

41 percent impairment of the right upper extremity and 9 percent impairment of the left upper extremity due to left C6 nerve root impairment and 3 percent for pain.

OWCP found a conflict of medical opinion evidence between Dr. Weiss and OWCP's medical adviser. It referred appellant for an impartial medical examination and Dr. Samuel E. Epstein, an osteopath, who found on September 22, 2008 that appellant had 20 percent impairment of his right upper extremity and 5 percent impairment of the left upper extremity under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹

There was no activity in the case between December 23, 2008 and July 6, 2009 at which time OWCP informed appellant that the schedule award requirements had changed.² On October 9, 2009 OWCP referred appellant for a second impartial medical examination with Dr. Zeidman regarding the extent of his permanent impairment for schedule award purposes. The record contains an iFECS report ME023 indicating that Dr. Zeidman was selected as the impartial medical examiner. After further development, OWCP determined that appellant had no more than 10 percent impairment of each of his upper extremities for which he had received schedule awards on February 4, 2011. On September 6, 2011 an OWCP hearing representative affirmed the schedule award decision.

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 the 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 the 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 includes an OWCP referral form, and an ME023 iFECS report which states that appellant's referee appointment was scheduled with Dr. Zeidman. The record does not contain iFECS screen shots substantiating the selection of Dr. Zeidman.

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

¹ A.M.A., *Guides* (5th ed. 2001).

² On August 7, 2009 OWCP requested an additional impairment rating under the sixth edition of the A.M.A., *Guides* from Dr. Epstein. He did not respond.

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

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

impartial specialist. OWCP has not met its affirmative obligation to establish that it properly followed its selection procedures.⁵

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 September 6, 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: January 14, 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

⁵ C.P., Docket No. 10-1247 (issued September 28, 2011).