

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

W.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Macon, GA, Employer**

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**Docket No. 12-1677
Issued: March 12, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2012 appellant filed a timely appeal of a July 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for a schedule award due to facial disfigurement. 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he is entitled to a schedule award for facial disfigurement.

FACTUAL HISTORY

On May 31, 2011 appellant, then a 58-year-old window clerk, filed a traumatic injury alleging on that date that a board fell down from a window at the employing establishment injuring his head and the left side of his face. He sought medical treatment and was diagnosed

¹ 5 U.S.C. § 8101 *et seq.*

with a facial laceration. Appellant requested a schedule award on July 23, 2011 for headaches, nerves and post-traumatic stress disorder.

By decision dated July 28, 2011, OWCP accepted appellant's claim for open wound of the face without complications. It issued a letter noting that, as his claim had been accepted for facial laceration, he could be entitled to 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. OWCP directed appellant to complete the enclosed application for disfigurement award, Form CA-1094 and to attach to the application two photographs which showed different views of the disfigurement. It requested that the photographs be at least 4 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 a Form CA-1094 requesting information from an attending physician.

Appellant completed an application for a facial disfigurement award on August 3, 2011 and described his disfigurement as the head and lips. He stated that he experienced bad headaches, dizziness and blurry vision. Appellant also stated that his condition made it difficult to interact with people.

In a note dated June 28, 2011, Dr. J.F. Beaty, a Veterans Administration physician, stated that appellant was experiencing cognitive difficulties related to his head injury. He recommended time off from work from July 5 through 22, 2011. Dr. Beaty did not address facial disfigurement.

In a form report dated May 31, 2011, an emergency medical technician (EMT) noted that appellant was working on a window when a board from the top of the window, approximately four to five feet up, fell and hit him on the head. Appellant reported dizziness and headache. The EMT described a laceration of approximate 0.5 inches on his forehead and small abrasions above his upper lip.

By decision dated March 28, 2012, OWCP denied appellant's claim for a schedule award. It noted that he failed to provide the requested photographs to support facial disfigurement or any medical evidence to support his claimed disfigurement.

Appellant requested an oral hearing before an OWCP hearing representative on April 9, 2012.

By decision dated July 26, 2012, an OWCP hearing representative affirmed the denial of appellant's claim, finding that there was no medical evidence of or photographs to support any facial disfigurement warranting schedule award.

LEGAL PRECEDENT

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 FECA in the amount of up to \$3,500.00.² In an appeal involving a disfigurement, the question

² 5 U.S.C. § 8107(c)(21).

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 5 U.S.C. § 8107(c)(21).³ In determining what constitutes a “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.⁴ As the only limitation on OWCP’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.⁵ The Board will not interfere with or set aside a disfigurement determination of OWCP unless clearly in error.⁶

OWCP’s procedures provide the steps for OWCP to follow in evaluating disfigurement cases.⁷ It 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.⁸ After OWCP 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.⁹

ANALYSIS

The Board finds that appellant has not established that he sustained facial disfigurement so as to warrant a schedule award. Appellant’s claim was accepted for open wound of the face without complications. According to OWCP’s procedures, a claimant seeking a schedule award for facial disfigurement must complete the front of a Form CA-1094 while the attending physician should complete the reverse of the form.¹⁰ With the CA-1094 form, the claimant must submit two photographs taken within five days of the date of the application, each showing different views of the disfigurement fairly and accurately portrayed. After the required evidence is submitted, the case is referred to an OWCP district medical adviser for evaluation to include personal examination of the claimant by OWCP officials. Appellant did not submit the required documentation or the medical evidence requested. He has not met his burden of proof to establish granting a schedule award for facial disfigurement.¹¹

³ *John F. Critz*, 44 ECAB 788, 791-92 (1993).

⁴ *Id.*

⁵ *Daniel J. Perea* 42 ECAB 214, 221 (1990).

⁶ *D.B.*, Docket No. 11-1293, 11-1825 (issued April 9, 2012).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (January 2010).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* note 7.

¹¹ *L.E.*, Docket No. 09-1431 (issued January 11, 2010).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained permanent disfigurement to his face causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board