United States Department of Labor Employees' Compensation Appeals Board

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P.R., Appellant)
and) Docket No. 11-1256) March 26, 2012
U.S. POSTAL SERVICE, POST OFFICE, Wenonah, NJ, Employer) (viai cii 20, 2012) ()
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 April 27, 2011 appellant, through his representative, filed a timely appeal from the December 27, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed his July 27, 2010 schedule award claim.¹

The Board has duly considered the matter and will affirm the December 27, 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) (hereinafter A.M.A, Guides) 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) could not have those benefits terminated without procedural due

¹ On January 30, 2005 appellant, then a 38-year-old letter carrier, filed an occupational disease claim alleging that right and left elbow pinched nerve was attributable to his duties of casing mail. On November 2, 2007 the Board issued an order setting aside decisions dated November 27, 2006 and April23, 2007 and remanded the case for further development of the evidence. *See* Docket No. 07-1642 (issued November 2, 2007). The Board found that OWCP had failed to consider all the relevant evidence prior to issuing its decisions. Following the Board's remand order, OWCP accepted his claim for bilateral capital tunnel syndrome and bilateral medial epicondylitis.

process.² 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*,³ 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.⁴ 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*.⁵ The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed. Accordingly,

IT IS HEREBY ORDERED THAT the December 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2012 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 In *Mathews*, the Court held that an evidentiary hearing is not required prior to the termination of social security disability benefits, noting, among other things, that the disabled workers need is likely to be less than that of a welfare recipient, so there is less reason to depart from the ordinary principle that something less than an evidentiary hearing is sufficient prior to adverse administrative action.

³ 43 ECAB 859(1992).

⁴ *Id*. at 866.

⁵ FECA Bulletin No. 09-03 (issued March15, 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).