

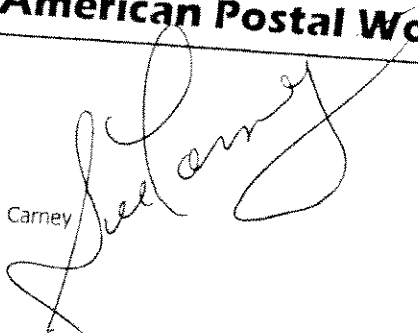
APWU

American Postal Workers Union, AFL-CIO

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1300 L Street, NW, Washington, DC 20005

From the Office of Susan M. Carney
Human Relations Director



July 15, 2009

To: State and Local Presidents

Subject: The Postal Service's *National Reassessment Process- Limited Duty*

On May 29, 2009, the Postal Service concluded its National Reassessment Process (NRP) Limited Duty pilot program. APWU has been notified that this program is being implemented nationwide effective July 13, 2009, with "work status meetings" beginning no sooner than July 27th. You should be aware that the Limited Duty NRP will target limited duty employees¹ as well as those rehab employees² who have not yet been subjected to the original NRP Phase 2, *which is now being referred to as the MMI NRP*. This new NRP is not intended to replace the MMI NRP. They will exist simultaneously, therefore as explained by the Postal Service, some rehab employees will be subjected to both versions of the program.

It is our belief that this new program has been established to accelerate the NRP, which to this point has proven unfruitful in reducing the Service's chargeback liabilities when considering the years of resources and finances that the Service has invested in it. We also suspect a dismal response to the USPS' solicitation, offering early outs is another driving force behind the program.

Nonetheless, the USPS insists that the program merely applies existing NRP processes to the targeted employees and that "available work" decisions will be consistent with current, relevant regulations. However, our review of the new Limited Duty NRP protocol guidelines not only exposed distinct and fundamental differences between the previous MMI program and the new Limited Duty program, but also revealed the continuation of the violations which we previously grieved at the national level.

We have attached additional information and reference documents to provide background and guidance in an effort to assist union representatives and members through the Postal Service's NRP process.

¹ Rehabilitation employees have OWCP approved work place injuries with "permanent", medical restrictions, i.e. these employees have reached maximum medical improvement (MMI).

² Limited duty employees have OWCP approved workplace injuries with "temporary" medical restrictions, i.e. have not reached MMI.

Limited Duty NRP Phase 2

Background

The USPS provided notice to APWU on March 13, 2009 stating that it would begin its Limited Duty NRP pilot program on March 17, 2009. The four pilot sites consisted of the Los Angeles, Sierra Coastal, Santa Ana, and SE New England postal districts. The pilot was originally scheduled to conclude on April 24, 2009.

Despite numerous efforts that were made by APWU to meet with the Postal Service, they habitually neglected our requests. As a result of the Postal Service's failure to bargain in good faith regarding the manner in which working conditions, job assignments, and restoration rights of the injured workforce were being effected, the APWU filed an unfair labor practice (ULP) against the Postal Service for taking unilateral action which was irreparably reducing the disability rights and benefits for such employees.

After filing the ULP, we were afforded an opportunity to meet with the Postal Service on May 7th, and again on July 1, 2009 not only to share our deep concerns regarding many elements of this new process and the manner in which it is being implemented in the field, but also to have an opportunity to finally be provided with detailed information specific to the implementation of this program.

Meetings with the USPS

We were advised that districts will start implementation on a staggered basis as determined by each USPS Area. The Service projected that there will only be a one - two week period between commencement dates. The USPS further advised that all local and state union leadership will receive timely briefings, and that employees on the workroom floor will receive a stand up talk regarding the new limited duty process. Additionally, the USPS reiterated that union representation will be provided when bargaining unit employees make such a request.

