

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

D.A., Appellant)	
)	
and)	Docket No. 11-968
)	Issued: November 30, 2011
U.S. POSTAL SERVICE, VEHICLE)	
MAINTENANCE FACILITY, New York, NY,)	
Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
Thomas R. Uliase, Esq., for the appellant	
Office of Solicitor, for the Director	

ORDER AFFIRMING CASE

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

On March 9, 2011 appellant, through his attorney, filed a timely appeal from a February 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) granting him a schedule award.¹

The Board has duly considered the matter and will affirm OWCP's February 24, 2011 decision. Appellant's attorney expresses no disagreement with the schedule award *per se*. Rather, he argues only that OWCP delayed adjudication of his 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) 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

¹ OWCP accepted that on June 29, 2000 appellant, then a 37-year-old motor vehicle operator, sustained a right wrist sprain and right distal radius fracture in the performance of duty. On May 16, 2005 the Board affirmed an August 18, 2004 decision terminating his compensation and authorization for medical benefits and finding that he had no further employment-related disability. Docket No. 05-353.

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 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, OWCP properly applied the sixth edition of the A.M.A., *Guides*.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

IT IS HEREBY ORDERED THAT the February 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 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).