

**United States Department of Labor
Employees' Compensation Appeals Board**

D.M., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Phoenix, AZ, Employer**

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**Docket No. 13-1033
Issued: November 12, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On March 25, 2013 appellant filed an appeal of a February 13, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision. The appeal was docketed as No. 13-1033.

In the February 13, 2013 decision, an OWCP hearing representative affirmed an August 24, 2012 OWCP decision denying authorization for continuing physical therapy. OWCP found the weight of the medical evidence was represented by Dr. Michael Wilmink, a Board-certified orthopedic surgeon selected as a referee physician to resolve a conflict under 5 U.S.C. § 8123(a).

In an October 9, 2012 statement, appellant had argued that Dr. Wilmink was not selected in accord with OWCP procedures. He indicated that there was no documentation regarding whether physicians were bypassed or other relevant information. In the February 13, 2013 decision, the hearing representative does not address the issue. There is no discussion of the selection procedures for a referee physician, the necessary documentation, Board case law or other relevant information. The Board has noted the importance of the referee selection procedure and the necessity of documenting the selection process.¹ Since appellant raised the

¹ See, e.g., *C.T.*, Docket No. 12-1303 (issued May 8, 2013); *L.E.*, Docket No. 12-1113 (issued November 13, 2012).

issue OWCP should have made proper findings on the issue. The case will be remanded to OWCP for proper findings with respect to the selection of the referee physician in this case. After such further development as is deemed necessary, OWCP should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 13, 2013 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: November 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