We learned that MMI employees who receive an assignment through the new Limited Duty NRP guidelines will subsequently be reassessed again under the MMI NRP. *Keep in mind the MMI NRP is still preceding while the Limited Duty NRP is active.* We argued forcefully that it was disruptive to subject MMI employees to repeated assessments. We also argued that the policies of both NRP initiatives demonstrated a flagrant attempt to force employees to either return to full duty, implore physicians to minimize their restrictions or at the very least compel them to ignore some or all of their medical limitations in order to avoid being unfairly displaced from work.

At the meetings, we rejected the Service's claim that they were merely applying established NRP processes and pointed out the fundamental differences which exists

between the two programs. We presented a thorough analysis of the shortcomings of the written implementation policy and procedures which are being provided to their field personnel, and we vigorously objected to the authoritarian manner in which local officials in the pilot sites have treated injured employees under this new process. We opposed union representatives and employees being denied advance notice to "work status" meetings, and further disagreed with the elimination of the previously established interview process. We believe such actions severely diminish the employee's ability to correct misinformation and to participate in what is supposed to be an interactive exchange.

We have consistently argued there is nothing in the Employee and Labor Relations Manual (ELM), or in federal regulation that requires modified assignments to be "operationally necessary", to "add value to the operation", or contribute "to the operation's overall performance". These requirements have been unilaterally and improperly incorporated by the Postal Service into the NRP. The applicable controlling language establishes that the sole criterion for restoration to duty is that the duties of the modified assignment be "consistent with the employee's medically defined work limitation tolerance."

We further argued that when making job offers the work is expected to remain continuously available. This is clearly a requirement as established in the Federal Employees' Compensation Act (FECA) Procedure Manual (PM), Chapter 2, Section 814 b (4) and c (2). We pointed out FECA PM 2, 814 b (1) states a job offer of less than 4 hours where an employee is capable of working four or more hours per day will be considered unsuitable and further reminded the Service that employees with temporary (limited duty) medical restrictions are exempt from the OWCP vocational rehabilitation program. Therefore, we contended that setting aside the previous MMI NRP guidelines and using the inadequate limited duty guidelines to reassess MMI employees, even on a temporary basis is self-defeating and inefficient, as is the expansion of the MMI NRP program to include the reassessment of limited duty jobs.

We also referenced a potential Article 8 violation, as employees subjected to the Limited Duty NRP would be required to hit the clock on any given day and afforded less than the hours they were originally offered. We also objected to the use of PS form 2499 for making rehab job offers. The form is intended to offer limited duty work; and we protested changes to the written job offers simply being notated, rather than being re-issued, when any one of the following is changed:

- A description of the duties to be performed.
- The specific physical requirements of the position and any special demands of the workload or unusual working conditions.

- The organizational and geographical location of the job.
- The date on which the job will first be available.
- The date by which a response to the job offer is required.
- The pay rate of the job offer

The Service must send a complete copy of any job offer to OWCP when it is sent (given) to the employee [20 CFR 10.507 (d)]. Simply making notations on a job offer does not meet the requirements of the ELM or of federal regulation. We believe the Postal Service is attempting to hide the temporary and fleeting nature of the job offer.

We discussed our concerns, and some changes have been made to the pilot protocol, however, many issues still exist. As we begin our review of their final version we fully expect to find that many of our objections have been ignored and anticipate APWU responding accordingly with all available and viable options.

To illustrate how many employees are expected to be impacted by this program, we are sharing the statistics that were provided to us by the USPS. We were apprised that 2,230 employees were reassessed as part of the pilot in a two and a half month period. Only forty-one per cent (912) of these employees received "full-day" job offers, just 30% (667) were assigned "partial-day" work (even though they were medically able to work more hours), and a devastating 29% (651) were told that there was no work available. Many are still working to demonstrate they have residual disabilities from the originally accepted condition, are dealing with reduced Wage Earning Capacity decisions and have yet to receive any wage loss compensation.

