

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

D.O., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, New York, NY, Employer**

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**Docket No. 11-350
Issued: October 25, 2011**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER AFFIRMING CASE

Before:

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

On November 30, 2010 appellant, through his representative, filed a timely appeal from the August 17, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed his May 18, 2010 schedule award claim.¹

The Board has duly considered the matter and will affirm OWCP's August 17, 2010 decision. Appellant's representative expresses no disagreement with the schedule award *per se*. Rather, he argues only that OWCP delayed its adjudication of appellant's schedule award claim until the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) became applicable on May 1, 2009, which deprived him of due process rights regarding a determination under the fifth edition, and that a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). These cases held only that a claimant who was in receipt of benefits (in *Goldberg* welfare benefits and in *Mathews* social security benefits)

¹ On September 15, 2004 appellant, a 44-year-old general maintenance foreman, injured his right knee and foot when he stepped into a hole and twisted his right leg. OWCP accepted his claim for right lower extremity.

could not have those benefits terminated without procedural due process. In this case, appellant simply made a claim for a schedule award. He was not in receipt of schedule award benefits nor was OWCP attempting to terminate benefits. Appellant had no vested right to a schedule award under the fifth edition of the A.M.A., *Guides*. In *Harry D. Butler*,² the Board noted that Congress delegated authority to the Director of OWCP regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.³ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of the Office should reflect use of the sixth edition of the A.M.A., *Guides*.⁴ The applicable date of the sixth edition relates to when a schedule award decision is reached, not to the date of maximum medical improvement or when the schedule award claim was filed. Accordingly,

IT IS HEREBY ORDERED THAT the August 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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

² 43 ECAB 859 (1992).

³ *Id.* at 866.

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).