

medical examinations, the record did not contain any further information showing how OWCP selected Dr. Ogin as the impartial medical specialist. The Board concluded that OWCP had an obligation to verify that it selected the impartial medical specialist in a fair and unbiased manner and remanded the case to OWCP for that purpose.

By decision dated September 17, 2009, OWCP found that the Physician's Directory System (PDS) had been properly used to select Dr. Ogin as the impartial medical specialist. OWCP explained that it was required to input appellant's zip code into the PDS system and attempt to schedule a referee appointment with the physician the PDS selected. If that physician could not perform the examination, then the next physician on the list would be contacted until an appointment was set up. It was further noted that OWCP was not required to select the physician who was geographically nearest to appellant's residence. Regarding the selection process in appellant's case, OWCP explained that appellant's correct zip code was inputted and the system initially selected Dr. Sheldon Goldberg. Dr. Goldberg's office was contacted but advised that he did not perform impartial medical evaluations. The system next selected Dr. Ogin for scheduling. On March 2, 2010 OWCP added IF ECS screen shots pertaining to the scheduling procedure to the record. The screen shots are all illegible.

Following a hearing held on January 21, 2010, the Branch of Hearings and Review affirmed the September 17, 2009 decision on April 13, 2010. The hearing representative found that there was no evidence that the selection of Dr. Ogin was biased or improper and concluded that the available PDS documentation demonstrated that the selection of Dr. Ogin was proper.

The Board finds that OWCP has not established that Dr. Ogin was properly selected as the impartial medical specialist in this case.

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. Ogin in a fair and unbiased manner. OWCP maintains records for this very purpose.³ The Board previously remanded this case specifically for OWCP to document that it properly followed its selection procedures. While the case record was supplemented, the IF ECS documents submitted to the record are illegible.

The Board finds that Dr. Ogin can not be considered the impartial medical specialist in this case. OWCP has not met its obligation to establish that it properly followed its selection procedures. The Board will remand this case for selection of a new impartial medical specialist. Following such further development as appropriate, OWCP shall issue a *de novo* 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 April 13, 2010 be set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: September 28, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board