Meeting with the Division of Federal Employees Compensation (DFEC)

The Division of Federal Employees does not have the authority to enforce employing agencies to comply with existing law, federal regulations or FECA procedures. Additionally, as a designated neutral party, the DFEC generally refrains from becoming involved regarding issues that exist between employers and unions. Its role is to apply these provisions from a neutral standpoint as written and to make benefit determinations accordingly. However, there were several issues that resulted from the pilot which we believed merited discussion with its officials. We met with DFEC representatives at their headquarters office in Washington, D.C. on June 25, 2009 to discuss them.

We impressed upon the officials the number of individuals that are still awaiting decisions and shared the hardships that are resulting from delayed compensation payments. We urged DFEC to do what was necessary to expedite the process and

warned them to make preparations for the impending numbers that are expected to follow.

We discussed the fact that claimants who were capable of working four or more hours but who were afforded less than four hours were receiving conflicting suitability determinations. Some claims examiners found the job offers unsuitable based on FECA PM 2, 814 b (1), while others determined the job offer suitable and warned claimants of Title 5 U.S.C. Chapter 81, Subchapter 1, 8106 (c) 2 sanctions, i.e. individuals who refuse suitable employment are not entitled to further compensation for wage loss or scheduled award (See FECA PM 2, 814 c (6)).

We were advised the 5 USC 8106 sanctioning letters would be rescinded, however, we were alarmed when DFEC officials further advised that in such circumstances where employees opt to refuse the job offer, that wage loss compensation will not be paid for the medically suitable work hours they were afforded. When asked to support this position, they loosely referred back to 5 USC 8106. However, when we challenged their reliance on this sole regulation, they advised they would research the information and get back to us.

Additionally, we shared the USPS' Limited Duty NRP protocol with DFEC. We pointed out that it was the Service's intent to make daily determinations regarding the availability of work for partially recovered employees. We expressed that this action was contrary to the procedures as described in FECA PM 2 - 814 - 4b(3). Here too they advised they needed time to research the matter but they assured us that they would get back to us regarding "daily determinations". During our meeting, APWU expressed that we fully expected the Office to uphold its own procedures, by declaring such job offers unsuitable.

Subsequent to the meeting, APWU sought legal counsel with our retained law firm and two additional attorneys who solely practice federal employees' compensation. Each believed DFEC's position was unfounded. In an effort to satisfactorily resolve the issue in advance of claimants enduring unnecessary hardships and time consuming appeal processes, I have written a follow-up letter to DFEC. That said, however, each injured employee must make his or her own informed decision as to whether to reject or accept such job offers. It is worth remembering that DFEC has the final say in determining the suitability of a job offer. There is a very real risk involved when refusing job offers, regardless of the number of hours being offered. It may easily result in the denial of any claimed wage loss compensation.

During our meeting, we expressed our concerns regarding Wage Earning Capacity (WEC) decisions. Employees who receive(d) WEC decisions should have their local union representatives contact the Human Relations Department for guidance.

We also requested confirmation based on our understanding of the 20 Code of Federal Regulation (CFR) part 10.519 establishes that only employees with permanent disabilities are eligible for placement in OWCP's Vocational Rehabilitation Program. Be advised they responded that this was "normally" the case, but that every case is evaluated separately. When pressured to provide an "abnormal" example, they were unable to provide an immediate response. That said, it is very important that employees make their treating physicians aware that the USPS may be contacting their office for an updated prognosis, i.e. has the employee reached their MMI? We suspect the Service may entice unsuspecting physicians to declare employees as MMI by advising them that once the employee's medical restrictions are deemed permanent, they will only need to provide yearly medical updates as opposed to monthly reports. All should be cautioned that changing an employee's status from limited duty to a rehab simply to avoid paperwork is ill-advised and could have potentially devastating effects for the employee, e.g. OWCP Voc rehab program, reduction in wage loss compensation benefits, and more.

While the DFEC representatives were not immediately responsive to our aforementioned concerns or inquiries, they did commit to taking our concerns under considerations and issuing directives to their district offices. These directives will be shared with the applicable unions.

