

A physician selected by OWCP to serve as an impartial medical specialist should be one wholly free to make a completely independent evaluation and judgment. In order to achieve this, OWCP has developed specific procedures for the selection of the impartial medical specialists designed to provide adequate safeguards against any possible appearance that the selected physician's opinion was biased or prejudiced. The procedures contemplate that the impartial medical specialists will be selected on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and OWCP.²

OWCP has an obligation to verify that it selected Dr. Collier in a fair and unbiased manner. It maintains records for this very purpose.³ The current record includes a May 27, 2009 MEO23 IF ECS report which states that appellant's referee appointment was scheduled with Dr. Collier. The record also contains two IF ECS screen shots.⁴ The Board cannot ascertain from these documents whether Dr. Collier was properly chosen from a rotational list after other physicians were appropriately contacted and bypassed. These documents do not substantiate the rotational referee selection of Dr. Collier.

The Board has placed great importance on the appearance as well as the fact of impartiality, and only if the selection procedures which were designed to achieve this result are scrupulously followed may the selected physician carry the special weight accorded to an impartial specialist. OWCP has not met its affirmative obligation to establish that it properly followed its selection procedures.

The Board will remand the case to OWCP for selection of another impartial medical specialist. After such further development as necessary, OWCP shall issue an appropriate decision.

² *Raymond J. Brown*, 52 ECAB 192 (2001).

³ *M.A.*, Docket No. 07-1344 (issued February 19, 2008).

⁴ In one screenshot, the notation "Prepay only" was made to explain why Dr. David R. Steinberg was not selected. In the second screenshot, the notation, "Claimant [doctor appointment] letter" was made for Dr. Stuart Trager. The screenshots did not identify the zip code locations of the offices of these physicians, specify the date or time that the physicians were contacted or contain any reference to a rotational list system for choosing physicians.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 21, 2010 is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: December 12, 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