

specialist to reflect whether appellant's bilateral knee and hip conditions preexisted his accepted employment injury.

The Board, having reviewed the case record, finds that the case is not in posture for a decision. Justice and equity require that the action proposed by the Board be fulfilled as the Board has intrinsic authority to ensure the orderly processing of appeals docketed for review.³ In its July 26, 2011 decision, the Board specifically found that appellant had provided sufficient evidence to allow his participation in the selection of the impartial medical specialist. Thus, OWCP should have prepared a list of three specialists available to act as an impartial medical examiner from which appellant could choose one to perform the impartial examination.⁴

Accordingly, as OWCP failed to follow the Board's directive as enunciated in its July 26, 2011 decision regarding appellant's participation in the selection of the impartial medical specialist, the Board concludes that the case must be remanded to OWCP for the action specifically described in its July 26, 2011 decision.⁵ Following this and any further development deemed necessary, OWCP should issue a decision concerning permanent impairment of appellant's legs, including any preexisting condition to the bilateral knees and hip conditions.⁶

³ See *Frank W. White*, 42 ECAB 693 (1991).

⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.4(f)(2) (July 2011).

⁵ The Board has final authority to determine questions of law and fact. Its determinations are binding upon OWCP and must, of necessity, be so accepted and acted upon by the Director of OWCP. Otherwise, there could be no finality of decisions and the whole appeals procedure would be nullified and questions would remain moot. See *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84, 85 (1949).

⁶ Appellant's counsel, on appeal, asserts that OWCP did not update its statement of accepted facts. However, the Board notes that OWCP has updated the statement of accepted facts.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2012 be set aside and the case remanded for further action consistent with this order of the Board.

Issued: September 12, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board