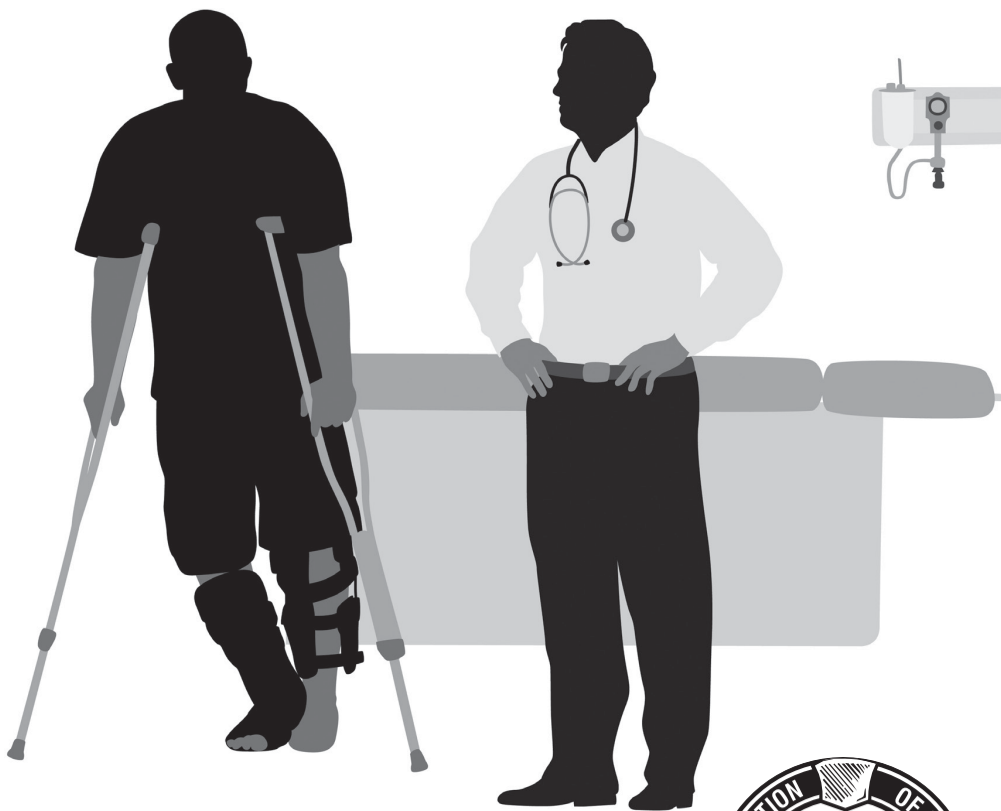


Grieving Management's OWCP Violations



National Association of Letter Carriers



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About this guide

Letter carriers suffer more injuries than any other federal employees. Injured letter carriers are protected by federal law which is known as the Federal Employees Compensation Act (FECA). The FECA is codified at 5 United States Code 81 (5 USC 81) and its implementing regulations are found at 20 Code of Federal Regulations Part 10 (20 CFR 10).

The FECA established the Office of Workers' Compensation Programs (OWCP) in the Department of Labor (DOL) and tasks that agency with deciding all matters relating to claims for on-the-job injuries by federal employees.

This guide was written to assist shop stewards processing grievances related to OWCP for postal management violations of FECA and postal regulations, however, the best solution to what management does wrong is to take them out of the picture.

The Department of Labor, Office of Worker's Compensation Program has developed a program called ECOMP, which allows you to file your claim electronically without needing to turn documents in to your supervisor.

You can register in ECOMP at any time. The NALC encourages every letter carrier to be registered in ECOMP.

Introduction

Letter carriers suffering on the job injuries are protected by federal law which is known as the Federal Employees Compensation Act (FECA). The FECA is codified at 5 United States Code 81 (5 USC 81) and its implementing regulations are found at 20 Code of Federal Regulations Part 10 (20 CFR 10).

The FECA established the Office of Workers' Compensation Programs (OWCP) in the Department of Labor (DOL) and tasks that agency with deciding all matters relating to claims for on-the-job injuries by federal employees. OWCP decides, for example, whether an injury is job-related, whether compensation is payable and, if so, how much, and whether a limited duty job offer is medically suitable.

The FECA was intended to protect federal employees by providing compensation when they suffer job-related injury or illness. The law places the burden on the injured worker to prove that the injury is work-related. While the OWCP claims process is designed to operate efficiently and to result in fair, accurate decisions, the procedures required to meet that burden are often complex and difficult to navigate.

For many, the OWCP claims process fails to deliver the benefits intended by FECA. Letter carriers know that too many legitimate claims are challenged by management or become unnecessarily complicated due to management mistakes in handling claims.

As a result, some letter carriers suffer on-the-job injuries but fail to obtain the protections of FECA. Management's

mistakes lead to some of the worst injustices to injured letter carriers who seek workers' compensation benefits. The FECA requires management to process claims in accordance with regulations, but frequently supervisors do not.

Management's mistakes often result in legitimate claims being delayed or even denied. Their mistakes also violate the law, as well as Postal regulations, and the National Agreement.

This guide is intended to provide shop stewards and contract enforcers with the necessary tools and references to hold Postal management accountable in complying with the laws and regulations governing on-the-job injuries. Holding management accountable will benefit all parties – the Postal Service, NALC, and individual letter carriers.

Failure to process claims hides the true cost of maintaining a safe and healthy workplace. When claims are erroneously denied, those costs are being transferred to employees and their health benefit plans, instead of being paid by the Postal Service.

Letter carriers should not allow Postal management, through its own errors, to transfer the costs of legitimate on-the-job injuries onto workers, their families, and their health benefit plans. The grievance procedure can be used to educate supervisors and managers concerning their legal and contractual obligations.

Assisting letter carriers with their OWCP claims is a great union organizing tool. Newly hired City Carrier Assistants (CCAs) as well as long-term non-members are more likely to

join the NALC when they see concrete benefits like assistance in filing a claim for a workplace injury and the processing of appeals for claim denials

Finally, of course, the individual letter carriers who have experienced on-the-job injuries will benefit. Having their claim processed timely and accurately by the Postal Service will allow OWCP to adjudicate the claim without unnecessary delays. Prompt acceptance of the claim will allow the letter carrier to enjoy the financial protection intended by the FECA and enable the medical care necessary to recover and return to regular duties faster.

When necessary, shop stewards should use the grievance procedure to hold management accountable. In doing so, shop stewards should be mindful of the distinction between helping an injured worker with an OWCP claim and dealing with management violations of contract and law.

ECOMP Claim Filing

Many of the common postal violations can be avoided when injured letter carriers register and file claims electronically via the Office of Workers' Compensation Programs' (OWCP) the Employees' Compensation Operations & Management Portal (ECOMP) web portal. You can register and file claims from your home computer, tablet, or cell phone.

ECOMP allows employees to electronically file claim forms, compensation forms, track the status of forms or documents submitted through ECOMP, and electronically upload and submit documents to existing OWCP claim files.

Injured workers should go to the ECOMP website, <https://www.ecomp.dol.gov/> and click on HELP on the upper right corner of the page. A page will open with an icon for FECA Claimant/injured worker. Click on the icon to access user guide videos created to chronologically walk the injured worker through their ECOMP experience.

ECOMP allows the injured worker to file a claim of their choice and submit factual and medical documentation without management interference. The Postal Service is required to give access to a computer if the injured worker does not have access to a device to file a claim ECOMP.

With ECOMP, injured workers should never be intimidated in the claim filing process. OSHA prohibits employers, including the Postal Service, from retaliating against injured workers who report workplace injuries.

Reporting a work-related injury or illness is a core employee right and retaliating against a worker for reporting an injury or illness is illegal discrimination under OSHA section 11(c).

Registering in ECOMP

Injured letter carriers must register and file claims electronically via OWCP's ECOMP web portal. You can register and file claims from your home computer, tablet, or smart phone.

Go to the ECOMP website, <https://www.ecomp.dol.gov/> and click on HELP on the upper right corner of the page. Click on the FECA Claimant, Injured Worker icon. Click on that link to access step-by-step instructions and instructional videos on

registering in ECOMP and filing claim forms. The videos can be viewed in less than a half hour.

Once registered, the injured worker can access complete claim files for every claim they have filed over the course of their career.

