United States Department of Labor Employees' Compensation Appeals Board

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J.S., Appellant)
and) Docket No. 13-523) Issued: May 13, 2013
U.S. POSTAL SERVICE, AIRMAIL FACILITY, Seattle, WA, Employer))
)
Appearances: John E. Goodwin, Esq., for the appellant Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before: COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge ALEC J. KOROMILAS, Alternate Judge

On January 9, 2013 appellant filed a timely appeal of a November 29, 2012 decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 13-523.

The case has been before the Board on prior appeals. By order dated April 11, 2011, the Board noted that an OWCP hearing representative had remanded the case for the selection of a referee physician who was a pain medicine specialist. The Board specifically noted that the American Board of Medical Specialists (ABMS) recognizes a certification for the subspecialty of pain medicine, under the primary specialties of anesthesiology, neurology and physical medicine and rehabilitation. The case was remanded for selection of a referee physician that was Board-certified in the subspecialty of pain medicine. By order dated July 12, 2012, the Board again

¹ Docket No. 92-4 (issued June 30, 1992) (Board affirmed finding that residuals of October 15, 1988 low back strain had resolved); Docket No. 94-442 (issued August 4, 1995) (Board affirmed finding that reconsideration request was untimely and failed to show clear evidence of error); Docket No. 00-1400 (issued May 10, 2011) (Board remanded for further development as to a recurrence of disability January 8, 1998); Docket No. 03-1108 (issued September 20, 2003) (Board found conflict in medical evidence).

² Docket No. 10-1559 (issued April 21, 2011).

remanded the case, finding that OWCP had not submitted new documentation establishing that the previously selected physician was Board-certified in the subspecialty of pain medicine.³

On remand, OWCP selected Dr. Daniel Brzusek, an osteopath who is Board-certified in physical medicine and rehabilitation. Dr. Brzusek submitted a September 11, 2012 report, and by decision dated November 29, 2012, OWCP found the report was entitled to special weight and resolved the conflict in the medical evidence. OWCP did not make a finding that Dr. Brzusek was Board-certified in the subspecialty of pain medicine, did not present any evidence on the issue, nor is there evidence from ABMS that Dr. Brzusek was Board-certified in the subspecialty of pain medicine.

The remands from the Board have provided straightforward instructions to OWCP for the selection of a referee physician that is Board-certified in the subspecialty of pain medicine. Unless OWCP can provide specific documentation that Dr. Brzusek is Board-certified in the subspecialty of pain medicine, the case requires selection of a new referee physician. The Board notes that, under the current procedures for the selection of a referee physician, when there are exceptional circumstances such as when an "esoteric specialty is required," OWCP may schedule a referee outside of the Medical Management Application (MMA) by consulting an appropriate directory of Board-certified medical specialists. If this procedure would facilitate the proper selection of a referee physician in this case and prevent additional delay in resolving the medical issue presented, OWCP may employ such a procedure in this case.

The case will again be remanded to OWCP for proper selection of a referee physician that is Board-certified in the specific subspecialty of pain medicine, with appropriate documentation of such Board-certification in the record. After such further development as OWCP deems necessary, it should issue an appropriate decision.

³ Docket No. 12-231 (issued July 12, 2012).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5 (December 2012).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 29, 2012 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: May 13, 2013 Washington, DC

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board