



On October 15, 2009 Dr. Sweet, based upon a statement of accepted facts, review of the medical evidence and physical examination, opined that appellant had not sustained a recurrence of disability on October 23, 2008 due to her accepted employment injury.

By decision dated December 2, 2009, OWCP denied appellant's claim for a recurrence of disability beginning October 23, 2008. It found that the report of Dr. Sweet was entitled to great weight. By decision dated July 12, 2010, the OWCP hearing representative affirmed the December 2, 2009 decision denying appellant's claim for a recurrence of disability.

On appeal appellant's counsel contends OWCP erred in denying her recurrence claim and in finding she no longer had any residuals or disability due to her accepted conditions. Counsel also contends that the medical report of Dr. Sweet is insufficient to constitute the weight of the medical opinion evidence because she was not properly selected under the Physicians Directory System (PDS).

The Board finds that the case is not in posture as OWCP has not established that Dr. Sweet 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.<sup>1</sup>

OWCP has an obligation to verify that it selected Dr. Sweet in a fair and unbiased manner. It maintains records for this very purpose.<sup>2</sup> This record contains no evidence that OWCP properly followed its selection procedures. The Board finds that OWCP has not adequately explained how the rotational system selected Dr. Sweet. 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.

Given the lack of any evidence in the record verifying the use of the rotational selection procedures, the Board finds that this case must be remanded for OWCP to meet its affirmative obligation to establish that it properly followed its selection procedures. Following such further development as appropriate, OWCP shall issue a *de novo* decision.

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<sup>1</sup> *Raymond J. Brown*, 52 ECAB 192 (2001).

<sup>2</sup> *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 July 12, 2010 is set aside and the case remanded for further proceedings consistent with the above 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