

the referee physician. In a February 8, 2011 decision, OWCP terminated appellant's compensation effective February 12, 2011 based on Dr. Wahba's October 29, 2010 report. On March 7, 2011 appellant requested a review of the written record before an OWCP hearing representative. She presented, through her husband, several arguments as well as a March 16, 2011 report from Dr. Young. In a May 17, 2011 decision, OWCP's hearing representative affirmed the February 8, 2011 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. Wahba was selected in accordance with OWCP procedure.

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

OWCP has an obligation to verify that it selected Dr. Wahba in a fair and unbiased manner. It maintains records for this very purpose.² 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.

Appellant requested that OWCP verify that Dr. Wahba was properly selected as the referee examiner. The record contains a printout (bearing the heading IF ECS Report: ME023 -- Appointment Schedule Notification) which indicated that the appointment with Dr. Wahba was initially scheduled for October 18, 2010 and rescheduled for October 25, 2010. While this evidence suggests that Dr. Wahba might have been selected from the Physician Directory System, 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. Wahba was properly selected in compliance with the rotational system using the PDS.³ OWCP's decision terminating appellant's compensation benefits must be reversed due to an unresolved conflict in medical opinion.⁴

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

² *M.A.*, 58 ECAB 355 (2008).

³ *See E.S.*, Docket No. 10-633 (issued September 28, 2011).

⁴ Due to the disposition of this case, appellant's arguments on appeal will not be addressed.

IT IS HEREBY ORDERED THAT the May 17, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 27, 2012
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