

sprain/strain. On December 21, 2007 it granted her a schedule award for three percent impairment of each upper extremity.¹

On February 20, 2009 OWCP referred appellant to Dr. Ian Fries, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The record contains a “referee medical examination (RME)” referral form dated February 20, 2009 which indicates that the “Physician’s Directory System (PDS)” was the referral source for the selection of Dr. Fries as the impartial medical examiner (IME). The record also contains an IF ECS MEO23 form dated March 5, 2009 which indicates that appellant’s referee examination was scheduled for April 1, 2009 with Dr. Fries.

In a report dated April 7, 2009, Dr. Fries provided an extensive history of the medical record, noted appellant’s current complaints and provided examination findings. He did not evaluate any of appellant’s examination findings pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Rather, Dr. Fries concluded that appellant did not have any objective residuals of the December 8, 2003 injury, beyond a minor left elbow scar. On May 6, 2009 Dr. Henry Magliato, another OWCP medical adviser Board-certified in orthopedic surgery, reviewed Dr. Fries’ report and agreed that appellant had no permanent impairment.

OWCP affirmed the prior schedule award on June 22, 2009. It noted that “[b]y way of our PDS system, Dr. Ian Blair Fries was randomly selected to perform the examination.” Appellant’s representative requested a hearing before the Branch of Hearings and Review. During the hearing held on October 15, 2009 appellant’s representative argued that the record did not establish that Dr. Fries was properly selected as the IME and that Dr. Fries’ report was not entitled to the weight of the evidence as it was not based on an accurate statement of accepted facts and did not evaluate appellant’s examination findings pursuant to the A.M.A., *Guides*.

On December 9, 2009 OWCP’s hearing representative affirmed the June 22, 2009 schedule award decision. The hearing representative found that the “PDS” scheduling sheet was in the record therefore appellant’s representative’s argument that the IME selection process was not properly documented had no merit. The hearing representative also found that Dr. Fries’

¹ Appellant’s treating physician, Dr. David Weiss, an osteopath, reported on September 27, 2006 that appellant had a 36 percent left upper extremity impairment, 13 percent left lower extremity impairment and a 4 percent right lower extremity impairment. This report was reviewed by Dr. Morley Slutsky, an OWCP medical adviser Board-certified in occupational medicine, who concluded that the medical evidence of record was inconsistent with the findings made by Dr. Weiss and recommended a second opinion. Appellant was referred for an impartial medical examination by Dr. Elliott Semet, a Board-certified orthopedic surgeon. On November 6, 2007 Dr. Semet concluded that appellant had no permanent impairment causally related to her employment. On December 4, 2007 the case was reviewed by a second OWCP medical adviser, Dr. Arnold Berman, a Board-certified orthopedic surgeon, who found that appellant had 3 percent impairments of both upper extremities due to C5 and C6 sensory deficits. After OWCP granted the schedule award based upon this finding, appellant requested a hearing before the Branch of Hearings and Review. On January 9, 2009 the hearing representative found that there was no conflict in the medical opinion evidence at the time of Dr. Semet’s evaluation; therefore, Dr. Semet was a second opinion physician. The case was remanded for a new impartial medical evaluation.

report was entitled to the weight of the medical evidence as he had conducted a thorough physical examination.

The Board finds that this case is not in posture for decision as OWCP has not established that Dr. Fries was properly selected as the impartial medical specialist in this case 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.²

OWCP has an obligation to verify that it selected Dr. Fries in a fair and unbiased manner. It maintains records for this very purpose.³ The current record includes a February 20, 2009 RME referral form which indicates that Dr. Fries was selected as the IME by use of the "PDS." The record also includes a March 5, 2009 MEO23 IF ECS report which states that appellant's referee appointment was scheduled with Dr. Fries. While the record includes IF ECS screen shots pertaining to case referral, the record does not include any IF ECS screen shots substantiating the selection of Dr. Fries.

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.

As the record lacks adequate documentation of the selection process in this case, 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).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2009 be 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