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S.R., Appellant)	
)	
and)	Docket No. 11-827
)	Issued: November 15, 2011
GENERAL SERVICES ADMINISTRATION,)	
MID-ATLANTIC REGION, PUBLIC)	
BUILDING SERVICE, Kansas City, MO,)	
Employer)	
)	

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

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

The Board has duly considered the matter and will affirm OWCP's November 18, 2010 decision. Appellant's attorney 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 her 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). He also asserted that appellant should have been provided a hearing with regard to which edition of the A.M.A., *Guides*, should apply. The cases cited by counsel hold 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

¹ On February 2, 2005 appellant, a 46 year old procurement technician, injured her left ankle and right knee in the performance of duty while stepping in a pothole in the parking lot while walking to her car. OWCP accepted her claim for left ankle sprain and fracture of the left ankle.

without procedural due process. 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 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 November 18, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 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).