Additional Information

Generally speaking, the USPS has the same obligation to its limited duty employees as it does to its permanent rehabbed employees. Therefore, in addition to the other actions we referenced, all partially recovered employees who experience a withdrawal or denial of medically suitable work as a result of the Limited Duty NRP should also consider or be aware of the following:

- File an individual grievance. The primary argument is a violation of Article 19, specifically ELM 546.142. The Postal Service is bound to its obligation to "must make every effort to find *medically suitable work (not operationally necessary work)* within the employee's work limitation tolerances with minimal disruption to the employee", i.e. (*pecking order*). In addition to filing "operational necessary" grievances, locals should also continue to grieve the Service's failure to make every effort and its failure to adhere to the pecking order.
- Step 4 disputes previously initiated by APWU regarding the MMI NRP continue to apply under the USPS Limited Duty NRP. Therefore, local level grievances should continue to be filed accordingly.
- Refer to the complete instructions regarding grievances, the OWCP processes and other alternatives that are described in the document entitled "USPS

Withdrawal of a Limited Duty/Permanent Rehabilitation Assignment". In addition referring to the NRP Phase 1 Activity File Checklist will give representatives a comprehensive idea of what information the NRP teams have available to them (more applicable to MMI NRP than LD NRP but it may still prove useful.)

- OWCP has informed us that an initial Form CA-2a, "Notice of Recurrence", should be filed when the Postal Service fails to provide suitable employment. However, a Form CA-2a does not have to be filed for following intermittent periods of "disability" (any period where medically suitable work is not provided) if caused by the NRP. However, if at some point a subsequent period of disability is extended rather than intermittent another Form CA2a may be requested.
- If the employee uses lwop and wishes to claim compensation from OWCP, he or she would file Form CA7/7a, "Claim for Compensation", on an on-going basis. Although this form is frequently filed by the claimant every 14 days, there is no requirement to wait for the end of a pay period to file. In all cases the USPS is required to complete and forward the form(s) to OWCP within 5 business days of receipt.
- When completing the 3971, it would be appropriate to note in the "Remarks" section, "IOD-Medically suitable work withdrawn", or words to that effect. As a reminder, in these circumstances it is the employee's option to elect sick leave, annual leave or lwop.
- According to the USPS, employees who opt to use leave in lieu of taking lwop while waiting for the adjudication of their recurrence claim will not be permitted to buy back their leave. Employees who opt to use their leave and wish to buy it back should file a CA7b. If denied, a local level grievance should be filed. A national level grievance was filed in July 2001 on leave buy back and is still pending. Employees should be informed that they risk losing their leave if we fail to prevail in the dispute.
- The Rehab Act was recently amended. As a result, it is our opinion that the vast majority of disabled employees should now be able to meet the criteria required to be considered a "qualified individual with disability". This should give them greater standing before the Equal Employment Opportunity Commission (EEOC) if an adverse action is taken against them by their employer (such as those occurring in the NRP). Therefore, any employee, who believes they may be entitled to "reasonable accommodation" under the Rehabilitation Act, should ask to be evaluated by the Postal Service's District Reasonable Accommodation Committee (DRAC) and should consider filing a complaint with the EEOC if they believe they were discriminated against because of their disability. Although the EL-307 has not yet been updated, the law is still in effect and the processes as described in the handbook remain applicable.

We will continue to provide you with information regarding both USPS NRP programs as warranted. You should also refer to the Human Relations, Federal Injury Compensation web page for reassessment updates.

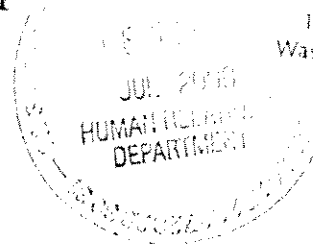
American Postal Workers Union, AFL-CIO

Telephone
(202) 842-4246

Memorandum

From the Office of WILLIAM BURRUS
President

July 10, 2009



1300 L Street, NW
Washington, DC 20005

TO:

Sue Carney

SUBJECT:

**Implementation of Phase 2 of the National Reassessment Process
(Notification No. GCCG2009107)**

Please find attached a copy of a letter dated 7/7/2009 from Alan Moore, regarding the above reference matter.

