

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

B.C., Appellant	)	
	)	
and	)	Docket No. 11-1043
	)	Issued: January 25, 2012
U.S. POSTAL SERVICE, POST OFFICE,	)	
Philadelphia, PA, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of the 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 March 17, 2011 appellant, through her attorney, filed a timely appeal from the December 1, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed her August 9, 2010 schedule award decision.<sup>1</sup>

The Board has duly considered the matter and will affirm OWCP's December 1, 2010 decision. Appellant's counsel 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

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<sup>1</sup> The record reflects that on October 7, 2000 appellant, a 46-year-old window clerk, felt pain in her feet and legs due to standing at work. OWCP accepted her claim for plantar fibromatosis of both feet and sprain of both feet, plantar fasciitis and Achilles tendinitis bilateral and authorized the removal of spurs bilaterally.

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*,<sup>2</sup> 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.<sup>3</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>4</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 for such award was filed. Accordingly,

**IT IS HEREBY ORDERED THAT** the December 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 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

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<sup>2</sup> 43 ECAB 859 (1992).

<sup>3</sup> *Id.* at 866.

<sup>4</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).