

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

D.M., Appellant	)	
	)	
and	)	<b>Docket No. 11-1231</b>
	)	<b>Issued: January 25, 2012</b>
<b>DEPARTMENT OF COMMERCE,</b>	)	
<b>U.S. CENSUS BUREAU, Los Angeles, CA,</b>	)	
<b>Employer</b>	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**ORDER REMANDING CASE**

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

On April 26, 2011 appellant, through her attorney representative, filed a timely appeal from a March 15, 2011 decision of an Office of Workers' Compensation Programs (OWCP) hearing representative affirming an August 26, 2010 OWCP decision terminating her wage-loss and medical compensation benefits.

OWCP accepted that on August 20, 2009 appellant sustained cervical and lumbar strains and right knee and right ankle sprains when she fell off a step stool. She stopped work on August 20, 2009 and did not return. Appellant received compensation for total disability through February 23, 2010. Dr. Peter C. Lee, a Board-certified physiatrist, submitted reports from August through November 2009 diagnosing cervical, lumbar, right knee and right ankle sprains with right-sided sciatica. He held appellant off work. On November 27, 2009 OWCP obtained a second opinion report from Dr. William C. Boeck, Jr., a Board-certified orthopedic surgeon, who released appellant to full duty as the accepted injuries resolved without residuals.

OWCP found a conflict of medical opinion between Dr. Lee, for appellant, and Dr. Boeck, for the government. To resolve the conflict, OWCP appointed Dr. Robert D. Shlens, a Board-certified orthopedic surgeon, as impartial medical examiner. In May 7 and June 2, 2010

reports, Dr. Shlens found “[n]o evidence of musculoskeletal injury or disability.” He released appellant to full, unrestricted duty.

By notice dated July 9, 2010 and finalized August 26, 2010, OWCP terminated appellant’s wage-loss and medical compensation benefits effective August 16, 2010 on the grounds that the accepted injuries had resolved without residuals. It accorded Dr. Shlens the weight of the medical evidence. Following a telephonic hearing held on December 5, 2010 OWCP issued a March 15, 2011 decision affirming the August 26, 2010 termination. The hearing representative found that Dr. Shlens’ opinion as impartial medical examiner continued to represent the weight of the medical evidence.

The Board finds that this case is not in posture for decision as OWCP has not established that Dr. Shlens 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 through the Physicians Directory System (PDS) 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. Shlens in a fair and unbiased manner. It maintains records for this very purpose.<sup>2</sup> The current record does not include any documents demonstrating that OWCP selected Dr. Shlens as the IME by use of the PDS. There is no MEO23 IF ECS report or any IF ECS screen shots substantiating the referee selection process.

The Board finds that OWCP has not adequately explained how the rotational system selected Dr. Shlens. 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 proper selection of an impartial medical specialist. After such further development as necessary, OWCP shall issue an appropriate 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 March 15, 2011 be set aside and the case remanded for further proceedings consistent with this opinion.

Issued: January 25, 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