When registered in ECOMP, an employee can view every document in their claim file. The transparency provided in ECOMP allows injured workers and contract enforcers to view correspondence between management and OWCP, including challenges that may not have been sent to the injured worker.

Stewards' Rights in OWCP Cases

Decisions made by OWCP are not grievable, whereas violations by the Postal Service (as well as contractual requirements) are grievable.

When it comes to helping injured workers pursue on-the-job injury claims with OWCP, NALC representatives have no right to time on the clock. Additionally, non-members of the NALC are not entitled to our assistance on OWCP claims as this is a members only benefit.

However, when it comes to grieving management's violations relating to on-the-job injuries shop stewards do have the right to time on the clock. And they have an obligation to fairly represent all letter carriers, not just NALC members.

Non Grievable – Decisions by OWCP

For example, OWCP has the exclusive authority to decide:

- Whether a claim is accepted as work-related,
- Whether compensation for wage-loss is payable,
- The medical suitability of a limited duty job offer.

These decisions are not grievable.

Grievable – Postal Service mistakes in handling OWCP Claims

Postal management is obligated by the National Agreement, its own regulations, and the FECA to follow certain procedures when employees report on-the-job injuries. Management’s violations of those procedures are grievable.

Postal supervisors typically do not understand the distinction between OWCP decisions and Postal Service violations related to OWCP matters. They are often coached to argue that such violations are not grievable and not arbitrable. They may tell union representatives that OWCP is the only agency that can provide a remedy for such violations.

Stewards should be ready for management’s non-grievable arguments and be prepared to argue that violations of the law, the contract and postal regulations are grievable.

Handbook and Manual violations are grievable

First, many of the FECA implementing regulations found in 20 CFR 10 are echoed in Postal Service handbooks and manuals. This is because Article 21.4 of the National

Agreement requires the Postal Service to promulgate regulations which comply with OWCP regulations. The Postal Service regulations sometimes restate the CFR's provisions word-for-word. In other cases, they paraphrase them or contain implementing language for use within the Postal Service.

When management violates provisions found in the Postal Service's handbooks or manuals relating to on-the-job injuries, cite Article 19 of the National Agreement. It requires management to comply with its own handbooks and manuals.

Also cite the Article 15.1 definition of a grievance, as noted at Joint Contract Administration Manual (JCAM) page 15-1. It addresses disputes that may be handled within the grievance procedure and may include alleged violations of Postal handbooks or manuals.

The law and regulations may be grieved directly

Second, even when there is no echoing Postal Service handbook or manual language, management violations of the FECA, 20 CFR 10, and other OWCP regulations are grievable.

In such cases, start by arguing Articles 3, 5, 15 and 21 of the National Agreement. Article 3 limits management's exclusive rights by requiring consistency with applicable laws and regulations.

Article 5 prohibits management from actions that are inconsistent with its obligations under law. The FECA (at 5

USC 81) and its implementing regulations (at 20 CFR 10) are applicable law and regulations. Article 21.4 specifically requires the Postal Service to comply with applicable regulations of OWCP.

Thus, the National Agreement clearly requires the Postal Service to comply with OWCP law and regulations. Again, cite the broad grievance definition in Article 15.1 (JCAM page 15-1), where the parties agreed that disputes that may be handled within the grievance procedure may include alleged violations of law.

Cite national level Pre-Arbitration F94N-4F-C 96032816 (M-01316), where the parties agreed that pursuant to Article 3, grievances are properly brought when management's actions are inconsistent with applicable laws and regulations.

Cite JCAM page 5-1 for quotation of Arbitrator Bernstein's national level award in H1N- 5G-C 14964 (C-06858). Bernstein held that Articles 3 and 5 *"incorporate all of the Service's obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well.*"

Cite Step 4 B04N-4B-C 97024116 (M-01372) for the proposition that Bernstein's award is binding on regional arbitrators.

The Postal Service has legal, as well as contractual, obligations to follow certain procedures for dealing with on-the-job injuries. When the Postal Service fails to follow those procedures, its violations are grievable.

How to Grieve Violations

As you investigate a potential violation and prepare any subsequent grievance file, you should always keep a few things in mind. In order for a grievance to have the best chance of success, stewards should be able to answer “yes” to each of the five questions below:

1. Is there a violation of the National Agreement?
2. Did we properly frame the issue?
3. Did we determine all the facts of the case and document each one?
4. Do our contentions clearly explain the documented facts and how the National Agreement was violated?
5. Did we request an appropriate remedy for the contract violation?

To succeed, any grievance filing should contain certain well-established elements:

- 1) documented, proven facts;
- 2) accurate citations of contract and law; and
- 3) appropriate requested remedies.

The same elements must be present in a grievance protesting management violations of on-the-job injury procedures.

Documented, proven facts

It is not enough for a steward to allege that management did something wrong or failed to do something it should have done. The steward must prove it. Evidence will depend on the specific facts of the case.

Say for instance, that management failed to provide an injured employee with a CA-16. The steward can provide strong evidence of this failure in different ways. For example, they could obtain a signed, dated statement from the injured worker stating that they asked the supervisor for a CA-16, but the supervisor refused.

Equally persuasive would be a signed, dated statement from the shop steward stating that they interviewed the supervisor, and the supervisor admitted he refused to provide a CA-16. A management document stating a local policy to not issue CA-16's would be compelling evidence.

For another example, say management failed to forward a CA-1 or CA-2 to OWCP within 10 working days. The steward could provide compelling evidence by obtaining a copy of the completed form showing that the supervisor completed and dated it more than ten working days after the employee submitted it. If the injured worker filed the claim online, they could print the confirmation of submission.

Alternative proof, also strong, could consist of a signed, dated statement from the shop steward that they interviewed the manager of the Injury Compensation Control Office (ICCO) (now Occupational Health Claims Office (OHC)), and the manager admitted the form was not forwarded within the time limits.

If the letter carrier filed the claim online, the shop steward should request a copy of the confirmation tracking number and the emails sent to the letter carrier verifying submission to OWCP.

Accurate citations of contract and law

This guide provides guidance to many specific citations that can be used for various violations. Those cited are by no means all-inclusive. There are other citations, including handbooks and manuals, Interpretive Step 4, and national pre-arbitration settlements, and OWCP publications, to name a few. Stewards could cite the CA-810, *Injury Compensation for Federal Employees* and CA-550 FECA, *Questions and Answers*. These OWCP publications do not contain the actual laws or regulations, but can be cited in grievances, for instance, as follows:

OWCP's explanation of its own regulations in the CA-810 Section 2.2C states, *"If an employee requires medical treatment for the injury, the supervisor should complete the front of Form CA-16 within four hours of the request whenever possible."*

Stewards have ready access to OWCP publications and forms, as well as Postal Service manuals, contract materials, and the CFR, via the NALC "Injured on the job" webpage at nalc.org.

Appropriate requested remedies

Crafting an appropriate remedy is an important element in every grievance, including those involving management's OWCP violations. The general principles to consider in the formation of a requested remedy include:

- A. The remedy should fit the violation;
- B. The grievant should be made whole; and
- C. The remedy should fix the underlying problem.

These same general principles should be applied in cases protesting management's OWCP procedure violations.

The remedy should fit the violation

In the instance where management improperly refused to provide a CA-16, and later claimed the supervisor did not know he was required to do so. An appropriate remedy might include an order requiring the Postmaster to instruct all the supervisors and 204b's, in writing, to comply with the regulations regarding Form CA-16. It would not be appropriate to request that the prime-time percentage in the Local Memorandum of Understanding (LMOU) be increased. There must be a logical connection between the remedy and the violation.

The grievant should be made whole

In most cases involving management errors in handling on-the-job injuries, no monetary make-whole remedy will be appropriate. The FECA provides that the benefits provided by OWCP are the sole remedies available to compensate employees who suffer on-the-job injuries.

Stewards should never request as a remedy that OWCP accept a claim and pay benefits as a remedy. OWCP has exclusive authority to make decisions regarding a claim. Those decisions are not subject to review by an arbitrator, or anyone else.

However, in some cases a monetary make-whole remedy will be appropriate. For instance, in one case the Postal Service failed to advise an injured letter carrier of their right to elect

continuation of pay (COP). By the time the carrier found out about their rights it was too late and OWCP denied his request for COP.

