

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**F.L, Appellant**

**and**

**DEPARTMENT OF COMMERCE, CENSUS  
BUREAU, Utica, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 11-424  
Issued: August 26, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On December 14, 2010 appellant filed a timely appeal from an August 17, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying modification of the May 13, 2010 decision terminating his wage-loss compensation benefits and a nonmerit September 17, 2010 decision denying reconsideration. The Board docketed the appeal as No. 11-424.

The Board has duly considered the matter and notes that on May 14, 2000 appellant, then a 57-year-old clerk, filed a traumatic injury claim alleging that on January 10, 2000 he strained his lower back while picking up boxes of materials. OWCP accepted the claim for aggravation of lumbosacral sprain, which was subsequently expanded to include aggravation of preexisting degenerative disc disease. By letter dated July 20, 2000, appellant was placed on the periodic rolls for temporary total disability. On May 28, 2009 OWCP referred appellant to a Dr. Joseph E. Ortiz to resolve a conflict in the medical opinion evidence between Dr. Rudolph Buckley, an attending Board-certified orthopedic surgeon, and Dr. Edwin Mohler, a second opinion Board-certified orthopedic surgeon. On April 7, 2010 it issued a notice proposing to terminate appellant's wage-loss benefits based upon Dr. Ortiz's report which concluded that appellant was no longer totally disabled and was capable of working his date-of-injury position with restrictions. By decision dated May 13, 2010, OWCP finalized the termination of appellant's wage-loss compensation benefits effective that day. By decision dated August 17,

2010, it denied modification of the May 13, 2010 decision terminating his wage-loss compensation benefits. On September 17, 2010 OWCP issued a decision denying appellant's request for a merit review of the May 13, 2010 decision.

The Board notes that a physician selected as an impartial medical specialist must be wholly free to make a completely independent evaluation and judgment.<sup>1</sup> OWCP's procedures provide that selection of the referee physician will be made by a strict rotational system utilizing the services of all available and qualified Board-certified specialists.<sup>2</sup> A physician who is non Board-certified may be used if he or she has special qualifications which are documented in the case record. In this case, a review of Dr. Ortiz's report does not indicate whether he is Board-certified. It only notes that he is an orthopedic surgeon. Moreover the record is devoid of any evidence showing how OWCP selected Dr. Ortiz. Based on the evidence of record, the Board is unable to determine whether he holds the requisite Board-certification to act as an impartial medical specialist. Moreover, there is no evidence of record that he possesses any special qualifications in the field of orthopedic surgery to serve in such capacity. The Board concludes, therefore, that OWCP failed to follow its procedures in the selection of the impartial medical specialist and the referral to Dr. Ortiz was improper. For this reason, OWCP improperly terminated appellant's entitlement to wage-loss benefits.<sup>3</sup>

---

<sup>1</sup> See *T.P.*, 58 ECAB 524 (2007); *Brenda C. McQuiston*, 54 ECAB 816 (2003); *Vernon E. Gaskins*, 39 ECAB 746 (1988).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (May 2003).

<sup>3</sup> See *Louis L. Baratta*, Docket No. 01-1610 (issued March 13, 2002).

**IT IS HEREBY ORDERED THAT** the September 17, 2010 nonmerit decision and the August 17, 2010 merit decision of the Office of Workers' Compensation Programs are reversed.

Issued: August 26, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board