

Appellant filed a claim for a schedule award due to his accepted work injury. OWCP determined that there was a conflict in the medical opinion between Dr. Nicolas Diamond, an attending osteopath, and an OWCP medical adviser regarding the extent of the permanent impairment to appellant's lower extremities.

To resolve the conflict, OWCP referred appellant in February 2010 to Dr. George P. Glenn, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the extent of appellant's lower extremity impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009).

The record includes an MEO23 Integrated Federal Employees Compensation System (iFECS) report indicating that appellant's impartial medical appointment was scheduled with Dr. Glenn.² The record also contains iFECS screen shots of physicians who were bypassed before Dr. Glenn was selected. One of the screen shots shows that Dr. Howard Zeidman, a Board-certified orthopedic surgeon, was bypassed because he had previously examined appellant in connection with the present claim. Dr. Ronald Gerson and Dr. Thomas O'Dowd, both Board-certified physicians, were bypassed for selection, but the screen shots provide no reasons for the bypasses.

In an April 6, 2010 report, Dr. Glenn determined that appellant had a one percent permanent impairment of his right leg and a zero percent permanent impairment of his left leg under the standards of the sixth edition of the A.M.A., *Guides*.

In a January 24, 2012 decision, OWCP granted appellant a schedule award for a one percent permanent impairment of his right leg and determined that he had a zero percent permanent impairment of his left leg. The award ran for 2.88 weeks from April 6 to 26, 2010. The award was based on a determination that the opinion of Dr. Glenn represented the weight of the medical evidence with respect to appellant's lower extremity impairment.

In a June 26, 2012 decision, an OWCP hearing representative affirmed OWCP's January 24, 2012 schedule award decision. She found that the weight of the medical evidence regarding appellant's lower extremity impairment continued to rest with the opinion of Dr. Glenn.

LEGAL PRECEDENT

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."³ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of

² The appointment was originally scheduled for March 25, 2010 but was changed to April 6, 2010 at appellant's request.

³ 5 U.S.C. § 8123(a).

such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

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. 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 OWCP and a particular physician.⁵ OWCP has an obligation to verify that it selected an impartial medical specialist in a fair and unbiased manner. It maintains records for this very purpose.⁶

OWCP's procedures provide that the selection of impartial medical specialists is made through a strict rotational system using appropriate medical directories. The procedure manual provides that the Physicians Directory System (PDS) should be used for this purpose wherever possible.⁷ The PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and impartial medical examinations. The PDS database of physicians is obtained from the American Board of Medical Specialties, which contains the names of physicians who are Board-certified in certain specialties.⁸

ANALYSIS

OWCP accepted that appellant sustained bilateral aggravation of pes valgo planus due to the extensive walking and standing required by his job. It determined that there was conflict in the medical opinion evidence regarding the extent of the permanent impairment of his lower extremities and referred him in February 2010 to Dr. Glenn, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the matter. In an April 6, 2010 report, Dr. Glenn determined that appellant had a one percent permanent impairment of his right leg and a zero percent permanent impairment of his left leg under the standards of the sixth edition of the A.M.A., *Guides*. OWCP granted appellant a schedule award for a one percent permanent impairment of his right leg and determined that he had a zero percent permanent impairment of his left leg. The award was based on the opinion of Dr. Glenn.

The record includes a MEO23 iFECS report which states that appellant's referee appointment was scheduled with Dr. Glenn. The record also contains iFECS screen shots of physicians who were bypassed before Dr. Glenn was selected and one of the screen shots shows that Dr. Zeidman was bypassed because he had previously examined appellant in connection with the present claim. But the Board notes that screen shots for other physicians provide no reason for the bypasses. Dr. Gerson and Dr. O'Dowd were both bypassed but there is no

⁴ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁵ *Raymond J. Brown*, 52 ECAB 192 (2001).

⁶ *M.A.*, Docket No. 07-1344 (issued February 19, 2008).

⁷ 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 within iFECS replaced the prior PDS selection procedure for an impartial medical specialist. *Id.* at Chapter 3.500.5 (July 2011).

⁸ *Id.* at Chapter 3.500.7 (September 1995, May 2003).

indication as to the reason. The Board cannot ascertain from the evidence of record the reasons that the physicians were bypassed. The record does not establish the proper rotational referee selection of Dr. Glenn.

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.⁹

Therefore, the Board finds that the case will be remanded to OWCP for selection of another impartial medical specialist. After such development as it deems necessary, OWCP shall issue an appropriate decision regarding appellant's schedule award claim.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has more than a one percent permanent impairment of his right leg and a zero percent permanent impairment of his left leg.

⁹ See *B.S.*, Docket No. 10-2343 (issued September 28, 2011); *N.M.*, Docket No. 10-978 (issued November 9, 2010) (the Board that found OWCP failed to provide any plausible reason for bypassing a physician and that the evidence of record was insufficient to establish that OWCP properly used the PDS in its selection of an impartial medical specialist); *D.K.* Docket 09-1361 (issued September 8, 2010) (adequate rationale was not provided in compliance with the rotational system using the PDS); *A.R.*, Docket No. 09-1566 (issued June 2, 2010) (OWCP procedures provide that impartial medical specialist must be selected from a rotational list of qualified Board-certified specialists and reasons for the selection made must be documented in the case record).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: October 28, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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