In case No. F94N-F4-C 99031789 (C-22599), Arbitrator Ames sustained the grievance, holding that the Postal Service had violated Articles 19 and 21 of the National Agreement by failing to advise the grievant of his right to elect COP. He ordered the Postal Service to make the grievant whole by reinstating the grievant's sick leave that was used due to their injury. This resulted in converting sick leave to COP (during the 45-day COP eligibility period) and paying the grievant for the remainder of his sick leave used, minus compensation benefits.

Arbitrator Claude Ames, while acknowledging only OWCP has final authority to determine COP payment, found, *"Failure of grievant's supervisor to inform him of his COP rights and time limits for filing was the proximate cause of OWCP's denial of his COP."*

Normally, a steward arguing for a make-whole remedy should be prepared to show a direct link between the **contractual violation** and the **demonstrable loss** to the employee.

The remedy should fix the problem

Sometimes a simple cease and desist agreement by management will fix an underlying problem. Often it will not. Local stewards are in the best position to determine this.

If a steward determines that a simple promise by management to cease and desist is not likely to solve an

ongoing issue, he or she should consider carefully what it will take to do so.

If management admits to a mistake, try to determine why it was made. If the reason was lack of training, a good remedy might include a requirement that the supervisor receive training in OWCP procedures, and that management provide a copy of the training records to the Union.

If the violations continue by other supervisors, consider a remedy that requires training for all office supervisors and 204b's. If the same supervisor continues the violations, request written acknowledgement indicating their action violated a specific provision of the ELM, CFR, EL-505, etc., and they have been instructed to cease such violations, with a copy to the Union.

Stewards should consider the underlying problems and craft remedy requests to resolve them. Doing so may involve progressive remedies in cases of repeated violations.

Such remedies might be unpleasant for the offending supervisors, but all parties benefit from solutions that fix underlying problems. The benefits include fewer grievances, greater contract compliance, less resources spent on grievance processing and in the case of grievances concerning on-the-job injury procedures, more OWCP claims accepted without delay.

Common Violations

Problems with OWCP claims can begin from the very first moment an injured worker attempts to file a claim. While FECA forbids management from denying or interfering with

the right of an injured worker to file a claim for an on-the-job injury, many carriers feel intimidated when they attempt to exercise their rights under FECA.

If that happens, letter carriers should contact their steward and file a grievance immediately if they are not given the proper forms. Injured workers also have 30 days to file an OSHA Whistleblower Complaint by calling 1-800-321-OSHA.

Section 11(c) of the OSH Act prohibits an employer from discriminating against an employee because the employee reports an injury or illness.¹ (29 CFR 1904.36)

The following violations of OWCP rules are listed in order of occurrence in the claim cycle. It is by no means the entire list of violations that injured letter carriers may have to grieve.

For every common violation, there is a corresponding grievance starter listed at the end of this guide. These grievance starters can be found in the members-only portal at nalc.org. After logging into the members-only portal, go to Member Documents, then the OWCP tab.

a. Choosing what claim form to file

ECOMP allows the injured worker to choose which type of form to file. While management may suggest what form to file, ECOMP allows the worker to file the claim of their choice without management interference.

¹ *"In addition to § 1904.35, section 11(c) of the OSH Act also prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files*

a safety and health complaint, asks for access to the part 1904 records, or otherwise exercises any rights afforded by the OSH Act.”

If a worker files a claim using a paper form, OWCP requires the supervisor transcribe the information from the paper form into ECOMP. The worker must keep a copy of the paper form to ensure the information is transcribed accurately and within OWCP time limits. Supervisors should not refuse paper forms, as not all employees have access to ECOMP.

Knowing the difference between a *CA-1 Traumatic Illness or Injury* and a *CA-2 Occupational Illness or Injury* is important. A *CA-1* is defined as an injury or series of events that occur during a single day, shift, or tour. A *CA-2* is then defined as an injury that occurs over more than one day, shift or tour.

Management’s obligations regarding claim filing are found in ELM 544.111 titled ***Immediate Supervisor Responsibility***:

544.111 General

When a notice of traumatic injury or occupational disease is filed, the immediate supervisor is responsible for doing the following:

- a. Immediately ensuring that appropriate medical care is provided.*
- b. Providing the employee a Form CA-1 or a Form CA-2*

Note: You do not need to wait for supervisor to provide you with claim form when you register and file in ECOMP.

Some managers read the language found in 544.111.b above to mean that they have the discretion in determining what claim form to provide. However, a closer examination of the basic definitions found in the ELM, section 541.2 helps us

answer this question of whether management can determine or direct what type of claim an injured carrier files.

541.2.b Claim — *an assertion, in writing, of an individual's entitlement to benefits under FECA. This claim must be submitted on a form as required by 542. A claim may be filed for a traumatic injury, an occupational disease or illness, or death.*

541.2.c Claimant — *an individual whose claim for benefits and/or compensation has been filed in accordance with FECA and the provisions of 542.*

542.112 Time Limit

FECA requires that written notice of a traumatic injury be given by the employee, or person acting on behalf of the employee, within 3 years of the injury.

542.122 Time Limit

FECA specifies that notice be given by the employee, or person acting on behalf of the employee, within 3 years of the onset of the condition.

A claim is an injured worker's **assertion** that an illness or injury occurred. That individual is known as the **claimant**. To be timely filed, that claim must be **filed by the employee** within 3 years. Said another way, the employee is obligated to file their assertion that an injury occurred using the correct form based on the definitions of CA-1 or CA-2. Based on this framework of language, the decision of what type of claim to file rests solely with the individual claimant. It is not management's decision.

Filing the wrong claim form can have significant negative impacts. For example, if someone experiences a traumatic injury but is directed to file a *CA-2 Occupational injury* claim, they will not receive their entitlement to Continuation of Pay, nor will they receive a *CA-16* for medical treatment. Worse yet, the claim will most likely be denied due to the factual error of filing of the wrong claim type.

The most common violation of this occurs when management directs someone to file a *CA-2a Notice of Recurrence*. This is typically due to management not understanding the definitions of claim types. If you or a coworker is instructed to file a *CA-2a*, seek immediate guidance from your National Business Agent's (NBA) office. In nearly every circumstance, that is not the correct form and filing a *CA-2a* will only delay treatment, healing, wage loss compensation, and possibly even a return to work.

Filing claims electronically via ECOMP takes management out of the mix at this early stage and allows the carrier to submit all pertinent information directly into the new claim file immediately. The immediate supervisor is then obligated to complete the form and send it to the Postal Service's district OHC by the end of the day it was received (ELM 544.111.f). The Postal OHC person is then obligated to send the completed form to the DOL within 10 days of the date the employee filed the claim (ELM 544.212)

b. Failure to provide a CA-16

Form *CA-16, Authorization for Examination And/Or Treatment*, is the form used in traumatic injuries to:

- authorize medical treatment for 60 days, and

- provide an initial medical report.

Form CA-16 is extremely important to injured workers. Its front is completed by management and guarantees payment by OWCP to the medical provider, even if the claim is denied. The reverse is completed by the treating physician, ensuring that OWCP immediately receives and reviews an initial medical report.

In far too many cases, Postal management does not issue a CA-16 or fails to complete it properly. Thus, OWCP receives the initial medical report late or not at all. This results in delay of acceptance of claims, or even denial of claims.

Claims filed in ECOMP require the supervisor complete their portion of the CA-1 online. At the end of the supervisor's page there is an icon where the supervisor can print a CA-16. The guide for supervisors has this instruction:

"If the injured employee requires medical treatment for the injury, you may obtain Form CA-16, Authorization for Examination and/or Treatment, by clicking the button "Issue CA-16." A copy of the form will be generated in PDF format, which may be printed and completed to authorize the employee to be treated for the claimed injury."

Contract enforcers should cite the ECOMP Supervisor's Guide language in a CA-16 grievance.

The regulations governing the CA-16 are found at 20 CFR 10.211 (a), 10.300, and 10.331; ELM 544.11, 545.2, 545.44 and 545.45; EL-505 pages 24, 37, 40, 41, 47, 48, 49, 109, and 119; and EL-806 122.2.

The CA-16 is used for traumatic injuries only.

