*

⁷ *Id.*

was asymmetrical. The district medical Director suggested compensation in the amount of \$2,500.00.

The district medical Director personally examined appellant and evaluated his disfigurement. The Board notes that appellant has no economic loss as a result of his disfigurement as he is currently earning more than that of his date-of-injury position. The Office took into consideration the proper factors and circumstances and made a sound and considered judgment which was proper and equitable under section 8107(c)(21) of the Act and does not constitute an abuse of discretion.

The Board further notes that appellant is not entitled to a schedule award for any other impairment to his face or lips. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the lips, mouth or chin no claimant is entitled to such an award.⁸

The February 24, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *George E. Williams*, 44 ECAB 530, 533 (1993); *John F. Critz*, *supra* note 2.