

Local Grievance # _____

Issue Statement (Block 15 of PS Form 8190):

Did management violate Articles 3, 5, and 21 of the National Agreement along with ELM Section 540 and EL-505 via Article 19 of the National Agreement and 20 C.F.R. 10 by failing to start and/or properly process Continuation of Pay (COP), if so, what should the remedy be?

Union Facts and Contentions (Block 17 of PS Form 8190):

Facts:

1. Letter Carrier **[name]** suffered a traumatic on-the-job injury on **[date]** at approximately **[time]** when **[explain incident]**.
2. Section 541.2 of the ELM defines a traumatic injury as:

Traumatic injury — a condition of the body caused by external force, including stress or strain. The injury:

(1) Must be identifiable as to time and place of occurrence and member or function of the body affected.

(2) Must be caused by a specific event or incident, or series of events or incidents, within a single day or work shift.
3. Letter Carrier **[name]**'s claim was accepted by OWCP on **[date]**. This is documented by the Acceptance Letter from the Dept. of Labor dated **[date]**.
4. Letter Carrier **[name]** elected COP on Form CA-1. This is documented by a copy of the CA-1 Claim Form.
5. 20 C.F.R. 10 is the implementing regulations of the Federal Employees' Compensation Act (FECA). Section 10.205 covers eligibility to receive COP and 10.220 addresses situations in which management is not required to start COP:

§10.205 What conditions must be met to receive COP?

(a) To be eligible for COP, a person must:

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(1) Have a “traumatic injury” as defined at §10.5(ee) which is job-related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment.

(2) File Form CA-1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 45 days of the injury.

(b) OWCP may find that the employee is not entitled to COP for other reasons consistent with the statute (see §10.220).

§10.220 When is an employer not required to pay COP?

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:

(a) The disability was not caused by a traumatic injury;

(b) The employee is not a citizen of the United States or Canada;

(c) No written claim was filed within 30 days from the date of injury;

(d) The injury was not reported until after the employment has been terminated;

(e) The injury occurred off the employing agency’s premises and was otherwise not within the performance of official duties;

(f) The injury was caused by the employee’s willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or

(g) Work did not stop until more than 45 days following the injury.

6. Section 543.41, 545.71, 545.721, and 545.732 of the ELM addresses management’s responsibilities when an employee requests COP as follows:

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 (see 545.72 for explanation for COP). Such pay is subject to taxes and all other usual payroll deductions. If an employee elects COP and the claim is subsequently denied, any COP granted to the employee must be charged to sick or annual leave or considered an overpayment of pay at the employee’s option (see 437).

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545.71 General

FECA provides that employer must continue regular pay during periods of disability up to a maximum of 45 calendar days for eligible employees who sustain traumatic injuries. Employees are not required to use their own sick or annual leave, unless the provisions of 545.73 or 545.74 apply.

545.721 Initial Disability for a Traumatic Injury

To be eligible for COP, an employee must:

- a. Have a traumatic injury.*
- b. File Form CA-1 within 30 days of the date of the injury and elect COP.*
- c. Begin losing time from work within 45 days of the injury.*

545.732 Controversion With COP Withheld

The Postal Service controverts (i.e., challenges or disputes validity) a claim and does not authorize COP when any one of the following circumstances is present:

- a. The disability was not caused by a traumatic injury.*
- b. No written claim was filed within 30 days from the date of injury.*
- c. The injury was not reported until after employment had been terminated.*
- d. The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties.*
- e. The injury was caused by the employee's willful misconduct or intent to bring about injury or death to self or another person, or was proximately caused by the employee's intoxication by alcohol or illegal drugs.*
- f. The first absence caused by the injury occurred 45 days or more after the injury.*

7. Article 21.4 of the National Agreement states:

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).*

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Sources of information concerning federal workers' compensation benefits are:

- *ELM Section 540—USPS regulations governing workers' compensation;*
- *USPS Handbook EL-505, Injury Compensation (December 1995);*
- *Title 5 United States Code Section 8101 (5 U.S.C. 8101)—the Federal Employees' Compensation Act (FECA);*
- *Title 20 Code of Federal Regulations Section Chapter 1 (20 C.F.R. 1) —regulations of the Office of Workers' Compensation Programs;*

8. 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. Moreover, the specific reference to the National Labor Relations Act in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

9. Article 3 Management's Rights states:

The Employer shall have the exclusive right, subject to the provision of this Agreement and consistent with applicable laws and regulations.