It is not used for an occupational disease or injury. It must be issued by management in most cases where a CA-1 is submitted, and the employee seeks medical attention. Only in the very limited circumstances where the injured employee first seeks medical attention more than one week after the injury, or in cases where the injured employee accepts treatment from the Postal Service's contract physician and the injury is only a first aid injury, may management not issue a CA-16.

The CA-16 itself authorizes examination and treatment. Even if the Postal Service requests an injured worker be examined by their contract physician, the injured worker should still request a CA-16.

The definition of a job-related first aid injury is found in Management Instruction EL-540-91-1 and in the instructions for PS Form 1769/301 - *Accident Report*. A first aid injury is a minor injury that requires no more than two medical visits, the second of which is to confirm full recovery. Any injury that involves work restrictions, disability, and/or limited duty is not considered a first aid case.

Thus, even if an employee agreed to be treated by the Postal Service's contract physician, if, at the initial visit, the physician placed a restriction (e.g., a weight limit of 30 lbs.), management would have to then immediately issue a CA-16 for the follow-up visit. The CA-16 should not be issued to the contract physician.

Also, if an employee seeks medical attention from his or her own physician, even in a first aid case, a CA-16 must be provided. Federal regulations, found at 20 CFR 10.7, expressly prohibit management from using a substitute form or modifying

the existing CA-16. Management normally must issue Form CA-16 within 4 hours of the claimed injury. If management gives oral authorization for the medical care, then the CA-16 must be issued within 48 hours. The completed CA-16 must be submitted directly to OWCP as soon as possible after medical treatment, either by the employee or the physician.

When a CA-16 is properly issued, completed, and sent directly to OWCP, the injured worker will have met his or her initial burden of proof, because the CA-16 includes a comprehensive initial medical report.

When a CA-16 is not properly issued or completed, the necessary medical report needed to meet the burden of proof may or may not be sent to OWCP.

Nothing in 20 CFR 10 or relevant Postal manuals requires an employee to request a CA-16 from the supervisor. The language requiring issuance of CA-16 is couched in mandatory terms. Nevertheless, employees should specifically request it from the supervisor whenever they submit a CA-1 and seek medical attention. Injured workers should request in writing citing ELM 545.21.

Form CA-16 is critically important to injured workers. Management is required to provide it in almost every traumatic injury. The CA-16 provides coverage of medical bills, MRIs, x-rays, and physical therapy during the first 60 days. However, management routinely fails to provide it. This often causes problems for injured workers. Their claims are delayed or even denied. Shop stewards should enforce the regulations regarding the CA-16 and hold management accountable for their failures.

c. Failing to pay the employee on day of injury

Postal Service supervisors tend to be poorly trained in most OWCP procedures. An injured worker's pay status on the date of injury can be mystifying to most supervisors.

Postal procedures for recording pay on the employee's date of injury (DOI) are found in section 13-4 of the EL-505, Workers' Compensation Handbook.

On the DOI, an injured employee is kept in a work status or granted *"administrative leave for any fraction of a day or shift lost, so that the employee receives pay for the entire shift that he or she is scheduled to work,"* including overtime.

COP is not charged on *"the DOI to the 45-day COP period, except when the injury occurs before the beginning of the workday or shift."*

"– If an employee receives first-aid treatment and returns to work the same day, excuse his or her time spent for first-aid treatment to administrative leave." An employee is not required *"to clock out when leaving the place of duty for first-aid examination or treatment."*

"– If an employee, including a casual or temporary employee, is directed by management to an on-site or off-site medical unit the same day as the accident, the time spent waiting for and receiving medical attention is recorded as work time, up to all time that the employee would have been directed to work beyond the regularly scheduled shift."

The EL-505 is citable in a grievance.

d. Failing to pay continuation of pay (COP)

On the employee portion of the CA-1, Claim for Traumatic Injury, workers must choose between COP and using sick or annual leave. To be eligible for COP, a worker must have a job-related traumatic injury, file a CA-1 within 30 days of the DOI, and begin losing time from work due to the injury within 45 days.

In most cases, selecting COP makes the most sense. An employee may choose to use leave instead of COP if they did not file the claim within the COP time limits.

Most on-the-job injuries are resolved within a relatively short period of time. When amending the FECA in 1974, Congress created COP to prevent employees' income loss while their claim was being adjudicated. COP acts as a financial bridge so injured workers continue to get paid while they heal and get back to work with minimal complications, providing savings to both injured workers and the Postal Service.

OWCP has the exclusive authority to determine questions of entitlement and all other issues relating to COP. The Postal Service can controvert COP but must pay COP until OWCP decides entitlement.

Postal managers have the responsibility to provide COP, and if they fail to do so when there is entitlement, they are in violation of **ELM 543.41, Continuation of Regular Pay:**

“For most employees who sustain a traumatic injury, FECA provides that the employer must continue the employee’s regular pay during any periods of resulting disability up to a maximum of 45 calendar days.”

If management fails to properly enter COP and charges an injured worker's sick or annual leave, the injured worker can require management to change the leave to COP. To accomplish this, the injured worker must make a written request to the postmaster within one year of the date the leave was used or the date of the written approval of the claim by OWCP (if written approval is issued), whichever is later. See 20 CFR 10.206 and ELM 543.42(c).

The regulations governing COP are found at **20 CFR 10.200; 5 USC 8118**; and ELM **545.7, 545.73, and 545.74**.

EL-505 requires Postal management to make the claimant aware of their right to choose COP.

EL-505, Section 4-15 Responding to an Employee's Election of COP, Sick, or Annual Leave

Obligation: Informing Injured Employees of Right to COP, Sick, or Annual Leave:

A traumatically injured employee may elect to have COP for the first 45 calendar days of disability or to use sick or annual leave. This election must be made on the CA-1. If the employee chooses sick or annual leave, ensure that the employee has been made aware of his or her rights and responsibilities (see Exhibit 3.5b, Sample Letter: Employee Rights, Responsibilities, and Choice of Physician).

The EL-505 also requires the service to counsel the injured employee by use of Exhibit 3.5a found in Section 13-4.

Article 21.4 of the National Agreement states:

Section 4. Injury Compensation Employees covered by this Agreement shall be covered by Article 21.4 Subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.

Page 21-4 of the JCAM explains:

Workers' Compensation. *Letter carriers who sustain occupational injury or disease are entitled to workers' compensation benefits under the Federal Employees' Compensation Act (FECA), administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP).*

National Arbitrator Bernstein ruled in case number H1N-5G- C 14964:

"Article 5 of the National Agreement serves to incorporate all of the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism--it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations."

e. Improperly calculating CCA COP and Compensation

CCAs are protected by the FECA, just like their career counterparts. FECA protection exists from the first day a CCA

begins their employment with the Postal Service, be it a “shadow” day, orientation, or classroom instruction.

Proper computation of COP and wage-loss compensation (WLC) for CCAs has been problematic in some cases.

In some districts, the Postal Service simply paid CCAs COP hours equal to their minimum call-in guarantee. That is inconsistent with OWCP regulations and thus constitutes a contractual violation that a contract enforcer should grieve. While the computation of COP and WLC is relatively straightforward for career employees with set work schedules, it is more complex for employees like CCAs who work variable hours, with few or no guarantees.

OWCP addressed the issue of how to calculate COP and WLC for Postal Service CCAs, in [FECA Bulletin \(FB 13-03\)](#). The bulletin provides OWCP claims examiners and agency injury compensation specialists with guidance for determining CCA COP and WLC.

It is important to understand that the Postal Service pays COP (but it is required to pay it in accordance with OWCP regulations), while OWCP pays WLC (but bases it on certification by the Postal Service of employee pay rates and hours worked).

The formula that OWCP requires agencies (including the Postal Service) to use to calculate COP is different than the formula OWCP uses to calculate WLC, for employees with no set work hours such as CCAs. In addition, there are separate formulas for determining WLC for employees who have worked in the CCA position for 11 months or more, versus those CCAs who have worked in the position for less than 11 months. The three formulas are described below.

The method for calculating COP weekly pay for CCAs is found at 20 CFR 10.216(b)(2): Calculate the total pay earned by the employee during the one-year period prior to date of injury (excluding overtime), divided by the number of weeks worked by the employee during that one-year period (a partial workweek counts as an entire week).

