

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT CREMATO and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION REHABILITATION CENTER, St. Albans, NY

*Docket No. 99-549; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective June 7, 1995 on the grounds that he refused an offer of suitable work.

This is the second appeal in this case.¹ In its decision dated November 24, 1997, the Board reversed the Office's September 14 and June 7, 1995 decisions on the grounds that there existed an unresolved conflict in the medical evidence between appellant's physician, Dr. Leonard Langman, a neurologist, who opined that appellant was totally disabled, and Dr. Jeffrey Appelbaum, a Board-certified neurologist serving as an Office referral physician, who opined that appellant should be able to perform some type of employment. The Office properly identified this conflict, and referred appellant, along with a statement of accepted facts and medical records, to Dr. Joseph C. Yellin, a neurologist, as an impartial medical specialist to resolve the conflict in the medical evidence. On the basis of Dr. Yellin's opinion that, within certain restrictions, appellant could work six to eight hours a day, the Office determined that a light-duty full-time position as a file clerk was suitable for appellant, and further found that appellant's refusal of the position was not justified. The Board found, however, that there was no indication in the record that Dr. Yellin is a Board-certified specialist, as required by the Office's procedures² and, therefore, found that Dr. Yellin's opinion could not be accorded the special weight given to an impartial medical specialist.³ Because the medical evidence of record only showed a conflict of opinion on appellant's ability to perform the duties of the offered position, the Board determined that the Office had not established that the position offered to

¹ See Docket No. 96-304 (issued November 24, 1997).

² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (March 1994); see *Walter N. Smith*, Docket No. 92-216 (issued October 15, 1992).

³ See *James P. Roberts*, 31 ECAB 1010 (1980).

appellant was suitable, and, therefore, the Office had no basis for its termination of appellant's compensation on the grounds that he refused suitable employment offered by the employing establishment. The facts of this case are more fully set forth in the prior decision of the Board and are incorporated herein by reference.

After remand of the case record, the Office researched Dr. Yellin's qualifications and concluded that he was Board-certified in neurology and had been properly selected as a referee physician in accordance with the method set forth in the Office procedure manual. Accordingly, in a decision dated October 7, 1998, the Office determined that its original selection of Dr. Yellin as an impartial medical specialist was valid and, therefore, the Office had properly terminated appellant's compensation, on the basis of Dr. Yellin's opinion, effective June 7, 1995.

The Board finds that the Office improperly terminated appellant's compensation for refusal to accept suitable employment.

In its October 7, 1998 decision issued after remand, the Office properly noted that the procedure for the selection of an impartial medical specialist is detailed in the Federal (FECA) Procedure Manual Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4. The Office procedure manual provides that "unlike the selection of second opinion examining physicians, the selection of referee physicians is made by a strict rotational system using appropriate medical directories" and specifically states that "the Physicians' Directory System (PDS) should be used for this purpose."⁴ The Office procedure manual explains that the "PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations" and states that "the database of physicians for referee examinations was obtained from the MARQUIS Directory of Medical Specialists."⁵

In its decision after remand, the Office stated that the selection of Dr. Yellin as a referee physician was accomplished entirely by the PDS computer software,⁶ and emphasized that the PDS contains a list of medical specialists who have been prescreened to ensure that they qualify to be used as impartial medical specialists, *i.e.*, they are all Board-certified in their specialties per the MARQUIS Directory of Medical Specialists. The Office asserts that Dr. Yellin is listed in the PDS and states that "it is therefore a foregone conclusion that any PDS selected impartial physician must be Board-certified in his specialty by virtue of his name being on the list of impartial examiners, and being thus selected." In support of its position, the Office submitted into the record file a copy of Dr. Yellin's certificate of Board-certification. A review of Dr. Yellin's certificate, however, reveals that it was issued by the American Osteopathic Board of Neurology and Psychiatry. As the Office points out, the PDS is intended to be used in conjunction with the MARQUIS Directory of Medical Specialists, which contains the names of physicians certified by the American Board of Medical Specialties. The MARQUIS Directory does not list the American Osteopathic Board in its list of approved Boards and further does not

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (March 1994).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7(a) (March 1994).

⁶ The Office provided documentary evidence that Dr. Yellin was in fact selected through the PDS.

list Dr. Yellin in its list of Board-certified physicians.⁷ Therefore, Dr. Yellin does not appear to be a Board-certified physician within the definition set forth by the Office in its procedure manual. Accordingly, Dr. Yellin's opinion cannot be accorded the special weight given to an impartial medical specialist and, therefore, the Office had no basis for its termination of appellant's compensation on the grounds that he refused suitable employment offered by the employing establishment.

The decision of the Office of Workers' Compensation Programs dated October 7, 1998 is hereby reversed.

Dated, Washington, D.C.
September 20, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ The American Board of Medical Specialties Directory of Board-Certified Medical Specialists (29th ed. 1997). Dr. Yellin's name also does not appear in the MARQUIS electronic database, or in the electronic database of Board-certified physicians maintained by the American Medical Association.