

advance of the effective date for the use of the sixth edition. He maintained that OWCP's application of the sixth rather than the fifth edition harmed 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.² 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 fifth edition of the A.M.A., *Guides*.³

In *Harry D. Butler*,⁴ 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.⁵ 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*.⁶ The FECA Bulletin directed that correspondence with treating physicians, consultants and second opinion specialists should reflect use of the new edition for decisions issued on or after May 1, 2009. 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. In this case, OWCP, on August 31, 2009, properly advised appellant, that effective May 1, 2009 all permanent impairment determinations must be made in accordance with the sixth edition and requested a new impairment rating corresponding to this edition. The Board finds that counsel has not established that the Director abused the discretion delegated to him under section 8107 and the implementing federal regulations to make the sixth edition of the A.M.A., *Guides* applicable to all claimants as of May 1, 2009. The fact that the sixth edition revises the evaluation methods used in previous editions does not establish an abuse of discretion. As noted in FECA Bulletin No. 09-03, the American Medical Association periodically revises the A.M.A., *Guides* to incorporate current scientific clinical knowledge and judgment and to establish standardized methodologies for calculating permanent impairment. Accordingly, the Board will affirm OWCP's July 5, 2011 decision.

² 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).

³ *Id.*

⁴ 43 ECAB 859 (1992).

⁵ *Id.* at 866.

⁶ 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 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board