Many CCAs have worked in the CCA position for less than one year. In those cases, COP is calculated by dividing the total wages earned (minus overtime) by the number of weeks worked.

The method for calculating WLC weekly pay for CCAs depends on how long the CCA has been employed as a CCA. There are two possible methods:

- 1) *If the employee has not worked 11 months or more in the CCA position: WLC is calculated in accordance with 5 USC 8114(d)(2) as follows: Total pay (excluding overtime) for the year prior to date of injury for an employee in the same (or neighboring) facility who did work 11 months or more in either TE or CCA positions. If there is more than one such employee, the one who worked the most hours in the year must be used. Divide that total by 52 weeks to calculate weekly wage-loss compensation.*
- 2) *If the employee has worked 11 months or more in the CCA position: WLC is calculated in accordance with 5 USC 8114(d)(1) as follows: total pay earned by the employee during the one-year period prior to the date of injury (excluding overtime) divided by 52 weeks.*

Contract enforcers should initiate grievance investigations for any CCA getting less than 40 hours of COP or WLC. Necessary

documents will include the payroll journals for the year prior to injury, Form 50s, CA-7s, and the documentation the Postal Service used to determine their COP or provided to OWCP to determine WLC amounts.

Grievances should be filed whenever the Postal Service pays COP inconsistent with OWCP regulations detailed above, or when it provides incorrect or incomplete salary and work hour information to OWCP affecting the injured worker's WLC.

f. Failing to provide OWCP with pay rates

When an injured worker submits a CA-7 for wage-loss compensation, OWCP will contact the Postal Service by letter, phone, or email requesting pay rate information. OWCP normally gives the Postal Service 15 days to provide the pay rate information. Compensation will not be paid until the pay rate information has been received.

The Postal Service is obligated to provide claim related documents to OWCP in a timely manner. The Postal Service often delays or fails to provide pay rate information, delaying payment of COP or wage-loss compensation. Grievance officers should cite:

ELM 544.12

Control office and control point supervisors are responsible for reviewing all claims for accuracy and completeness and for forwarding claims and related documents to OWCP within prescribed FECA time frames.

g. Providing a CA-2a instead of a CA-1 or CA-2

When a worker suffers an injury to the same body part as a previous injury, they may be tempted to file a CA-2a, Notice of Recurrence. In most cases the new injury would require new claim and filing a CA-2a will lead to costly delays in treatment and wage-loss compensation.

Form CA-1, *Federal Employee's Notice of Traumatic Injury*, is used to report injuries caused by work factors that occur during the course of one work shift or workday.

Form CA-2, *Federal Employee's Notice of Occupational Disease*, is used to report injuries caused by work factors that occur over the course of more than one work shift or workday.

Form CA-2a, *Notice of Recurrence*, is used to report recurrences of previously accepted injuries. However, the OWCP definition of recurrence is highly technical and commonly misunderstood. Use of the correct form, whether CA-1, CA-2 or CA-2a, is important to injured letter carriers.

Supervisors frequently provide a Form CA-2a to injured letter carriers in circumstances that call for a CA-1 or CA-2. Unsuspecting carriers then complete and submit the wrong form. This results, at best, in long delays in payment of compensation, medical benefits, and so on.

In the context of on-the-job injuries, recurrence is defined at:

20 CFR 10.5(x):

"...an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."

20 CFR 10.104 adds:

"...a notice of recurrence should not be filed when a new injury, new occupational disease or new event contributing to an already-existing occupational disease has occurred. In these instances, the employee should file Form CA-1 or CA-2."

The key to understanding when to use a CA-2a as opposed to a CA-2 or a CA-1 is the phrase *"spontaneous change... without an intervening injury or new exposure to the work environment that caused the illness."*

Consider the following example. A letter carrier develops tendonitis in their right elbow as a result of casing mail. The letter carrier files a CA-2, and their claim is accepted. The doctor completes a CA-17 limiting them to no use of their right arm for two weeks. Management provides limited duty, answering phones, for the two weeks, and then the letter carrier returns to casing and delivering their route. Four months later the tendonitis in their right elbow flares up, and the doctor again limits them to no use of their right arm.

In this example, CA-2a is the wrong form because there was new exposure to the work environment that caused the illness. The correct form is CA-2 because the four months of casing caused tendonitis to flare up. Very few supervisors are

aware of the technical distinction between a recurrence and a new injury. Many assume that if a condition involves the same diagnosis and the same body part as a previous injury, it is a recurrence.

However, Postal regulations define recurrence in accordance with the definition at 20 CFR 10.5(x). Postal regulations also require supervisors to discuss the situation with an employee when he or she reports a recurrence and determine if the situation involves a new injury.

ELM 541.2p restates the OWCP definition of recurrence.

EL-505, page 124 also restates that definition.

EL-505, Exhibit 5.1 restates the definition of recurrence and provides a 4-page explanation of how to distinguish between new injury and recurrence, and gives several examples.

EL-505, Section 5.1 requires the supervisor to discuss the situation with the employee when he or she reports a recurrence. It also requires the supervisor to review Exhibit 5.1 and determine if a recurrence or new injury exists.

Typically, when an employee incorrectly submits a CA-2a when a CA-2 should be filed, long delays result. OWCP may process the CA-2a for three or four months before realizing that there was technically no recurrence. At that point, OWCP will probably deny the claimed recurrence and advise the employee to submit a CA-2. The longer the delay, the more difficult it becomes to prove the claim.

Submission of the appropriate form is important to injured workers. Management is required to discuss the situation with an employee and provide the form requested.

However, management routinely fails to do so. This often causes problems for injured workers, whose claims are delayed or even denied. Shop stewards should enforce the regulations regarding recurrences and hold managers accountable for their failures.

h. Delaying forwarding of CA-1 or CA-2 to OWCP

When OWCP does not timely receive a CA-1 or CA-2, acceptance of the claim and payment of benefits are delayed. Injured workers are best served when claims are timely submitted by management to OWCP.

Provisions in both the law and the contract require management to complete and transmit Form CA-1 and CA-2 to OWCP within 10 working days after receipt from the employee.

An injured worker can avoid this by filing a claim electronically via the ECOMP web portal. The injured worker receives an electronic control number (ECN) verifying submission. Once a claim is filed in ECOMP the Postal Service receives an email from OWCP to complete their portion.

Injured workers can track their supervisor's processing of forms via their ECOMP dashboard. If the forms are not submitted to OWCP within 10 working days, a grievance investigation should be initiated.

Supervisors may also return the form for the employee asking the employee to resubmit the form. This will delay claim development and Continuation of Pay, COP. If the supervisor returns to the form to the filer for resubmission, the steward should investigate the reason for the resubmission.

In almost all cases 20 CFR 10.110(b) requires the employer to complete and transmit the form to OWCP no more than 10 working days after receipt from the employee. The limited exceptions include situations where there is no medical charge against OWCP, no disability beyond the day of injury, no need for more than two appointments for medical examination and/or treatment, and so on.

20 CFR 10.110(c) specifically cautions the employer to not wait for submittal of supporting evidence before sending the form to OWCP.

ELM 544.11.f

Prompt completion and forwarding of Form CA-1 or CA-2 to the control office or control point on the same day it is received from the employee.

ELM 544.12

Control office and control point supervisors are responsible for reviewing all claims for accuracy and completeness and for forwarding claims and related documents to OWCP within prescribed FECA time frames.

ELM 544.212

The control office or control point submits to the appropriate OWCP district office within 10 working days after it is received from the employee:

ELM 545.12

Control point personnel must not, under any circumstances or for any reason, delay timely submission of reports or claim forms to the control office.

ELM 545.75d

Submission of Form CA-1 to OWCP must not be delayed, under any circumstances...

EL-505, Section 4.4

Under no circumstances may ICCO personnel... delay submission of the CA-1 to the OWCP within 10 working days from the date received by the supervisor.

EL-505, Section 8.3

Do not delay submitting the claim pending collection of data to support a controversion or challenge.

EL-505, Section 10.5

Do not delay submitting the CA-1, CA-2, CA-5 or CA-5b pending receipt of third party information.

It can be difficult for stewards to determine whether a particular form was transmitted to OWCP within the time limits. This is because internal Postal procedures require supervisors who receive a CA-1 or CA-2 to forward it to the ICCO/OHC office. Personnel in ICCO/OHC office then forward it to OWCP.

