

procedures. By decision dated April 18, 2000, it granted a schedule award for seven percent impairment of the right upper extremity. OWCP subsequently modified its prior award and found four percent impairment of the right upper extremity and three percent impairment of the left upper extremity.⁴

The Board has addressed appellant's entitlement to an additional schedule award on three separate occasions.⁵ The last time the case was on appeal in 2005, the Board found that the impartial medical examiner's (IME) December 29, 2003 impairment rating required clarification.⁶ Accordingly, the Board remanded the case to OWCP for further medical development. Since then appellant was reexamined by the initial IME and subsequently referred to another IME. OWCP has continued to deny appellant an additional schedule award. The latest IME, Dr. Jeffrey B. Daniels, examined appellant on May 9, 2007 and found that his impairment was "probably" five percent of both upper extremities.⁷ However, two district medical advisers disagreed with Dr. Daniel's impairment rating, and advised OWCP that the medical evidence did not support an increased award.

By decision dated August 17, 2007, OWCP denied an additional schedule award based on the district medical adviser's interpretation of Dr. Daniel's May 9, 2007 examination findings. After conducting a hearing on December 12, 2007, the Branch of Hearings and Review affirmed OWCP's August 17, 2007 decision. However, appellant's counsel did not receive a copy of the hearing representative's March 5, 2008 decision. Consequently, OWCP reissued the March 5, 2008 decision on July 23, 2012.⁸

The Board finds that the case is not in posture for decision. On appeal, counsel argued that Dr. Daniel's selection as IME was not in accordance with the then-applicable Physician Directory System (PDS) method of appointment.⁹ Selection of a referee examiner is done on a

⁴ OWCP's February 4, 2005 modification did not result in any additional compensation because appellant had already been compensated for seven percent upper extremity impairment.

⁵ Docket No. 01-1202 (issued August 13, 2002); Docket No. 03-1106 (issued November 18, 2003) and Docket No. 05-1344 (issued October 5, 2005). The Board's three prior decisions are incorporated herein by reference.

⁶ The Board previously remanded the case because of an unresolved conflict in medical opinion regarding the extent of appellant's upper extremity impairment due to his accepted bilateral carpal tunnel syndrome. Docket No. 03-1106 (issued November 18, 2003).

⁷ Dr. Daniel rated appellant under the then-applicable fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001).

⁸ During the four-year interim period, OWCP adopted the sixth edition of the A.M.A., *Guides* (2008) as the appropriate method of rating permanent impairment under FECA. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁹ The iFECS-based Medical Management (MM) application has since replaced the PDS method of appointment that was in effect when OWCP designated Dr. Daniel as IME. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5 (December 2012); *L.W.*, 59 ECAB 471, 478 (2008).

strict rotational basis.¹⁰ Counsel correctly noted that the latest IME was not selected on a strict rotational basis. The record indicates that PDS selected Dr. William Goulburn, a colleague of Dr. Daniel. OWCP bypassed Dr. Goulburn because “[Dr.] Daniel agreed to do the exam[ination].” Apart from Dr. Daniel’s willingness to conduct the examination, it is unclear why OWCP did not select Dr. Goulburn as IME. Because OWCP’s designation of Dr. Daniel as IME was inconsistent with its procedures, the hearing representative’s July 23, 2012 decision shall be set aside and the case remanded for further medical development.

On remand, OWCP should refer appellant to an appropriately designated IME for evaluation and a rationalized medical opinion regarding the extent of any bilateral upper extremity permanent impairment under the A.M.A., *Guides* (6th ed. 2008). After OWCP has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

IT IS HEREBY ORDERED THAT the July 23, 2012 decision of the Office of Workers’ Compensation Programs is set aside. The case is 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

¹⁰ What the PDS and MM methods both share in common is the fundamental principle that referee examiners are selected on a strict rotational basis. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (July 2011); *R.C.*, Docket No. 12-468, slip op. at 5 (issued October 5, 2012); *L.W.*, *supra* note 9.