

OWCP received an October 13, 2011 letter from appellant's congressman requesting clarification of the protocol utilized in selecting Dr. Sokoloff as the impartial medical specialist. During the OWCP hearing held on February 17, 2012 appellant, and her representative, again questioned the protocol by which Dr. Sokoloff was chosen as the impartial medical specialist.

On May 7, 2012 OWCP's hearing representative affirmed the August 4, 2011 decision rescinding the schedule award and finalized the October 4, 2011 preliminary overpayment determination. The hearing representative found that Dr. Sokoloff had been properly selected by the "Physician's Directory System [PDS]" to act as the impartial medical specialist.

The Board finds that this case is not in posture for decision as OWCP has not established that Dr. Sokoloff was selected in a fair and unbiased manner.

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.¹

OWCP has an obligation to verify that it selected Dr. Sokoloff in a fair and unbiased manner. It maintains records for this very purpose.² 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.

Appellant and her counsel questioned OWCP regarding the protocol utilized to select Dr. Sokoloff as the impartial medical specialist. OWCP responded that the PDS was properly utilized and selected Dr. Sokoloff in an unbiased manner. The record contains a printout (bearing the heading "IFECS Report: ME023 -- Appointment Schedule Notification") which indicated that the appointment with Dr. Sokoloff was scheduled for July 15, 2011. While this evidence suggests that Dr. Sokoloff might have been selected from the PDS, the ME023 alone is insufficient to substantiate proper selection of the impartial specialist under OWCP procedures.³ The evidence is not adequate to establish that Dr. Sokoloff was properly selected in compliance with the rotational system using the PDS.

¹ *C.P.*, Docket No. 10-1247 (issued September 25, 2011); *Raymond J. Brown*, 52 ECAB 192 (2001). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003). The Board notes that, as of July 2011, the Medical Management Application in iFECS replaced the prior PDS selection procedure for an impartial medical specialist. *Id.* at Chapter 3.500.5 (July 2011).

² *M.A.*, Docket No. 07-1344 (issued February 19, 2008).

³ *E.S.*, Docket No. 10-644 (issued September 28, 2011).

As the record lacks adequate documentation of the selection process in this case, 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.

IT IS HEREBY ORDERED THAT the May 7, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 12, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board