

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

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**V.J., Appellant** )

**and** )

**DEPARTMENT OF AGRICULTURE, ANIMAL, )  
PLANT HEALTH INSPECTION SERVICE, )  
PLANT PROTECTION AND QUARANTINE, )  
Robinson, NJ, Employer** )

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**Docket No. 11-1660  
Issued: January 25, 2012**

*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  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On July 8, 2011 appellant, through his attorney, filed a timely appeal from the April 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed her January 6, 2011 schedule award claim.<sup>1</sup>

The Board has duly considered the matter and will affirm OWCP's April 12, 2011 decision. Appellant's representative 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). These cases held only that a claimant who was in receipt of benefits (in *Goldberg* welfare benefits and in *Mathews* social security benefits)

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<sup>1</sup> On January 9, 2007 appellant, a 39-year-old manager, injured her right forearm, ankle and knee when she slipped on stairs while in travel status. OWCP accepted the claim for closed fracture of the shaft of the radius and ulna, right knee contusion and right ankle sprain.

could not have those benefits terminated 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 April 12, 2011 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).