United States Department of Labor Employees' Compensation Appeals Board

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I.B., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY, Employer

Docket No. 11-712 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 January 25, 2011 appellant, through her representative, filed a timely appeal from the October 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed her schedule award.¹

The Board has duly considered the matter and will affirm OWCP's October 21, 2010 decision. Appellant's representative expresses no disagreement with the schedule award *per se*. Rather, counsel 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 her of due process rights regarding a determination under the fifth edition. He argues 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) could not have those benefits terminated without procedural due process.

¹ On June 12, 1998 appellant, a 50-year-old administrative officer, filed a claim alleging that her wrist and hand condition was causally related to typing in the course of her employment. OWCP accepted her claim for left wrist tenosynovitis. On June 3, 2010 it issued a schedule award for a one percent impairment of her left upper extremity.

In this case, appellant simply made a claim for a schedule award. She 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 OWCP 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 October 21, 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).