The solution is to closely monitor the date the employee submits the form to their supervisor and the date the employee receives notification of a claim number from OWCP. OWCP has a system that automatically generates and mails a claim number as soon as a CA-1 or CA-2 is received.

Claims filed through ECOMP are automatically sent to the Postal Service OHC office and allow injured workers to track the claim via their ECOMP dashboard.

Often such investigations result in quick transmittal of the delayed form to OWCP. Nonetheless, shop stewards should enforce the applicable regulations.

Generally, if an employee has not received a claim number from OWCP by the end of three weeks after submitting a CA-1 or CA-2, the steward should investigate. The investigation should start with an interview of the supervisor who received the form and then proceed to interview ICCO/OHC personnel. Additionally, the injured worker can call the OWCP National Office (202-513-6860) and ask if they have received the form from the Postal Service.

i. The right to choose a physician

The law gives injured letter carriers the right to free choice in their initial selection of physician. It also requires the employer to advise an injured employee of that right. Postal regulations reinforce those requirements.

Despite the very clear language of the law and contract, supervisors often fail to advise employees of their right to choose a physician. In some cases, supervisors coerce employees into treatment from Postal Service contract physicians.

The regulations do permit the Postal Service to require an injured employee to be examined by a contract physician but only so long as the examination does not interfere with or delay the employee's appointment with his or her chosen physician. Arbitrator Mittenthal issued a national level arbitration award on this issue, (C-06462).

Moreover, the Postal Service can only require the employee to be examined by a Postal physician. The employee has the exclusive right to choose the physician who will provide treatment.

20 CFR 10.300(d)

The employer should advise the employee of the right to his or her initial choice of physician. The employer shall allow the employee to select a qualified physician.

ELM 543.3

FECA guarantees the employee the right to an initial choice of physician.

ELM 544.112

In case of a traumatic injury, the supervisor must advise the employee of the following:

- a. The right to select a physician of choice.*

ELM 545.21

The control office or control point must advise the employee of the right to an initial choice of physician (see 543.3).

EL-505, Section 3.2

Immediately ensure that appropriate medical care is provided: Advise the employee of his or her right to treatment by a USPS contract medical provider or by a private physician or hospital of his or her choice.

EL-505, Section 3.3

FECA guarantees the employee the right to a free choice of physician.

EL-505, Section 3.9

Obligation: Ensuring Right to a Free Choice of Physician Initial medical examination and treatment must be authorized in accordance with FECA provisions and

applicable OWCP regulations and policies governing medical care. FECA guarantees the employee the right to a free choice of physician.

EL-505, Section 3.10

Authorizing Medical Treatment in a Nonemergency — supervisor or ICCO

Obligation: Authorizing Medical Examination and/or Treatment

Initial medical examination and/or treatment must be authorized in accordance with the FECA provisions and applicable OWCP regulations and policies governing medical care. FECA guarantees the employee the right to a free choice of physician.

Employees have a right to free choice of physician. Supervisors have an obligation to inform employees of that right. Employees are generally better off seeking treatment from their own doctors because some Postal contract doctors are susceptible to inappropriate pressures from supervisors regarding work restrictions, release to work, and so on. Stewards should enforce this right.

j. Failing to provide completed copy of CA-1 or CA-2

When an employee submits a CA-1 or CA-2, the employer is required to complete the agency portion and then give a complete copy of the form to the employee. However, in most cases the Postal Service does not provide the required copy.

When a claim is filed in ECOMP, the employee can print and save a copy of the form. As the form is processed, the employee can see the claim form as it is put in the claim file.

Reviewing the completed claim form is important because it alerts an injured worker to any Postal Service objections to the claim. Sometimes the Postal Service challenges are baseless, but the employee does not learn about them until months later. By then, it is far more difficult for the employee to counter the challenge.

Claims filed in ECOMP require the Postal Service get a signature on completed claim forms. The claimant should receive a complete copy of the claim form when asked to sign the completed form.

Employer challenges may appear on the CA-1 or CA-2:

- CA-1 Item 28 *asks the employer whether the employee was injured in performance of duty, and if not, for an explanation.*
- CA-1 Item 35 *asks the employer whether the supervisor's knowledge of the facts of the case agree with the statements of the employee or witnesses.*
- CA-1 Item 36 *asks the employer whether it controverts COP, and if so, to give the reason in detail.*

CA-2 instructions require the supervisor to review and comment on the accuracy of the employee's attached statement. Early knowledge of all such employer objections can help the injured employee counter them effectively from the start.

20 CFR 10.110(a) requires the employer, when it receives a CA-1 or CA-2, to give the employee copies of both sides of the form.

ELM 544.12 states that the control office must provide the employee a copy of the completed CA-1 or CA-2.

The right to receive a copy of a completed CA-1 or CA-2 is important to injured carriers. Stewards should educate supervisors about this right and then hold them accountable if they violate it.

k. Notice of Controversion and Challenge

OWCP regulations specifically authorize the employer to controvert COP. The regulations also allow the employer to challenge a claim by contesting any of the facts as stated by the injured worker in the report of injury. When the employer does controvert or challenge a claim, OWCP requires it to advise the employee of the challenge and/or controversion and its basis. Postal regulations also require written notification to the employee in all controversions and challenges.

Despite the regulations, supervisors and managers often fail to notify employees of controversions and challenges. As discussed, lack of notice usually works to the injured employee's disadvantage.

Injured workers can look for management's controversions and challenges by searching case imaging via their ECOMP dashboard. If those are found in the case file and no copy has been received, a grievance investigation should be initiated immediately.

20 CFR 10.211(c) requires management to: *Inform the employee of any decision to controvert COP and/ or terminate pay, and the basis for doing so.*

ELM 544.12

The control office or control point must advise the employee whether COP will be controverted and whether pay will be interrupted.

ELM 545.731

Controversion means to dispute, challenge, or deny the validity of a claim. The Postal Service may controvert a claim by completing the indicated portion of Form CA-1 and submitting detailed information in support of the controversion to OWCP (see 545.75).

ELM 545.75

Proper identification of controverted claims is essential to permit the OWCP to give these claims priority in processing and to avoid the possibility of substantial, erroneous payments of regular pay. If a written explanation of the controversion is not submitted, OWCP may accept as factual the employee's report of injury.

When a claim is controverted, the control office or control point must ensure that the following actions are taken...e. The employee, employee beneficiary, or representative must be furnished with a written explanation for the basis of the controversion.

EL-505, Section 8.5

Notify the employee, in writing, that his or her claim is being controverted or challenged (See Exhibit 8.5, Sample Letter: Employee's Notice of Controverted or Challenged Claim).

EL-505, Appendix C defines challenge and controversion:

Challenge: *The formal administrative procedure through which USPS management presents evidence to OWCP to dispute any element of an employee's claim for benefits that appears questionable.*

Controversion: *The formal administrative procedure through which USPS management presents evidence to OWCP to dispute an employee's claim for COP.*

Since timely knowledge of challenges and controversions is important to injured carriers, stewards should educate supervisors regarding the requirement to properly notify employees whenever a challenge or controversion is made and then hold them accountable.

I. Improperly contacting a carrier's physician

OWCP regulations allow an employer to contact an injured worker's physician, in writing, regarding work limitations and possible job assignments. The same regulations specifically prohibit the employer from contacting the physician by telephone or in person.

In too many cases, local supervisors ignore the prohibition against telephone or personal contact with the physician.

This often results in problems for the injured worker. In some cases, the supervisor misreports the physician's words.

In other cases, the physician becomes aggravated at management's harassment and refuses to provide care in the future to federal employees with workplace injuries. Injured workers benefit when their physicians provide written recommendations concerning work restrictions.

Written limitations are less likely to be misunderstood by the employee or management. When management has legitimate questions about work restrictions, clarity is best served, again, when the Postal Service's questions and the physician's answers are committed to paper.

20 CFR 10.506 states:

To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments.

However, the employer shall not contact the physician by telephone or through personal visit.

ELM 545.52

To aid in returning an injured employee to suitable employment, the control office or control point may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. However, FECA prohibits contacting the physician by telephone or through a personal

visit except for administrative purposes such as determining whether a fax has been received or ascertaining the date of a medical appointment.

The parties have agreed in two national-level settlements that phone contact initiated by the employer with the physician is prohibited.

