

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAZARUS E. JACKSON and DEPARTMENT OF THE ARMY,
CONSOLIDATED PROPERTY BOOK BRANCH, Fort Dix, NJ

*Docket No. 00-1881; Submitted on the Record;
Issued June 19, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has more than a seven percent permanent impairment of the left lower extremity for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

This is the second appeal in this case.¹ Previously, the Board found an unresolved conflict in the medical evidence and remanded the case for resolution by an impartial medical specialist. The facts of this case are set forth in the Board's July 14, 1998 decision and are herein incorporated by reference.

Following the Board's July 14, 1998 decision, appellant was referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence.

The impartial medical specialist, Dr. Lawrence I. Barr, an orthopedic surgeon and osteopathic physician, submitted reports dated November 4 and 24, 1998.

By decision dated December 10, 1998, the Office denied appellant's claim for an additional schedule award.

By decision dated September 21, 1999, an Office hearing representative set aside the Office's December 10, 1998 decision and modified appellant's March 14, 1994 schedule award to include an additional two percent permanent impairment of the left lower extremity, for a total of seven percent.

¹ See Docket No. 96-2133 (issued July 14, 1998).

By decision dated October 6, 1999, the Office granted appellant an additional schedule award for six weeks based upon a two percent permanent impairment of the left lower extremity.²

By letter dated October 13, 1999, appellant, through his representative, requested a hearing.

By decision dated January 13, 2000, the Office denied appellant's request for a hearing on the grounds that a hearing had already been held in his case and that the issue involved could be resolved equally well through a request for reconsideration and the submission of additional evidence.

The Board finds that this case is not in posture for decision.

Under the Office's procedures, a physician selected to perform an impartial medical examination should be a Board-certified specialist. A specialist who is not Board-certified may be selected to perform such an examination but the necessity for such selection must be documented.³

The Office's 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. The manual specifically states that "the Physician's Directory System (PDS) should be used for this purpose," that the "PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations" and that "the database of physicians for referee examinations was obtained from the MARQUIS Directory of Medical Specialists."⁴

In this case, the MARQUIS Directory does not list Dr. Barr as a Board-certified physician.⁵ Nor is Dr. Smith identified as being Board-certified in the American Medical Association, Directory of Physicians in the United States (35th ed. 1996) or the electronic database of physicians maintained by the American Medical Association. Therefore, Dr. Barr does not qualify as a Board-certified physician within the definition set forth by the Office in its procedure manual. The Office referred appellant to Dr. Barr for resolution of a conflict in the medical evidence even though Dr. Barr was not Board-certified. The Office did not provide any

² Appellant had previously been awarded a schedule award for a five percent permanent impairment.

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (March 1994).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7(a) (March 1994).

⁵ The American Board of Medical Specialties Directory of Board-Certified Medical Specialists (30th ed. 1998)

documentation to justify the referral of appellant to Dr. Barr to resolve the conflict in the medical evidence. The Office therefore improperly referred appellant to Dr. Barr for a resolution of the conflict in the medical evidence.⁶

The case must therefore be remanded for referral of appellant to an appropriate Board-certified specialist to resolve the conflict in the medical evidence. After such development as it may find necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated January 13, 2000 and October 6 and September 21, 1999 are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
June 19, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ See *Albert Cremato*, 50 ECAB ____ (Docket No. 99-549, issued September 20, 1999); *Marlene M. Hartley*, 49 ECAB 588 (1999).