

surgeon, as the referee physician.² The Board finds, however, that the record does not establish that Dr. Bolstad was properly selected as a referee physician in accord with OWCP procedures.

A physician selected by OWCP to serve as a referee 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 referee physicians designed to provide adequate safeguards against any possible appearance that the selected physician's opinion was biased or prejudiced. The procedures contemplate that referees 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.³

It is well established that OWCP has an obligation to verify that it selected Dr. Bolstad in a fair and unbiased manner. It maintains records for this very purpose.⁴ The current record includes only a September 30, 2010 ME023 report (Appointment Schedule Notification) that lists Dr. Bolstad as the selected physician. There are no other documents, screen captures or any other evidence showing how the PDS system was used to properly select Dr. Bolstad in accordance with the strict rotational system used to select a referee physician.

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.⁵ OWCP has not met its affirmative obligation to establish that it properly followed its selection procedures in this case.⁶

² In an October 28, 2010 report, Dr. Bolstad concluded that appellant had two percent impairment of the right leg. On January 19, 2011 OWCP denied the claim for any greater impairment. In a March 28, 2011 decision, an OWCP hearing representative set aside the January 19, 2011 decision and directed OWCP to have Dr. Bolstad clarify his opinion and have an OWCP medical adviser review the report. On May 20, 2011 OWCP denied the claim for greater impairment. In an August 16, 2011 decision, the hearing representative set aside the May 20, 2011 decision finding that Dr. Bolstad's report required clarification. On November 10, 2011 OWCP denied the claim for greater impairment. In a June 13, 2012 decision, the hearing representative affirmed the November 10, 2011 decision and remanded the case for further development based on new medical evidence.

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

⁴ *M.A.*, Docket No. 07-1344 (issued February 18, 2008).

⁵ See *D.M.*, Docket No. 11-1231 (issued January 25, 2012); *D.L.*, Docket No. 11-660 (issued October 25, 2011).

⁶ An ME023 form is not sufficient documentation that OWCP properly followed its selection procedures. *D.A.*, Docket No. 12-311 (issued July 25, 2012); *C.P.*, Docket No. 10-1247 (issued September 28, 2011), *petition for recon. denied*, (issued May 15, 2012).

The Board will remand the case to OWCP for proper selection of a referee physician.⁷ After such further development as necessary, OWCP shall issue an appropriate decision.⁸

IT IS HEREBY ORDERED THAT the June 13, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 12, 2013
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

⁷ OWCP subsequently implemented its iFECS-based Medical Management application. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5 (July 2011). The application contains the names of physicians who are Board-certified in over 30 medical specialties for use as referees within appropriate geographical areas.

⁸ Due to the disposition of this case, counsel's remaining arguments on appeal will not be addressed.