

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

M.S., Appellant)
)
)
and) **Docket No. 12-333**
) **Issued: August 7, 2012**
)
U.S. POSTAL SERVICE, POST OFFICE,)
Egg Harbor Township, NJ, Employer)
)

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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On November 28, 2011 appellant, through his attorney, filed a timely appeal from the May 31, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed a March 3, 2011 schedule award claim.

The Board has duly considered the matter and will affirm OWCP's May 31, 2011 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 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). 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 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 fifth edition of the A.M.A., *Guides*. In *Harry D. Butler*,¹ the Board

¹ 43 ECAB 859 (1992).

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.² 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*.³ 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 May 31, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

² *Id.* at 866.

³ 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).