

employee's entitlement to a schedule award.² On September 30, 2009 OWCP referred the employee to Dr. Zeidman for an impartial evaluation to resolve a conflict in medical opinion regarding whether the employee had a permanent impairment due to an accepted injury.

The Board finds that OWCP has not adequately explained how the rotational system selected Dr. Zeidman. 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.³

OWCP has an obligation to verify that it selected Dr. Zeidman in a fair and unbiased manner. It maintains records for this very purpose.⁴ The current record contains a September 29, 2009 MEO23 iFECS report which states that the employee's referee appointment was scheduled with Dr. Zeidman. The record also contains four screen shots. The screen shots, however, are not fully legible.⁵ Several do not identify the physicians bypassed because the physician's name is obscured by a box indicating the reason the unknown physicians were bypassed. These documents do not substantiate the proper referee selection of Dr. Zeidman.⁶

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 medical specialist. OWCP has not met its affirmative obligation to establish that it properly followed its selection procedures.⁷

² Docket No. 08-1672 (issued January 29, 2009). On January 17, 2000 the employee, a letter carrier, sustained a work-related lumbar sprain and lumbar radiculopathy while lifting a tub of mail. This claim was adjudicated under OWCP file number xxxxxx502. On June 6, 2003 the employee sustained a second lumbar sprain and lumbar radiculopathy condition. The 2003 claim was adjudicated by OWCP under file number xxxxxx212. The employee filed a schedule award claim on January 28, 2005. The claims were doubled and, on September 8, 2009, OWCP accepted the additional condition of herniated disc at L4-5.

³ *Raymond J. Brown*, 52 ECAB 192 (2001).

⁴ *M.A.*, Docket No. 07-1344 (issued February 19, 2008).

⁵ *See B.S.*, Docket No. 10-2343 (issued September 28, 2011) (The Board remanded the case for selection of a new impartial medical examiner as OWCP failed to establish that it properly followed its procedures for selection of the impartial medical examiners because iFECS documents in the record were illegible).

⁶ *See generally, P.D.*, Docket No. 10-31 (issued September 28, 2011) (The Board remanded the case for selection of a new impartial medical examiner, although the record contained an MEO23 iFECS report stating that appellant's referee appointment was scheduled with the selected impartial medical examiner, it did not include any iFECS screen shots substantiating the referee selection of the impartial medical examiner).

⁷ *See V.P.*, Docket No. 11-605 (issued January 12, 2012).

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 regarding the employee's entitlement to a schedule award.

IT IS HEREBY ORDERED THAT the August 29, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: June 28, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board