WCAT Decision Number: WCAT-2004-00032-RB
WCAT Decision Date: **January 08, 2004**
Panel: Ian J. Puchlik, Vice Chair

Introduction

The worker suffered a chainsaw laceration to the left side of his face on August 22, 2000. He was advised by an officer of the Workers' Compensation Board (Board) in a letter dated December 19, 2001 that he had been awarded a lump sum of $4,386.32.

Issue(s)

At issue is the determination of the worker's disfigurement entitlement.

Jurisdiction

This appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and the Review Board were replaced by the Workers' Compensation Appeal Tribunal (WCAT). As this appeal had not been considered by a Review Board panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No. 2), 2002*, section 38.)

Background and Evidence

A file photograph reveals a laceration to the left side of the worker's face which runs from the left temple area to just above the corner of the mouth near the nose. In a memo dated December 13, 2001 a disability awards officer described the disfigurement as follows:

> I would estimate that 5% of the entire head and neck area is involved. There is moderate alteration of texture with no significant wrinkling or puckering. There is mild alteration of color and there is no significant color change when comparing to the unaffected adjacent skin. Full points for visibility are granted. The scar is mildly depressed but there has been no other loss of bodily form.

By applying the points/factors contained in item #43.20 of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) the disability awards officer determined the points as follows:

Points

1.	Surface	5
2.	Texture / Keloid	5
3.	Colour	5
4.	Visibility	99
5.	Loss of Bodily Form	3
Total Points ……		**117**

The calculation was then made in accordance with item #43.20 of the RSCM to arrive at the award of $4,386.32.

In his notice of appeal the worker has stated that he is seeking an increase in the disfigurement entitlement, but makes no submission nor provides additional evidence to suggest what the award should be.

Law and Policy

Section 23(5) of the *Workers Compensation Act* states:

> Where the worker has suffered a serious and permanent disfigurement which the Board considers is capable of impairing the worker's earning capacity, a lump sum in compensation may be paid, although the amount the worker was earning before the injury has not been diminished.

Item #43.20 of the RSCM establishes guidelines and a process for calculating the disfigurement entitlement. Of significant importance is the determination of the point system which is identified in a grid containing four point categories within each of five factors. This points/factors grid is utilized in determining the total points, in this case 177.

Decision and Reasons

The disability awards officer considered the worker's facial disfigurement in light of the grid in item #43.20 of the RSCM.

Surface

The disability awards officer estimated the area of disfigurement relative to the total surface area of the entire head and neck area, as being 5 percent of the entire area. Although this may appear to be a subjective determination, I have no reason not to accept his judgement, and therefore the worker is entitled to five points on this factor.

Texture – Keloid

The Board officer noted there was moderate alteration of texture but no significant wrinkling, which I accept. However I note the grid awards a higher award for moderate alteration and I find that a better balance between these two factors would best be represented by an award in the mid-range rather than the low end of the range. An award of 5 points for the slight wrinkling and 25 points for moderate alteration of texture would best be represented by an overall 15 points.

Colour

The colour change is noted to be mild but not significant by the disability awards officer resulting in a value of five points. As there was no evidence to the contrary I accept this evaluation and award of 5 points.

Visibility

The worker was given the maximum 99 points for this factor.

Loss of Bodily Form

The scar was considered to be mildly depressed by the disability awards officer and awarded a minimal of three points. My view of the photograph shows a mild to moderate depression and I would therefore award 24 points for loss of form.

Summary and Conclusion

In light of the foregoing, I find the disfigurement award should be based on a total of 144 points. I therefore allow the worker's appeal and vary the Board officer's decision. No expenses were requested, and none are awarded.

Ian J. Puchlik
Vice Chair

IJP/hba/gl

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