



appellant by diminishing the amount of the schedule award to which he was entitled. The Board has held, however, that a claimant has no vested right to a schedule award when he or she has only made a claim for a schedule award.<sup>1</sup> To the extent that counsel is arguing that appellant was deprived of a protected property interest, the Board notes that such assertions are similar to arguments made in the cases of *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 attempting to terminate benefits. Appellant had no vested right to a schedule award under the A.M.A., *Guides*.<sup>2</sup>

Counsel further maintained that OWCP violated the limits on its construction of statutory authority in retroactively applying the sixth edition of the A.M.A., *Guides*. The Board, however, has previously found that the Director properly exercised its authority in applying the sixth edition of the A.M.A., *Guides* to all schedule awards issued after May 1, 2009.<sup>3</sup> In *Harry D. Butler*,<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup> 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 was filed. Accordingly, the Board will affirm the July 22, 2011 decision.

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.

---

<sup>1</sup> See *P.V., Order Affirming Case*, Docket No. 11-348 (issued September 15, 2011); *B.M., Order Affirming Case*, Docket No. 11-1468 (issued January 12, 2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 43 ECAB 859 (1992).

<sup>5</sup> *Id.* at 866.

<sup>6</sup> FECA Bulletin No. 09-03 (issued March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

**IT IS HEREBY ORDERED THAT** the July 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 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