

By letter dated April 27, 2017, OWCP acknowledged receipt of a statement designating Mr. Muirhead as appellant's representative.

On December 1, 2017 appellant filed a claim for a schedule award and submitted additional medical evidence.

OWCP scheduled a second opinion examination with Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, which occurred on July 30, 2018. While appellant attended the examination, the correspondence advising him and/or his designated representative about the scheduled second opinion examination is not of record.

By decision dated October 3, 2018, OWCP denied an additional schedule award. It based its decision on Dr. Lakin's medical examination findings. On November 12, 2018 appellant, through counsel, requested reconsideration of OWCP's October 3, 2018 decision. Counsel objected to Dr. Lakin's second opinion examination, noting that he had not been advised of his selection to perform a second opinion examination. By decision dated January 17, 2019, OWCP denied reconsideration of the merits of appellant's claim.

The Board has held that the notification of a referral for a second opinion examination is an administrative action, and that notification to the claimant's authorized representative of a second opinion examination is required.² In the present case, appellant authorized Mr. Muirhead to represent him on January 11, 2007. Despite this authorization, there is no evidence of record that OWCP sent the authorized representative notice of appellant's referral to Dr. Lakin for a second opinion examination. OWCP therefore improperly relied on Dr. Lakin's opinion in denying appellant's additional schedule award claim. The case must therefore be remanded to OWCP for another second opinion examination for the purpose of affording appellant the opportunity to have his physician participate in the examination.³ OWCP shall then further develop the evidence as it deems necessary and issue an appropriate *de novo* decision.⁴

² See *K.J.*, Docket No. 09-2317 (issued June 15, 2010); *Donald J. Knight*, 47 ECAB 706 (1996) (OWCP's failure to notify appellant's authorized representative of the referral to a second opinion physician effectively denied appellant's statutory right to have a physician designated and paid by him to be present and participate in the examination pursuant to 5 U.S.C. § 8123).

³ See *P.C.*, Docket No. 16-1714 (issued October 18, 2017); *C.M.*, Docket No. 14-1302 (issued May 5, 2015).

⁴ Given the disposition of the schedule award issue, the nonmerit issue is moot. See *W.G.*, Docket No. 18-0451 (issued February 21, 2019).

IT IS HEREBY ORDERED THAT the October 3, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order.

Issued: April 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board