

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. 1 by failing to provide the appropriate claim form to the grievant, and if so, what should the remedy be?

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

Facts:

1. Letter Carrier **[name]** suffered an on-the-job injury on **[date]** at approximately **[time, if traumatic]** when **[explain incident]**.
2. Section 541.2 of the ELM defines a traumatic injury, occupational injury or illness, and recurrence 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 of 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.

Occupational disease or illness — an illness or disease produced by one of the following:

(1) Systemic infections.

(2) Continued or repeated stress or strain.

(3) Exposure to toxins, poisons, fumes, etc.

(4) Other continued and repeated exposure to conditions of the work environment over a longer period of time than a single day or work shift.

Recurrence of disability – an employee's inability to work, after return to work, that is caused by a spontaneous change in the employee's medical condition and is related to a previous injury or illness without intervening injury or new exposure.

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Recurrence of medical condition – a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no work stoppage.

3. Letter Carrier **[name]** reported the injury to Supervisor **[name]** on **[date]**. This is documented by the written statement from Letter Carrier **[name]** in the case file and copy of the CA-2a Claim for Recurrence.
4. Letter Carrier **[name]**'s CA-2a Claim for Recurrence was denied by OWCP by Notice of Decision dated **[date]**. This is documented by a copy of the Notice of Decision in the case file.
5. 20 C.F.R. § 10.7 describes what forms are needed to process claims under the FECA as follows in part:

(a) Notice of injury, claims and certain specified reports shall be made on forms prescribed by OWCP. Employers shall not modify these forms. Employers are expected to maintain an adequate supply of the basic forms needed for the proper recording and reporting of injuries.

1. CA-1 – Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.
2. CA-2 – Notice of Occupational Disease and Claim for Compensation.
3. CA-2a – Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation.

5. 20 C.F.R. § 10 addresses recurrence as follows in part:

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:

" . . . 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."

6. ELM 541.2P restates the OWCP definition of recurrence.
7. EL-505 page 124 also restates that definition.

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8. 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.
9. 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.
10. Article 21.4 of the National Agreement states:

Employees covered by this Agreement shall be covered by 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.

11. Article 21 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).*

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;*

12. 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

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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.

13. 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 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. 1 by failing to provide the appropriate claim form to the grievant.
2. Section 5-1 of the EL-505 Identifying a Recurrence of disability clearly states management's obligation when an employee notifies a supervisor:

Discuss the situation with the employee when he or she reports a recurrence of disability. With the help of Exhibit 5.1, determine if a recurrence of disability, a new injury or illness, or a related compensable condition exists.

Letter Carrier **[name]** notified Supervisor **[name]** of his/her injury. At this point, the supervisor was required to have a discussion with the grievant to determine whether a CA-2a was the appropriate claim form based on the definitions and information stated in the ELM 540 and EL-505.

3. Supervisor **[name]** violated the EL-505 via Article 19 when he or she failed to have the required discussion with the grievant which lead to the inappropriate form being filed.
4. 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

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violated, Letter Carriers are harmed and caused undue hardship. Without the proper forms being provided and/or properly processed at the time an injury is reported to the supervisor, 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, Letter Carrier **[name]**'s case was unnecessarily delayed and treatment was denied **[or explain any other undue hardship, if any]**.

Remedy Requested (Block 19 of PS Form 8190):

1. Management cease and desist violating 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. 1.
2. Management **[or Supervisor's name]** 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 caused by management's actions and to ensure future compliance of the parties.
5. Management will make all payments associated with this case as soon as administratively possible, but no later than 30 days from the date of settlement and proof of payment will be provided to the Union.
6. Any and/or all 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, 19, and 21:

1. Copies of any and all forms 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,

Shop Steward
NALC

Request received by: _____
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.