

lump sum. It informed him that its offer was in error as he was not working or receiving retirement benefits. OWCP stated, “It is also noted that you have also filed for a schedule award for your right arm. As a result, you will be awarded an impairment of 28 percent for your right arm which will begin once the left lower extremity award expires. This award is payable for 611.52 days and 87.36 weeks.”

On appeal appellant asserts that OWCP awarded him a schedule award for a 28 percent permanent impairment under the fifth edition of the A.M.A., *Guides*.¹ He argues that OWCP should use the version of the A.M.A., *Guides* in effect at the time it issues its schedule award decision, citing *Harry D. Butler*.² OWCP’s December 18, 2007 correspondence, however, did not purport to be a final decision with appeal rights. The letter did not identify itself as a final decision or provide findings of fact and a statement of reasons as required for a decision under OWCP’s regulations.³ The content of the letter was informational in nature and provided to notify appellant that he did not qualify for a lump-sum schedule award. Consequently, as OWCP did not issue a schedule award granting appellant a permanent impairment of the right upper extremity until July 28, 2011, after the effective date of the sixth edition of the A.M.A., *Guides*, it properly utilized the sixth edition of the A.M.A., *Guides* in determining the extent of his permanent impairment.⁴

Appellant further maintains that OWCP erred in referring him for an impairment evaluation using the sixth edition of the A.M.A., *Guides* as it had previously determined the extent of his permanent impairment pursuant to the fifth edition of the A.M.A., *Guides*. As discussed, however, the December 18, 2007 letter from OWCP did not constitute a final decision, and thus it properly developed the medical evidence to determine the extent of his permanent impairment under the current edition of the A.M.A., *Guides*.

¹ Appellant argues that OWCP acknowledged that he had a 28 percent permanent impairment on November 9, 2010. In a report dated November 9, 2010, an OWCP medical adviser reviewed the opinion of the second opinion examiner and opined that appellant had a four percent permanent impairment of the right upper extremity. He noted that appellant had previously received a schedule award for a 28 percent right upper extremity impairment, and thus had no further impairment. The medical adviser’s inaccurate finding that appellant had received a prior award for a 28 percent impairment, however, does not establish that he was entitled to such an award.

² 43 ECAB 859 (1992).

³ See 20 C.F.R. § 10.126.

⁴ The Board 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. In *Harry D. Butler*, the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. See *Harry D. Butler*, *supra* note 2. 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. *Id.* at 866. 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*. FECA Bulletin No. 09-03 (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). 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.

Appellant argues that he has a property interest in receiving a schedule award under the fifth edition of the A.M.A., *Guides*, 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. The Board has held that a claimant has no vested right to a schedule award when he or she has only made a claim for a schedule award.⁵ 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*.⁶

IT IS HEREBY ORDERED THAT the December 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 2013
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

⁵ See *B.M.*, Order Affirming Case (Docket No. 11-1468, issued January 12, 2010); *P.V.*, Order Affirming Case (Docket No. 11-348, issued September 15, 2011).

⁶ *Id.*