

the right lower extremity. By decision dated March 29, 2010, OWCP's hearing representative affirmed the January 6, 2010 decision. In an order dated June 28, 2011, the Board set aside the March 29, 2010 OWCP decision. It found that this decision was flawed because the hearing representative made no findings and because the only reason provided for relying on Dr. Dennis' opinion was that it was the only impairment rating rendered in conformance with the sixth edition of the A.M.A., *Guides*. The Board remanded the case to OWCP for consideration of the medical evidence pursuant to the standards set out in section 8128(a) and section 20 C.F.R. § 10.126. By decision dated November 15, 2011, OWCP found that appellant was not entitled to an additional schedule award greater than a seven percent impairment. By decision dated June 13, 2012, the hearing representative affirmed the November 15, 2011 decision.

Section 8123(a) of FECA provides that, 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, an impartial medical referee, who shall make an examination.¹ Under the Federal (FECA) Procedure Manual, the Director has exercised discretion to implement practices pertaining to the selection of the impartial medical referee. The selection of referee physicians is made from a strict rotational system.¹ OWCP will select a physician who is qualified in the appropriate medical specialty and who has no prior connection with the case.² In turn, the Director delegated authority to each district OWCP for selection of the referee physician initially by use of the Physicians' Directory System and currently by the Medical Management Application within iFECS.³ These applications contain the names of physicians who are Board-certified in over 30 medical specialties for use as referees within appropriate geographical areas.⁴ The procedures provide for a rotation among physicians from the American Board of Medical Specialties, including the medical boards of the American Medical Association and those physicians, who are Board-certified with the American Osteopathic Association.⁵

Selection of the referee physician is made through use of the application by a medical scheduler.⁶ The scheduler chooses the type of examination to be performed (second opinion or impartial referee) and the applicable medical specialty. The next physician in the roster appears on the screen and remains until an appointment is scheduled or the physician is bypassed. The record indicates that on June 17, 2009 a medical scheduler undertook selection of an impartial medical examiner. Dr. Christopher Spagnuola, a Board-certified orthopedic surgeon, was the first physician selected. In a July 2, 2009 OWCP memorandum, it was indicated that his initial selection was bypassed because he did not perform schedule award examinations. On July 9, 2009 the referee medical examination was rescheduled. The second physician selected was Dr. Dennis. There are no screen shots of record documenting the final selection of him. The June 17, 2009 screenshot however indicates that Dr. Dennis appeared more than once in the

¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (July 2011).

² *Id.* at Chapter 3.500.4(b)(1).

³ *Id.* at Chapter 3.500.4(b)(6).

⁴ *Id.* at Chapter 3.500.4(b)(6)(a).

⁵ *Id.* at Chapter 3.500.5.

⁶ *Id.* at Chapter 3.500.5(b).

rotational system, under different identification numbers.⁷ The Board has previously stated that OWCP must adequately document why a physician would appear twice in a strict rotational selection system or why differing information pertaining to the same physician would appear in the system.

OWCP has developed specific procedures for the selection of impartial medical specialists designed to provide adequate safeguards against any possible appearance that the selected physician's opinion was biased or prejudiced. The procedures contemplate that impartial medical specialists will be selected on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and OWCP.⁸ OWCP has not established that it properly followed its selection procedures.⁹ On remand it shall select another impartial medical examiner to evaluate appellant's permanent impairment. After such further development as necessary, OWCP shall issue an appropriate decision to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT that this case be remanded for referral to an impartial medical examiner to evaluate appellant's permanent impairment.

Issued: February 6, 2014
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

⁷ *K.P.*, Docket No. 13-1042 (issued September 17, 2013).

⁸ *Raymond J. Brown*, 52 ECAB 192 (2001).

⁹ As OWCP has not properly resolved the conflict of medical opinion regarding the degree of appellant's permanent impairment, the issues regarding his schedule award and overpayment of compensation are not in posture for decision.