

discussing the medical report requirements for the issue presented. Dr. Dawson submitted an additional report dated April 12, 2012.

An OWCP hearing representative, in a decision dated August 15, 2013, found that the telephone communication with Dr. Dawson was improper and the supplemental reports from Dr. Dawson must be excluded from the record. This is consistent with long-standing Board precedent regarding improper contact between OWCP and a referee physician.²

OWCP procedures have specific requirements for medical reports that must be excluded from consideration. A memorandum is written explaining why the reports are excluded.³ The referee report and any clarification reports are then combined with the exclusion memorandum, and the combined document is entered into the record as “MISC/memo to file” rather than medical evidence. The author date and received date is the date of the memorandum.⁴ Letters to a physician who is sent medical evidence should instruct the physician to disregard the excluded report.⁵

OWCP did not follow any of its procedures with respect to excluded medical reports in this case. No memorandum was prepared, the reports were untouched in the record, and no reference was made to the excluded reports in a statement of accepted facts or other document. It is not clear whether the reports were provided to the new referee physician, Dr. Wagner. The purpose of the procedures regarding exclusion of medical reports is to make it clear to physicians and others that certain medical evidence is not to be considered in rendering a decision.

The case will be remanded for OWCP to properly follow its procedures regarding exclusion of medical reports. After excluding the medical evidence that was improperly obtained, OWCP should select a new referee physician and resolve the conflict in the medical evidence. After such further development as is deemed necessary, it should issue an appropriate decision.

² See *J.F.*, Docket No. 08-1182 (issued June 18, 2009); *Carlton L. Owens*, 36 ECAB 608 (1985).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.12(b) (September 2010).

⁴ *Id.*

⁵ *Id.*

IT IS HEREBY ORDERED THAT the December 5, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: September 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board