U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS D. GULCH and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, N.J.

Docket No. 97-622; Submitted on the Record;
Issued August 20, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant developed arthritis and degenerative disc and joint disease conditions in the performance of duty, causally related to factors of his federal employment.

The Board finds that the August 22, 1996 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and law of the case, and hereby adopts the hearing representative's findings and conclusions.

On appeal appellant's representative argues that the Office improperly ignored appellant's requests to participate in the selection of an impartial medical examiner and failed to issue a separate decision on that issue, improperly failed to develop the initial impartial medical examiner's report, and improperly referred appellant to another impartial medical examiner.

The Board notes, however, that in *Henry J. Smith*,[1] it explained that the language of the Federal (FECA) Procedure Manual, Chapter 3.500.4(b)(4) addressing the selection of a referee medical examiner does not grant a claimant an unqualified right to participate in the selection of the impartial physician, but provides that a claimant must offer his reason for desiring to participate in the selection, and that the proffered explanation must then be evaluated by the claims examiner for its validity and rationale, to ascertain whether or not to grant the claimant's request for participation. In the instant case, the record reveals that only one of appellant's two requests to participate in the selection of the medical referee was received prior to the date of the scheduled examination, and that request gave the reason for wanting participation as appellant's desire to undergo a "truly impartial examination." As the hearing representative properly explained, appellant's articulated reason for desiring participation, namely that of insuring a

[1] 43 ECAB 892, 894 (1992); *see also David Alan Patrick*, 46 ECAB 1020 (1995) (in two instances the Office will prepare a list of three specialists for selection by the claimant: first, when there is a specific request for participation and a valid reason for participation is provided; or, when there is a valid objective to the physician selected by the Office).

"truly impartial [medical] examination," was already insured by the Office's proper reliance upon the rotation system for selection of an impartial examiner, such that appellant's request was redundant and unnecessary, and did not warrant a separate decision on that issue, as the Office hearing representative's rationale fully explained in the August 22, 1996 decision.

Additionally, the Board notes that when the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming, as in this case, or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative, or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question. Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Federal Employees' Compensation Act[2] will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[3] This procedure was properly followed in this case.

Further, if, as in this case, an appointment with that physician cannot be kept, referral to a third physician chosen once more by proper use of the rotation system, insures the impartiality of the medical examination the claimant will receive. The Office referral to Dr. Rogers was, therefore, certainly proper under the circumstances of this case.

As no improper actions are apparent by the Office, there is no reason for not according Dr. Rogers' well-rationalized report the special weight that it is due, such that it establishes that appellant's osteodegenerative skeletal problems are not causally related to factors of his federal employment.

[2] 5 U.S.C. § 8123(a) provides the following: "An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[3] *Harold Travis*, 30 ECAB 1071 (1979).

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 20, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member