Prearbitration settlement A94N-4A-C 97019738 (M-01428):

The Office of Workers' compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the FECA effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician.

Step 4 settlement E94N-4E-C 98037067 (M-01385):

The first issue contained in this case is whether management violated the National Agreement when it telephonically contacted limited duty employee's physicians to receive information and/ or clarification on a carrier's medical progress....

The Office of Workers' Compensation Programs (OWCP), US Department of Labor, issued new regulations governing the administration of the FECA effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician.

m. Failing to provide copies of written contacts with physician

When the employer does contact a physician in writing, it must send a copy of the correspondence to the injured worker and to OWCP. In addition, if the physician responds, the employer must send copies of the response to the injured worker and OWCP.

In many cases the Postal Service does not provide the required copies to OWCP and the employee. Disputes about limited duty and work restrictions are more difficult to resolve when an employee is in the dark about the Postal Service's communications to and from their doctor.

In addition, employees need to know promptly if the Postal Service directs inappropriate questions to a physician. Employers are limited to questions about work limitations and possible job assignments. It would be inappropriate, for instance, for the Postal Service to write to a physician demanding medical justification for recommended surgery. Again, the injured employee who learns promptly about such errors will be in the best position to correct them.

20 CFR 10.506

When [written] contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received.

ELM 544.12

The control office must provide the employee a copy of all correspondence between the Postal Service and the treating physician.

ELM 545.52

A copy of all written correspondence to the employee's physician and any response received must be sent to the OWCP and the employee.

EL-505, Section 6.3

Send copies of such correspondence to the employee and to the OWCP district office, and forward copies of the physician's response to both, once it is received.

n. Delaying forwarding of CA-7 to OWCP

Form CA-7, Claim for Compensation, is used for claiming compensation for wage loss due to an on-the-job injury. Employees complete the front side and submit it to the employer.

The employer completes the reverse and forwards it to OWCP. When OWCP does not timely receive CA-7s, employees suffer delayed payment of benefits.

Both the law and the contract require management to complete and transmit Form CA-7 to OWCP within 5 working days after receipt from the employee.

CA-7s should be filed via the employees ECOMP dashboard. The injured worker can track the form's submission to OWCP via the dashboard. If the form has not been forwarded to OWCP within the required 5 working days, a grievance investigation should be initiated.

20 CFR 10.111(c) and 10.112(c) provide:

Upon receipt of Form CA-7 from the employee...the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA-7 ...to OWCP.

ELM 544.12

Control office and control point supervisors are responsible for reviewing all claims for accuracy and completeness and for forwarding claims and related documents to OWCP within pre-scribed FECA time frames.

ELM 545.82d

The control office or control point forwards the completed Form CA-7 and any other accompanying medical reports to OWCP within 5 working days upon receipt from the employee.

Despite this crystal-clear language, the Postal Service often fails to timely submit Form CA-7 to OWCP. It can be difficult for stewards to determine whether a form has been transmitted to OWCP within the time limits. The solution is for injured workers to request, in writing, a completed copy of each CA-7 at the time they submit the form.

CA-7s filed through ECOMP provide a tracking number allowing injured workers to track the form once submitted to the Postal Service. If the supervisor (or the Postal Service District Injury Compensation Specialist) returns the form to the filer for resubmission, the steward should investigate and file a grievance.

OWCP's regulations do not require the employer to provide a completed copy of Form CA-7. However, the Privacy Act gives employees a general right to any information which the Postal Service files under their name or other identifying means.

While there are a few limited exceptions to this right, none would normally apply to a request for a CA-7.

Upon receipt of the CA-7, the employee can compare the date the completing manager signed the reverse of the form to the date the employee submitted it. If there is more than a 5-workday postponement, the employee should request to see their steward.

If management does not provide a copy of the CA-7, as often happens, the employee should request to see his steward regarding violation of AS 353. The steward's investigation of that violation should include a request for a copy of the CA-7.

o. Failing to provide a job offer

OWCP regulations stipulate that if an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury but **has**

recovered enough to perform some type of work, they must seek work.

ELM 546.142 requires the Postal Service to *make every effort* toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance.

The two major types of limited duty violations thus can be identified as: 1) Denial and Withdrawal violations and 2) Pecking Order violations.

Denial and Withdrawal violations occur when limited duty is available but not offered, and/or when limited duty is improperly withdrawn.

Pecking Order violations occur when management provides limited duty, but does not attempt to minimize the adverse impact on the injured carrier. An example would be if limited duty is provided at another station when it was available at the carrier's bid station.

Some cases could involve a combination of a Pecking Order violation and a Denial violation. Example: four hours of limited duty is offered on tour three when the injured carrier could have worked eight hours on his/her regular schedule.

A limited duty grievance will need proof that the grievant is entitled to limited duty. Grievance officers will need the OWCP letter acceptance letter, the worker's CA-17 indicating their medical restrictions and all correspondence concerning limited duty job offers.

p. Improper Job Offers

The Postal Service's requirement to make every effort in finding work for injured letter carriers often result in job offers that exceed the employee's medical restrictions. If the employee refuses the job offer, OWCP will decide whether or not the job offer was suitable given the employee's medical restrictions.

"Suitability" is a term of art within OWCP that specifically refers to the determination made by OWCP that the job offer complies with the work restrictions derived from the medical evidence to which it has given weight.

While we cannot grieve the suitability determination made by OWCP, we certainly can investigate and grieve whether the job offer made by the Postal Service is appropriate.

OWCP takes the Postal Service's word at face value that the described duties in the job offer fall within the accepted restrictions. Often this is not the case.

For example, NALC has seen many cases where the restrictions impose zero twisting, bending, or stooping; and the job offer includes casing and carrying mail with just some auxiliary parcel help. In such cases we should be grieving the fact that the Postal Service is misrepresenting the actual job duties. A remedy in such cases might include a retraction of the job offer and a letter from the Postal Service to OWCP explaining that the offered duties, in fact, fall outside the injured worker's restrictions.

Appropriateness would also include whether or not the job offer meets the Postal Service's obligations under ELM 546 and the National Agreement. While OWCP could care less about such distinctions, we should vigorously grieve these violations.

The FECA provides several avenues to appeal their decisions including – appeals to the Branch of Hearings and Review, Reconsideration requests, and appeals to the Employees' Compensation Appeals Board (ECAB). Decisions from these appeals are also non-grievable.

ELM Section 546.142 requires the Postal Service to “make every effort” to find work within the injured employee's medical restrictions.

ELM Section 545.31 instructs the supervisor or manager who *authorizes medical care to advise “the employee, in writing, of the obligation to return to work as soon as possible... “Return to work” refers to work in the employee's bid assignment or work in other locations and positions.*

Notification to the employee must include the following

- If a specific alternative position is available, the supervisor/manager must advise the employee in writing of the specific duties and physical requirements of the position.*
- If no specific alternative position is necessary, the supervisor/manager should advise the employee of any change the agency can make to the employee's permanent assignment to accommodate the employee's limitations due to the injury.”*

Postal Handbook EL-505 Section 7-4 directs managers to “consult with the occupational health nurse, contract physician or the treating physician” (in writing) to ensure that the limited duty assignment is consistent with the injured worker’s medical restrictions. This may or may not happen, and job offers may sometimes exceed the employee’s limitations.

Injured workers are often given job offers and told they must immediately accept the job offer or they will be sent home in a non-pay status. While this is a violation of postal regulations and handbooks, the injured worker should never refuse the job offer. They should instead review the job offer with their supervisor or manager.

The Postal Service normally makes a job offer on PS Form 2499. Section I of the form contains employee information, Section II contains the hours and duties of the job, and Section III is where the employee can accept or refuse the job offer. Just above the place to accept or refuse the job offer, Section III of the 2499 states:

“Supervisor/manager should discuss this Offer of Modified Assignment (Limited Duty) and the duties of the assignment with the employee. If the employee has concerns (e.g. task, work location, or medical limitations) not addressed with this offer of Modified Assignment (Limited Duty), the supervisor/manager should discuss the concerns with the employee and, if possible, suggest alternatives. If the employee raises additional medical issues such as disability or seeks a reasonable accommodation, the supervisor/manager, must engage in an interactive discussion with the employee (see

Handbook EL-307, Reasonable accommodation, An Interactive Process” for specific guidance). These discussions must be documented on page 2, Section IV of this form.”