You are designated as the APWU contact person in this matter. Contact the USPS representative as soon as possible for discussion, if appropriate. Please provide notification of your review to me by 8/10/2009.

Please note: Your secretary should update the Notification Tracking Module in Step 4 CAS as necessary.

Attachment
WB:hjp//opeiu #2/afl-cio

LABOR RELATIONS



July 7, 2009

Mr. William Burrus
President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This is in further reference to Phase 2 of the National Reassessment Process.
The Postal Service will begin Phase 2 implementation in accordance with the following:

- Beginning July 13, each Area will determine the order its Districts will implement Phase 2
- District implementation will be on a staggered basis and will include leadership/union briefings
- Work Status meetings (issuance of new modified assignment) with injured employees will take place no sooner than the week of July 27, 2009

If you have any questions concerning this matter, please contact Victor Smith at (202) 268-5842.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan S. Moore".

Alan S. Moore
Manager
Labor Relations Policy and Programs

American Postal Workers Union, AFL-CIO

Memorandum

Telephone
(202) 842-4246

From the Office of WILLIAM BURRUS
President

1300 L Street, NW
Washington, DC 20005

July 14, 2009

TO:

Sue Carney

SUBJECT:

**July 1 Meeting Concerning NRP Phase 2 - Limited Duty Process -
Requested Updates Enclosed
(Notification No. GCCG2009112)**

Please find attached a copy of a letter dated 7/13/2009 from Alan Moore,
regarding the above reference matter.

You are designated as the APWU contact person in this matter. Contact the
USPS representative as soon as possible for discussion, if appropriate.
Please provide notification of your review to me by 8/14/2009.

Please note: Your secretary should update the Notification Tracking Module
in Step 4 CAS as necessary.

Attachment

WB:bb
opeiu #2/afl-cio

Local Pickup



JUL 14

July 13, 2009

Mr. William Burrus
President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This is in further reference to the July 1 meeting concerning the National Reassessment Process-Phase 2-Limited Duty Process. The National Reassessment Process-Updates the union requested during that meeting are enclosed.

If you have any questions concerning this matter, please contact Victor Smith at (202) 268-5842.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan S. Moore".

Alan S. Moore
Manager
Labor Relations Policy and Programs

Enclosure

Stand Up Talk – National Reassessment Process



As you know, our district has initiated the Postal Service's National Reassessment Process. This process has been focused on reviewing all rehabilitation assignments, task by task, to ensure all assignments contain only necessary tasks. Our district will now be initiating the National Reassessment Process for limited duty employees, whereby limited duty assignments would be included in the National Reassessment Process.

As our operations become more automated, both in the plant and in customer services, it is becoming more difficult to provide productive and necessary tasks to employees within their medical restrictions. A team of management members from operations, medical, labor relations, and injury compensation functions here in the District was established to complete the process of identifying necessary tasks and placing employees with medical restrictions in these assignments. All assignments are based on a review of current medical restrictions; strict adherence and compliance with Postal and Federal policy/regulations as well as the collective bargaining agreements.

On a daily basis, if necessary tasks within employee's medical restrictions are not identified, the employee will be sent home for the remainder of their scheduled workday. Most employees will be advised to report back to their assignment on their next scheduled workday. When no necessary tasks can be identified within an employee's medical restrictions, the employee will be advised to report back to work upon receipt of updated medical restrictions. When there is no necessary work available, an employee can elect to file a claim for compensation from OWCP or use leave. Assistance will be provided in completion of all appropriate forms.

As our staffing needs continue to change, we are increasingly experiencing situations where sufficient productive or necessary assignments to accommodate injured employees are more difficult to find. We take our responsibility to all employees very seriously and will work to ensure they are afforded all rights under the Federal Employees Compensation Act.

