

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD SANTOS and DEPARTMENT OF THE ARMY,
NATIONAL GUARD BUREAU, Natick, MA

*Docket No. 02-624; Submitted on the Record;
Issued August 19, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation.

On October 10, 1989 appellant, then a 29-year-old tools and parts attendant, injured his back while unloading radios from a truck. He sought medical treatment that day and returned to work on October 17, 1989 and continued working limited duty until October 31, 1989 when he stopped due to pain. Appellant has not returned to work since that day.

The claim was accepted for low back strain and later, a herniated disc at L4-5.

Appellant received compensation for total disability and was treated by his physician Dr. Eugene Russo, a neurologist.

In a March 12, 1999 letter, following a periodic review, the Office referred appellant to Dr. James McLennan, located at 1 Randall Square, Suite 410, Providence, RI for a second opinion referral.

In a March 31, 1999 report, Dr. McLennan found that appellant had no objective evidence that he had a neurological or orthopedic condition.

In an October 19, 1999 letter, the Office proposed terminating appellant's compensation relying on Dr. McLennan's report to find he was no longer totally disabled. The Office terminated appellant's compensation by decision dated November 23, 1999. Thereafter, he requested a hearing.

A hearing was held on May 18, 2000 and the hearing representative reversed the termination finding a conflict in the medical evidence between Drs. Russo and McLennan.

In a December 6, 2000 letter, appellant was referred for an impartial medical examination to Dr. Michael Olin located at 63 Eddie Dowling Highway, Suite 7, North Smithfield, RI.

In a December 6, 2000 letter to appellant notifying him of the referral to Dr. Olin, the address provided to appellant for Dr. Olin was 1 Randall Square, Suite 410, Providence, RI, the same address as Dr. McLennan.

In a December 13, 2000 report, Dr. Olin found appellant was no longer disabled.

The Office proposed to terminate appellant's compensation in a February 27, 2001 letter. By decision dated April 2, 2001, the Office terminated appellant's compensation.

Appellant requested a hearing. At the hearing he argued that the Office had not met its burden of proof because Dr. Olin was associated with Dr. McLennan, the second opinion referral who was part of the conflict.

In support of his argument, appellant testified that Drs. Olin and McLennan have the same address, 1 Randall Square, Suite 410, Providence, RI; their names are on the door together, they share the same waiting room, support personnel and the two examinations were conducted in the same room. In support of his allegations, appellant submitted pictures showing the building directory and the office door with both doctors listed at Suite 410.

In a December 20, 2001 decision, the hearing representative found the weight of the evidence rested with Dr. Olin as the impartial medical specialist and affirmed the termination. Regarding appellant's arguments, the hearing representative found that the Office provided proper notice in its December 6, 2000 referral of the restrictions placed on the selection of impartial medical specialists and Dr. Olin accepted the referral. Furthermore, the hearing representative found no evidence in the record supporting that Drs. Olin and McLennan were in a partnership.

The Board finds that the referral to Dr. Olin was improper.

A physician serving as an impartial medical specialist should be one who is wholly free to make a completely independent evaluation and judgment, untrammled by a conclusion rendered on a prior examination.¹ An opinion of an associate who has already rendered an opinion on the claim cannot be considered completely independent and, therefore, his report cannot be used by the Office to resolve the conflict in the medical evidence.² The Board has held that a physician selected as an impartial medical specialist cannot be considered completely independent when an associate has previously served as an Office referral physician in the case.³

¹ *Raymond E. Heathcock*, 32 ECAB 2004 (1981); *Paul J. Rini*, 13 ECAB 557 (1962).

² *Raymond E. Heathcock*, *supra* note 1.

³ *See Daniel A. Davis*, 39 ECAB 151 (1987).

The importance of safeguarding the independence of impartial medical specialists is also recognized in the Office's procedures. Under the Office's procedures, "physicians previously connected with the claim or the claimant or physicians in partnership with those already so connected" may not be used as impartial medical specialists.⁴

In the present case, Dr. Olin shared the same address, suite number, waiting area and examination room as Dr. McLennan, whose opinion was part of the conflict. While there is no evidence in the record to indicate that the two doctors were in a medical partnership there exists an appearance of impropriety due to the close association of the medical practices of Dr. Olin with Dr. McLennan.

Accordingly, the Board finds that Dr. Olin cannot serve as an impartial medical specialist in this case and his report does not resolve the conflict in the medical evidence. Since it is the Office's burden to terminate appellant's compensation, the Board finds the Office has not met its burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated December 20, 2001 is reversed.

Dated, Washington, DC
August 19, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

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