

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

W.W., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Atlantic City, NJ, Employer**

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**Docket No. 11-977
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 March 9, 2011 appellant, through his representative, filed a timely appeal from the December 13, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed his schedule award.¹

The Board has duly considered the matter and will affirm OWCP's December 13, 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 him 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 August 20, 2002 appellant, a 47-year-old supervisory general engineer, injured his upper back in the performance of duty when he picked up a computer box and felt a snap or pop and a shock run down his arm. He also complained of pain in his chest. OWCP accepted his claim for cervical sprain and authorized an anterior cervical discectomy at C5-6 and C6-7. On May 25, 2010 OWCP issued a schedule award for an 18 percent impairment of his left upper extremity.

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 OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.⁴ The applicable date of the sixth edition refers 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 June 9, 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).