

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS L. WARING and DEPARTMENT OF THE NAVY,
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 96-2251; Submitted on the Record;
Issued July 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in determining that appellant is entitled to a schedule award in the amount of \$300.00 for facial disfigurement.

In the instant case, on July 1, 1994, appellant filed a claim for a traumatic injury occurring on that date when a pipe struck him on the forehead. The Office accepted appellant's claim for a forehead laceration. By decision dated June 21, 1996, the Office issued appellant a schedule award for \$300.00 for facial disfigurement resulting from his accepted employment injury.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in determining that appellant is entitled to a schedule award in the amount of \$300.00 for facial disfigurement.

The Federal Employees' Compensation Act¹ provides in section 8107(c)(21) that, "[f]or 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."²

In a case involving 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 section 8107(c)(21) of the Act. In determining what constitutes "proper and equitable" compensation for disfigurement, sound

¹ 5 U.S.C. § 8101 *et seq.*

² 5 U.S.C. § 8107(c)(21).

judgment and equitable evaluation must be exercised as to the likely economic effect of appellant's disfigurement in securing and maintaining employment.³

The Board has recognized that the Office deputy commissioners, Office assistant deputy commissioners, Office chiefs of branch of claims, Office district directors and similar officials, because of their expertise, have the status of experts in evaluating disfigurement for schedule award purposes so long as they personally view the disfigurement.⁴

The Office has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time possible. 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.⁵ The Board will not interfere with or set aside a disfigurement determination of the Office unless it is clearly in error.⁶

By letter dated February 14, 1996, an Office assistant district director informed appellant that both he and the district medical director would schedule an interview with appellant regarding his claim for disfigurement resulting from his July 1, 1994 employment injury. The Office district medical director examined appellant on June 11, 1996 and found that appellant had a "vertical healed laceration presently three centimeters long on the central forehead starting at the hairline." He stated:

"There is no definitive localized tenderness in the wound area nor is there noticeable pigmentation or depigmentation. The scar is raised less than two millimeters from the surface of the forehead. On wrinkling the forehead there are no contractures or surface distortions. A residual scar is present which is barely noticeable in room light."

The Office medical director further noted that appellant did not require additional medical or surgical treatment.

In a memorandum to the Director incorporated into the Office's June 21, 1996 decision, the assistant district director who interviewed appellant indicated that he reported successful interaction with the public and no adverse impact on his work due to his scar. The Office assistant district director noted that subsequent to appellant's employment injury, the facility where appellant worked closed and the employing establishment relocated him to another position. He further noted, however, that appellant maintained that the change in location was not related to his employment injury. The Office assistant district director found that appellant

³ *Gary W. Blanch*, 44 ECAB 865 (1993).

⁴ *Alfred T. Baldwin*, 30 ECAB 734 (1979).

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

⁶ *Gary W. Blanch*, *supra* note 3.

had “barely noticeable scarring” which “would have a minimal impact on securing or maintaining employment.” He thus determined that appellant was entitled to an award of \$300.00 for disfigurement causally related to his employment injury.

On appeal, appellant contends that he should receive a greater schedule award. The Office, in granting appellant a schedule award in the amount of \$300.00 for facial disfigurement based on the recommendation of the Office assistant district director and Office medical director, took into consideration the proper factors and circumstances and made a sound and considered judgment, which did not demonstrate clear error. Therefore, the Office did not abuse its discretion in its determination of the amount of appellant’s schedule award for facial disfigurement.

The decision of the Office of Workers’ Compensation Programs dated June 21, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 7, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member