

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

_____)
J.S., Appellant)
)
and) **Docket No. 10-1559**
) **Issued: April 21, 2011**
U.S. POSTAL SERVICE, AIRMAIL FACILITY,)
Seattle, WA, Employer)
_____)

Appearances:

John E. Goodwin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On May 25, 2010 appellant filed an application for review of a May 5, 2010 merit decision of the Office of Workers' Compensation Programs. The appeal was docketed as No. 10-1559.

The case has been before the Board on prior appeals. In a decision dated June 30, 1992, the Board affirmed a decision of the Office finding that residuals of the October 15, 1986 low back strain had ceased by December 5, 1986.¹ In a decision dated August 4, 1995, the Board affirmed that appellant's request for reconsideration was untimely and failed to show clear evidence of error.² By decision dated May 10, 2001, the Board remanded the case to the Office for further development.³ The Board noted that appellant had filed a claim on January 8, 1998 for a recurrence of disability and submitted probative evidence in support of her claim. By

¹ Docket No. 92-4 (issued June 30, 1992).

² Docket No. 94-442 (issued August 4, 1995).

³ Docket No. 00-1400 (issued May 10, 2001).

decision dated September 9, 2003, the Board remanded the case on the grounds that a conflict in the medical evidence existed.⁴

In a decision dated March 23, 2005, an Office hearing representative found that the orthopedic surgeon selected to resolve the conflict, Dr. Donald Hubbard, had inferred that a chronic myofascial pain syndrome was causally related to the employment injury. The hearing representative stated the case should be referred to an appropriate specialist on the issue.

The Office referred appellant to an orthopedic surgeon. By decision dated August 23, 2006, an Office hearing representative stated that the Office should have referred appellant to a “Board-certified pain specialist.” In a decision dated October 15, 2007, an Office hearing representative found a conflict in the medical evidence on the issue of an employment-related disability on or after December 5, 1986, and directed that appellant should be referred to “a Board-certified specialist in pain management for an examination and reasoned opinion on whether the claimant’s myofascial pain syndrome condition and any disability for work, on or after December 5, 1986, is causally related to the accepted employment-related injury of October 15, 1986.”

The Office initially referred appellant to Dr. David J. Tauben, a Board-certified internist. While the Office referred to Dr. Tauben as a pain management specialist, no explanation was provided for this designation.⁵ The Office found Dr. Tauben’s reports did not resolve the conflict, and appellant was then referred to Dr. William J. Stump, a neurologist. By decision dated October 6, 2008, an Office hearing representative found that Dr. Stump was not a Board-certified pain management specialist, and the case was remanded for further development.

To resolve the conflict, the Office then referred appellant to Dr. Aleksandra Zietak, a Board-certified physiatrist who submitted a June 29, 2009 report. In the May 5, 2010 decision, an Office hearing representative states, “Pain management specialists treat chronic back pain and neck pain which includes anesthesiologist and physiatrist therefore Dr. Zietak is considered an appropriate specialist.” No authority was provided for the statement.

According to the ABMS,⁶ Dr. Zietak is Board-certified in physical medicine and rehabilitation. There is a specific subspecialty certification for pain medicine, under the primary specialties of anesthesiology, neurology and physical medicine and rehabilitation.⁷ There is no indication that Dr. Zietak was Board-certified in the subspecialty of pain medicine.

⁴ Docket No. 03-1108 (issued September 9, 2003). The record also contains an October 19, 2004 order from the Board remanding the case on the grounds that appellant’s representative was not sent a copy of a November 26, 2003 Office decision.

⁵ On appeal, appellant states that Dr. Tauben was board certified in pain management. According to the American Board of Medical Specialists (ABMS), Dr. Tauben is Board-certified in internal medicine and no other certification is reported.

⁶ ABMS at <http://www.abms.org>.

⁷ *Id.*

The Office was directed to refer appellant for a referee examination by a Board-certified pain management specialist.⁸ The appropriate specialist in this case is a physician who is Board-certified in the subspecialty of pain medicine. On remand the Office should follow the established procedure for selecting a referee examiner and select a physician who is Board-certified in pain medicine.⁹ After such further development as the Office deems necessary, it should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 5, 2010 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 21, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁸ 20 C.F.R. § 10.321 provides that the Office will select a referee physician who is qualified in the appropriate specialty and has no prior connection with the case.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4 (May 2003).