National Reassessment Process, Phase 2, Limited Duty; Priority for Assignment Worksheet

Name of Employee: _____ DOI: _____ Claim No: _____
 Office/Installation _____ Tour _____ Finance # _____

1) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; within their craft, within their regular schedule (tour), and within their current facility. I have been unable to identify adequate work available for this employee within these requirements. Proceed to #2. NOTES:	Supervisor/Manager Name _____ Supervisor/Manager Signature _____ Date _____
2) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; <i>outside their craft</i> , within their regular schedule (tour), and within their current facility. I have been unable to identify adequate work available for this employee within these requirements. NOTES:	Supervisor/Manager Name _____ Supervisor/Manager Signature _____ Date _____
3) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; within their craft, <i>outside their regular schedule (tour)</i> , and within their current facility. I have been unable to identify adequate work available for this employee within these requirements. Proceed to #4. NOTES:	Supervisor/Manager Name _____ Supervisor/Manager Signature _____ Date _____
4) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; <i>outside their craft, outside their regular schedule (tour)</i> , and within their current facility. I have been unable to identify adequate work available for this employee within these requirements. Contact District Assessment Team (DAT) and forward copies of all search documents. NOTES:	Supervisor/Manager Name _____ Supervisor/Manager Signature _____ Date _____
SPECIAL NOTES TO SUPERVISORS AND MANAGERS: When No Work is Identified/Available for a <i>Complete Day</i> , HRM must be notified. When a <i>Partial Day</i> of work is provided, this worksheet must be completed daily.	Activity Start and End Date(s): _____ Thru _____ Work Hours Provided _____
ADDITIONAL NOTES:	COP Requested _____ Sick Leave Requested _____ Annual Leave Requested _____ LWOP Requested _____ LWOP-IOD Requested _____

USE OTHER SIDE OF THIS DOCUMENT FOR ADDITIONAL NOTES

National Reassessment Process, Phase 2, Limited Duty; Priority for Assignment Worksheet

Name of Employee: _____ DOI: _____ Claim No: _____
 Office/Installation _____ Tour _____ Finance # _____

5) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; within their craft, within their regular schedule (tour), and *outside their current facility*. I have been unable to identify adequate work available for this employee within these requirements. Proceed to #6. NOTES:

Supervisor/Manager Name _____
 Supervisor/Manager Signature _____
 Date _____

6) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; *outside their craft*, within their regular schedule (tour), and *outside their current facility*. I have been unable to identify adequate work available for this employee within these requirements. Proceed to #7. NOTES:

Supervisor/Manager Name _____
 Supervisor/Manager Signature _____
 Date _____

7) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; within their craft, *outside their regular schedule (tour)*, and *outside their current facility*. I have been unable to identify adequate work available for this employee within these requirements. Proceed to #8. NOTES:

Supervisor/Manager Name _____
 Supervisor/Manager Signature _____
 Date _____

8) I have made every effort to search for and identify adequate work available for this employee within their current medical restrictions; *outside their craft*, *outside their regular schedule (tour)*, and *outside their current facility*. I have been unable to identify adequate work available for this employee within these requirements. NOTES:

Supervisor/Manager Name _____
 Supervisor/Manager Signature _____
 Date _____

SPECIAL NOTES TO SUPERVISORS AND MANAGERS:
 When No Work is Identified/Available for a *Complete Day*, HRM must be notified.
 When a *Partial Day* of work is provided, this worksheet must be completed daily.

