

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

P.D., Appellant)
)
and) **Docket No. 10-1031**
) **Issued: September 28, 2011**
U.S. POSTAL SERVICE, POST OFFICE,)
Marlton, NJ, Employer)

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

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

On March 3, 2010 appellant, through his representative, filed a timely appeal from a December 1, 2009 merit decision of the Office of Workers' Compensation Programs' (OWCP) Branch of Hearings and Review. This decision affirmed OWCP's selection of the impartial medical specialist, Dr. George Maslow, a Board-certified orthopedic surgeon, as proper. The December 1, 2009 decision also affirmed an April 30, 2009 schedule award which found that appellant had a six percent permanent impairment of the left upper extremity.

The Board finds that this case is not in posture for decision as OWCP has not established that Dr. Maslow was properly selected as the impartial medical specialist and his report is not sufficient to constitute the weight of the medical evidence.

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.¹

¹ *Raymond J. Brown, 52 ECAB 192 (2001).*

OWCP has an obligation to verify that it selected Dr. Maslow in a fair and unbiased manner. It maintains records for this very purpose.² The current record includes an October 1, 2008 RME referral form which indicates that Dr. Maslow was selected as the impartial medical specialist by use of the Physicians' Directory System "PDS." The record also includes a December 4, 2008 MEO23 IF ECS report which states that appellant's referee appointment was scheduled with Dr. Maslow. While the record includes IF ECS screen shots pertaining to case referral, the record does not include any IF ECS screen shots substantiating the referee selection of Dr. Maslow.

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.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2009 is set aside and the case remanded for further proceedings consistent with this opinion.

Issued: September 28, 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

² M.A., Docket No. 07-1344 (issued February 19, 2008).