Postal and federal regulations allow the injured worker to take the job offer to their attending physician. Injured workers who get a job offer where some of the duties may exceed their medical limitations should accept the job offer (under protest), do what work they feel is within their medical limitations and take the job offer to their physician for review.

Accepting a job offer that may exceed an injured worker’s medical restrictions does not waive the opportunity to contest the propriety of the job offer through the grievance procedure.

Acceptance “under protest” M-01120 MOU January 29, 1993: *By accepting a limited duty assignment, an employee does not waive the opportunity to contest the propriety of that assignment through the grievance procedure, whether the assignment is within or out of his/her craft.*

Contract enforcers should never grieve the “suitability” of a job offer. The term “suitability” is an OWCP determination and suitability determinations cannot be grieved.

A contract enforcer can grieve whether a job offer is “appropriate” per the procedures outlined in Section 7-4 of the EL-505.

q. Withdrawal of Limited Duty job offer

Limited duty is work provided for an employee who is temporarily or permanently incapable of performing their normal duties as a result of a compensable injury or illness. The Postal Service's withdrawal of a limited duty job often causes a chain of events that are often harmful to the injured employee. To protect our injured brothers and sisters, it is imperative that stewards vigorously enforce Postal Service's obligations to provide limited duty work.

The Postal Service has strong legal and contractual obligations to make every effort to provide limited duty while minimizing any adverse impact on the injured employee. Those obligations are spelled out at ELM 546.142 which also establishes a pecking order that the Postal Service must follow in providing limited duty work that is conveniently outlined on page 146 of the Postal Service Injury Compensation Manual, the EL-505.

An employee may be offered a limited duty assignment that meets OWCP's suitability requirements but fails to meet the requirements of the ELM. In such cases, the employee should accept the assignment but grieve the ELM violations.

Limited duty grievances fall into three broad classes that often are intertwined:

1. Withdrawal of limited duty
2. Failure to provide limited duty
3. Failure to follow the ELM 546.14 pecking order

Winning limited duty grievances requires well-documented case files with evidence specific to the case. The steward should obtain this evidence from the injured letter carrier, their coworkers, and from the Postal Service.

The steward for all three classes of grievances should document what limited duty (LD) work is available within the ELM pecking order. In withdrawal cases, the steward should also document the work that previously had been performed by the injured worker and where that work went.

1. Information that should be obtained from the injured letter carrier

a. The OWCP case file:

- File may contain information that supports injured worker's ability to work.
- Information regarding acceptance of OWCP claim.
- Job offers
- Communications between postal service and OWCP.
- Information that could affect wage-loss compensation such as a loss of wage earning capacity (LWEC).
- You will need a signed Privacy Act waiver from the injured carrier to obtain and use documents from the OWCP file.

b. A detailed and specific statement from the injured letter carrier:

- Duties performed daily while on limited duty
- Duties performed historically while on limited duty
- Who performed the work after it was withdrawn

- How the withdrawal of work has harmed the injured carrier and their family – financially, and emotionally.

2. Information that should be obtained from the injured worker's coworkers

- Detailed and specific descriptions of the limited duty work performed by the injured worker.
- Descriptions of work historically done by injured workers in the office.
- Descriptions of possible work to be done by the injured worker.
- Cookie cutter or boilerplate statements are not effective.

3. Information that should be obtained from the Postal Service via written request

a. The work search:

- Any and all information related to the Postal Service's work search
 - Copies of all forms and documents connected with the work search
 - Who conducted search
 - Were searches conducted daily, weekly, monthly, or when employee's restrictions changed
 - How far did the Postal Service search for work
 - The offices searched, the dates searched and the names of who was contacted
 - Restrictions the Postal Service used in its work search
 - Copies of all correspondence involved in the work search including emails, and phone records
 - Interviews with all managers involved in the work search

4. Documenting the available work through management:

- Interview supervisors regarding work the injured carrier performed and who was assigned the work now that the carrier has been sent home
- Document the work that was done on LD:
 - TACS reports covering the grievant's daily work for the entire period of limited duty work
 - Schedules – as above
 - Written Limited Duty Job Offer (LDJO) or Rehabilitation Assignment the Postal Service Withdrew
 - Current Medical Restrictions of Injured Employee
 - Written Notice from Management that LDJO or Rehabilitation Assignment is Withdrawn
 - All Prior LDJO's and/or Rehabilitation Assignments
 - Any Past Medical Restrictions
 - PS Form 50's
 - Overtime Alert Reports for All Employees in Office (Before and After Carrier Sent Home)
 - Employee Everything Reports for All Employees in Office (Before and After Carrier Sent Home)
 - Weekly and Monthly Flash Reports (Before and After Carrier Sent Home)

Using the above information, the steward should argue the case through showing the limited duty work the injured employee had been performing, where that work went, and what work is currently available.

It must be stressed here that the most important documents in any limited duty grievance file are the Article 17 & 31 information requests. The requests should be in writing and included in the file. Regional arbitrators have overwhelmingly

held that in ELM 546.142 cases, once the Union has established that the injured employee has been compensably injured, the burden shifts to the Postal Service to demonstrate that it made every effort to search for work within the parameters of the pecking order. By requesting the Postal Service to fully document in the grievance process its efforts to find limited duty work, the door will be closed at arbitration for the Agency to embellish or exaggerate those efforts.

Possible remedies in limited duty cases should include making the grievant whole for all lost wages and benefits, including but not limited to, annual and sick leave (lost and used), Thrift Savings Plan (TSP) benefits, out of schedule premium (if applicable), and overtime pay (if applicable) for the time frame of the grievance and ongoing.

Resources for Contract Enforcers

The “Injured on the Job” page on the NALC website, nalc.org/workplace-issues/injured-on-the-job, has links to:

- *USPS Handbook EL-505, Injury Compensation*
- *USPS Employee Labor Relations Manual (ELM) section 540 Injury Compensation Program.*
- The NALC/OWCP folder – Branches can order OWCP folders from the NALC’s supply department by calling 202-393-4695.
- OWCP National Office – 202-613-6860
- *Title 5 United States Code Section 8101 (5 U.S.C. 8101) –the Federal Employees’ Compensation Act (FECA);*
- *FECA -*
<https://www.dol.gov/agencies/owcp/FECA/regs/statutes/feca>
- FECA Procedure Manual - Chapter 2-0807, Continuation of Pay and Initial Claims for Compensation
<https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECA-PT2/group2#20807>
- *Title 20 Code of Federal Regulations Section Chapter 10 (20 C.F.R. 10)- Electronic Code of Federal Regulations -PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES’ COMPENSATION ACT, AS AMENDED.* <https://www.ecfr.gov/>

Grievance Starters

The following grievance starters can be found in the members-only portal at nalc.org. After logging into the members-only portal, go to Member Documents, then the OWCP tab to access the word documents. The name of the grievance starters follows in parentheses if different than the description of the issue.

1. Choosing what claim form to file
2. Failure to provide a CA-16
3. Failing to pay the employee on day of injury (Failure to Pay IW on DOI)
4. Failing to pay COP (Failure to Provide-Process COP)
5. Improperly calculating CCA COP and Wage-Loss Compensation (Improper Calc CCA COP WLC)
6. Failing to provide OWCP with pay rate information (Fail to Provide Pay Rate Info)
7. Providing a CA-2a instead of a CA-1 or CA-2 (Providing a CA-2a vs CA-1 or 2)
8. Delaying forwarding of CA-1 or CA-2 to OWCP
9. Failing to advise carrier of the right to choose a physician (Right to Choose a Physician)
10. Failing to provide completed copy of CA-1 or CA-2
11. Failing to give notice of Controversion and Challenge (Notice of Controv./Challenge)
12. Contacting a carrier's physician in person or by phone (Improper Contact of Physician)
13. Failing to provide copies of written contacts with physician (Fail Contacts with Physician)
14. Delaying Forwarding of CA-7 to OWCP
15. Failing to provide a job offer (Limited Duty-

Withdrawal LDJO)

16. Improper Job Offers (Misrepresented Job Offer)

17. Withdrawal of Limited Duty job offer (Limited Duty-
Withdrawal LDJO)