ADDITIONAL NOTES:

Activity Start and End Date(s): _____
 Thru _____
 Work Hours Provided _____
 COP Requested _____
 Sick Leave Requested _____
 Annual Leave Requested _____
 LWOP Requested _____
 LWOP-10D Requested _____

USE OTHER SIDE OF THIS DOCUMENT FOR ADDITIONAL NOTES

Date: ___ / ___ / ___

Subject: Employee Leave Information Letter, Refusal

Employee Name: _____ EID# _____

This informational letter is in regards to the search for a modified assignment relative to your injury-on-duty. Following the guidelines established by the National Reassessment Process (NRP), Phase 2, Limited Duty; a search for necessary tasks meeting your medical restrictions within your regular office/facility was completed. Based on this search, we identified a Limited Duty assignment within your medical restrictions and you refused to accept this assignment.

You need to complete a PS Form 3971 for the remainder of your workday and for the remainder of the pay period or until your next medical appointment depending on which is sooner. You can select COP (if eligible), leave, or LWOP-IOD; however, any COP or compensation requested from DOL/OWCP will be challenged because you refused this Limited Duty assignment.

If you elect LWOP-IOD you should complete a CA-7 on a pay period basis (recommended by the DOL/OWCP to be completed bi-weekly). Completion of this form is required in order for you to file for compensation. A completed CA7 should be returned to the HRM (Injury Compensation office) at the end of each pay period you are out of work.

In addition, your selections for leave include LWOP, Sick Leave or Annual Leave. If you elect to use Annual Leave or Sick Leave, I must inform you that a leave buy-back will not be approved for Sick or Annual Leave used if your claim has already been approved by the Department of Labor, Office of Workers' Compensation Programs (DOL/OWCP).

You must update your medical documents (e.g.; CA17) on a regular basis or as determined by your treating physician. Upon receipt of all new or updated medical documentation, you are required to immediately provide this documentation for review of the medical restrictions and a new determination of available necessary tasks.

Please contact me or HRM (Injury Compensation) if you have any questions, require information, or desire to meet with the District Reasonable Accommodation Committee (DRAC).

~~You should not report back for duty unless you: 1) elect to accept the most recently offered PS Form 2499, in which case, you should contact this office in advance; or 2) you are notified by the DAT that based on new or updated medical documentation a revised modified assignment consisting of necessary tasks is available.~~

Supervisors Signature _____

Date _____

Date: ___/___/___

Subject: Employee Leave Information Letter, Complete Day

Employee Name: _____ BID# _____

This informational letter is in regards to the search for a modified assignment relative to your injury-on-duty. Following the guidelines established by the National Reassessment Process (NRP), Phase 2, Limited Duty; the District Assessment Team (DAT) has completed a search for necessary tasks meeting your medical restrictions in all crafts and on all tours within your facility and throughout the Local Commuting Area (LCA) within the District boundaries. Based on this search, we were unable to identify any available necessary tasks within your medical restrictions.

You need to complete a PS Form 3971 for the remainder of the pay period or until your next medical appointment depending on which is sooner. In addition, if this action takes place in week 2 of the pay period, it is recommended that a PS Form 3971 be completed for the next pay period as well. You can select COP (if eligible), leave, or LWOP-IOD. Your selections for leave include LWOP, Sick Leave or Annual Leave.

If you elect to use Annual Leave or Sick Leave, I must inform you that a leave buy-back will not be approved for Sick or Annual Leave used if your claim has already been approved by the Department of Labor, Office of Workers' Compensation Programs (DOL/OWCP).

If you elect LWOP-IOD you should complete a one time only CA2A (Claim for Recurrence). You should also complete a CA-7 on a pay period basis (recommended by the DOL/OWCP to be completed bi-weekly unless otherwise notified by OWCP). Completion of this form is required in order for you to file for compensation. A completed CA7 should be returned to the HRM (Injury Compensation) office at the end of each pay period you are out of work.

You must update your medical documents (e.g.; CA17) on a regular basis or as determined by your treating physician. Upon receipt of all new or updated medical documentation, you are required to immediately provide this documentation for review of the medical restrictions and a new determination of available necessary tasks. Please contact your supervisor or the HRM (Injury Compensation) office if you have any questions, require information, or desire to meet with the District Reasonable Accommodation Committee (DRAC).

