



related residuals.<sup>2</sup> The record contains a printout (bearing the heading “IFECS Report: ME023 -- Appointment Schedule Notification”) which indicated that the appointment with Dr. Schmidt was scheduled for July 7, 2008.

In a July 29, 2008 decision, OWCP terminated appellant’s compensation effective July 28, 2008 based on a July 7, 2008 report of Dr. Schmidt. In a November 5, 2008 decision, an OWCP hearing representative set aside OWCP’s July 29, 2008 decision and remanded the case to OWCP in order to obtain a supplemental report from Dr. Schmidt. OWCP obtained a December 8, 2008 report from Dr. Schmidt and, in a January 21, 2009 decision, terminated appellant’s compensation effective January 21, 2009 based on the opinion of Dr. Schmidt.

Appellant requested a hearing before an OWCP hearing representative. At the May 28, 2009 hearing, counsel argued that there was no evidence that Dr. Schmidt was chosen by using the Physicians’ Directory System (PDS), the computerized system for selecting impartial medical specialists.

In an August 14, 2009 decision, OWCP’s hearing representative affirmed the January 21, 2009 decision.

The Board finds that OWCP has not met its burden of proof to terminate appellant’s compensation benefits as it has not established that Dr. Schmidt was selected in a fair and unbiased manner.

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 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 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.<sup>3</sup>

OWCP has an obligation to verify that it selected Dr. Schmidt in a fair and unbiased manner. It maintains records for this very purpose.<sup>4</sup> 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.

Before OWCP and on appeal to the Board, counsel objected to Dr. Schmidt’s selection on the grounds there is insufficient evidence of record to establish that he was selected on a proper

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<sup>2</sup> Dr. Schmidt was also asked to address whether several conditions should be added as accepted work injuries, including abdominal wall and umbilical hernia, rectus abdominal sprain and strain, L5-S1 herniated disc and L5-S1 radiculopathy, bilaterally.

<sup>3</sup> *Raymond J. Brown*, 52 ECAB 192 (2001).

<sup>4</sup> *M.A.*, Docket No. 07-1344 (issued February 19, 2008).

rotational basis using the PDS. Counsel argued that the file does not reveal whether Dr. Schmidt was selected from the PDS and there is no image of his selection from the PDS. The record contains a printout (bearing the heading “IFECS Report: ME023 -- Appointment Schedule Notification”) which indicated that the appointment with Dr. Schmidt was scheduled for July 7, 2008. While this evidence suggests that Dr. Schmidt might have been selected from the PDS, the ME023 alone is insufficient to substantiate proper selection of the impartial specialist under OWCP procedures. The evidence is not adequate to establish that Dr. Schmidt was properly selected in compliance with the rotational system using the PDS.<sup>5</sup> OWCP’s decision terminating appellant’s compensation benefits must be reversed due to an unresolved conflict in medical opinion.

**IT IS HEREBY ORDERED THAT** the August 14, 2009 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: September 28, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>5</sup> See *A.R.*, *supra* note 13.