

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM G. ELLESIN and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, North Canton, OH

*Docket No. 00-1133; Submitted on the Record;
Issued March 13, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any disability or medical condition on or after April 21, 1998 causally related to his August 1, 1997 employment injury.

On August 1, 1997 appellant, then a 51-year-old air traffic control supervisor, sustained a temporary aggravation of left ankle osteoarthritis in the performance of duty when his chair became caught on carpeting.

On May 16, 1998 appellant filed a claim for a recurrence of disability, which he attributed to his August 1, 1997 employment injury.

In a report dated April 21, 1998, Dr. Ian J. Alexander, appellant's attending orthopedic surgeon, diagnosed post-traumatic osteoarthritis of the left ankle.

In a report dated September 3, 1998, Dr. Charles J. Paquelet, an Office referral physician, opined that appellant's continuing problems were due to his preexisting osteoarthritis rather than his August 1, 1997 employment injury.

By decision dated September 10, 1998, the Office denied appellant's claim for a recurrence of disability.

By letter dated September 15, 1998, appellant requested an oral hearing which was held on February 3, 1999.

In a report dated February 26, 1999, Dr. Alexander opined that appellant's August 1, 1997 employment injury aggravated and accelerated his underlying osteoarthritis.

By decision dated April 15, 1999, the Office hearing representative found an unresolved conflict in the medical evidence between Drs. Alexander and Paquelet and remanded the case for referral of appellant to an appropriate Board-certified impartial medical specialist.

The Office selected Dr. David W. Smith, an osteopath and orthopedic surgeon, to act as an impartial medical specialist in resolving the conflict in the medical evidence. In a report dated July 6, 1999, Dr. Smith examined appellant and opined that appellant had no continuing disability or medical condition causally related to his August 1, 1997 temporary aggravation of left ankle osteoarthritis.

By decision dated August 4, 1999, the Office denied appellant's entitlement to any additional medical care or lost wages on the grounds that he had no residuals causally related to his August 1, 1997 employment injury.

By letter dated August 10, 1999, appellant requested an oral hearing which was held on November 15, 1999. At the hearing appellant submitted additional medical evidence.

By decision dated February 4, 2000, the Office hearing representative affirmed the Office's August 4, 1999 decision on the grounds that the weight of the medical evidence, as represented by Dr. Smith, established that appellant had no continuing disability or medical condition causally related to his August 1, 1997 employment injury.

The Board finds that this case is not in posture for a 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 a selection must be documented.¹

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" and specifically states that "the Physician's Directory System (PDS) should be used for this purpose."² The Office's 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."³

In this case, the MARQUIS Directory does not list Dr. Smith in its list of Board-certified physicians.⁴ 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. Smith does not appear to be a Board-certified physician within the definition set forth by the Office in its procedure manual. The Office referred appellant to Dr. Smith for resolution of a conflict in

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

² *Id.*

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

⁴ The American Board of Medical Specialties Directory of Board-certified Medical Specialists (30th ed. 1998).

the medical evidence even though Dr. Smith was not Board-certified. The Office did not provide any documentation to justify the referral of appellant to Dr. Smith to resolve the conflict in the medical evidence. The Office therefore improperly referred appellant to Dr. Smith for a resolution of the conflict in the medical evidence.⁵

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 further development as it may find necessary the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated February 4, 2000 and August 4, 1999 are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
March 13, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Albert Cremato*, 50 ECAB ____ (Docket No. 99-549, issued September 20, 1999); *Marlene M. Hartley*, 49 ECAB 588 (1998).