Contentions:

1. Management violated Articles 5 and 21 of the National Agreement, ELM Section 540 and EL-505 via Article 19 of the National Agreement, and 20 C.F.R. 10 by failing to provide and/or properly process COP.
2. The grievant notified Supervisor **[name]** of his/her injury and elected COP. At that point, management was required to, among other things, provide the grievant with COP. This did not happen in this case. Moreover, because management did not provide COP, they did not comply with the other requirements of the language quoted above.

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3. In all situations, except as described in 545.732 above, the employer may controvert entitlement to COP, but must continue the employee's regular pay pending a final determination by OWCP. OWCP has the exclusive authority to determine questions of entitlement and all other issues relating to COP. In this case no exception under 545.732 exists, and management did not provide COP.
4. Handbook EL-505 lays out management's responsibilities to provide COP. The following language appears on page 4:

An employee's regular pay may be continued for up to 45 calendar days of wage loss because of disability and medical treatment following a traumatic injury. This is to ensure that the employee's income is not interrupted while the claim is being adjudicated.

The EL-505 goes on to state in Chapter 4 at page 80:

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

A traumatic 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.

Also at page 80, management is required to make any employee who chooses sick or annual leave rather than COP aware of their rights.

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 at pages 53 and 54.

5. The Union contends this issue is an "obligation under the law" as defined by National Arbitrator Bernstein; therefore, management violated Article 5 of the National Agreement.
6. Letter Carriers who are injured on-the-job are guaranteed certain rights and protections by the National Agreement and Federal Law. When these rights are violated, Letter Carriers are harmed and caused undue hardship. Without the proper forms being provided and/or properly processed at the time of a traumatic injury, an employee's Worker's Compensation benefits could be delayed and/or denied for reasons that are out of the employee's control. In this case, the grievant did not receive the pay (COP) he/she was entitled to under the law **[or explain any other undue hardship, if any].**

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Remedy Requested (Block 19 of PS Form 8190):

1. Management cease and desist violating Articles 3, 5, and 21 of the National Agreement, ELM Section 540 and EL-505 via Article 19 of the National Agreement, and 20 C.F.R. 10.
2. Management at **[Station Name and Zip Code]** take a training course on the proper procedures and management's responsibilities regarding on-the-job injuries
3. Letter Carrier **[name]** be made whole for any and all lost wages and benefits that occurred as a result of management's actions.
4. Letter Carrier **[name]** be paid a lump sum of \$100.00 for undue hardship and to ensure compliance of the parties.
5. All payments associated with this case be made as soon as administratively possible but, no later than 30 days from the date of settlement.
6. Proof of payment be provided to the Union upon payment, and/or any remedies the Step B Team or Arbitrator deems appropriate.

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**National Association of Letter Carriers
Request for Information**

To: _____
(Manager/Supervisor)

Date _____

_____,
(Station/Post Office)

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning a violation of Articles 3, 5, and 19:

1. Copies of any and all Forms CA-1 and PS Forms 1769 related to the on-the-job injury to Letter Carrier **[name]**.
2. TACS Employee Everything report for Letter Carrier **[name]** from **[dates(s)]**.

I am also requesting time to interview the following individuals:

1. **[Name]**
2. **[Name]**
3. **[Name]**

Your cooperation in this matter, will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

Request received by: _____

Shop Steward
NALC

Date: _____

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**National Association of Letter Carriers
Request for Steward Time**

To: _____ Date _____
(Manager/Supervisor)

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Article 17 of the National Agreement, I am requesting the following steward time to investigate a grievance. I anticipate needing approximately _____ (hours/minutes) of steward time, which needs to be scheduled no later than _____ in order to ensure the timelines established in Article 15 are met. In the event more steward time is needed, I will inform you as soon as possible.

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

Request received by: _____

Shop Steward
NALC

Date: _____

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| PRIVACY ACT AUTHORIZATION AND |
|--------------------------------------|

I authorize the NALC and/or its authorized representatives to disclose information received through the U.S. Department of Labor/Office of Workers' Compensation Programs deemed necessary to investigate and/or process grievances.

This authorization is effective on the date it is signed and is effective until revoked by me in writing. A copy of this authorization shall have the same force and effect as the signed original.

Signature of Claimant

Printed Name

Date

Privacy Act Statement: By signing this form you authorize the disclosure of your information regarding workers' compensation claims to the NALC and/or its representatives to investigate or to determine if a grievance exists. This form will be maintained by the NALC and will only be disclosed as part of a grievance should it be determined a violation of the National Agreement or FECA Regulations exists.

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