If your treating physician has determined you have reached Maximum Medical Improvement (MMI) as a result of your injury, you will continue to be reassessed by the Postal Service following the guidelines established by the National Reassessment Process, Phase 2, for Rehabilitation (MMI) employees; and you will be contacted with the results of that process.

You should not report back for duty unless you are contacted that necessary work tasks have been identified for you within your medical restrictions.

Supervisors Signature _____

Date _____

Date: ___/___/___

Subject: Employee Leave Information Letter, Partial Day

Employee Name: _____ EID# _____

This informational letter is in regards to the modified assignment relative to your injury-on-duty. Following the guidelines established by the National Reassessment Process (NRP), Phase 2, Limited Duty; a search for necessary tasks meeting your medical restrictions within your regular hours of duty (tour) and within this office/facility and offices/facilities within the surrounding area was completed. Based on this search, we were unable to identify enough available necessary tasks within your medical restrictions, in order for you to complete a full day of work.

You need to complete a PS Form 3971 for the remainder of your workday. You can select COP (if eligible), leave or LWOP-IOD.

If you elect LWOP-IOD you should complete a CA-7 and a CA7a on a pay period basis, tracking your intermittent LWOP-IOD (recommended by the DOL/OWCP to be completed bi-weekly). Completion of these forms is required in order for you to file for compensation. The completed CA7 and CA7a should be returned to me at the end of the pay period.

Your selections for leave include LWOP, Sick Leave or Annual Leave. If you elect to use Annual Leave or Sick Leave, I must inform you that a leave buy-back will not be approved for Sick or Annual Leave used if your claim has already been approved by the Department of Labor, Office of Workers' Compensation Programs (DOL/OWCP).

Please contact me or HRM (Injury Compensation) if you have any questions, require information, or desire to meet with the District Reasonable Accommodation Committee (DRAC).

You should report back for duty at your normal reporting time on your next scheduled workday.

Supervisors Signature _____

Date ___/___/___

**NATIONAL REASSESSMENT PROCESS (NRP)
 PHASE 2 - LIMITED DUTY PROCESS
 New Medical / New Injury - OVERVIEW**

Responsible Team Member	Action	Description	Outcome
STEP 1 - Manager or Supervisor	Employee presents new medical documentation as an updated medical or from a new injury.	For updated medical documentation, determine if medical restrictions have changed, if so, proceed. For new injuries, determine if the employee has medical restrictions.	Manager or Supervisor will be prepared to initiate NRP, Phase 2, Limited Duty process.
STEP 2 - Manager or Supervisor	Managers and/or Supervisors will complete all Initial Action items	Assess employee based on the newly presented medical documentation to determine availability of necessary work.	Manager or Supervisor have completed Initial Actions requirements and will be prepared to conduct Work Status Meeting with injured employees
STEP 3 - Manager or Supervisor	Managers and/or Supervisors will complete all Work Status requirements and continue forward with Daily Determinations	Present Work Status determination to employee and elicit feedback regarding proposed assignment / action. Make assignment adjustments based on employee feedback, if necessary.	Employee will have been advised of Work Status determination.

**NRP, Phase 2 – Limited Duty
New Medical Documentation / New Injury
Step 1**

RESPONSIBLE TEAM MEMBER(S):

- Managers and Supervisors
- District NRP Team

ACTION: When employees present a new medical as the result of an updated medical or a new injury, the Managers/Supervisors will proceed forward as guided by this section.

1. For an updated medical on an existing case, determine if the medical restrictions have changed, if so, proceed forward. If the medical has not changed, no further action is required.
2. For a new medical with restrictions as the result of a new injury, proceed forward.

OUTCOME:

Managers and Supervisors at individual facilities will proceed forward with this process when a new medical has been presented.

**NRP, Phase 2 – Limited Duty
New Medical Documentation / New Injury
Step 2**

RESPONSIBLE TEAM MEMBER(S):

- Managers and Supervisors
- District Assessment Team

ACTION – Conduct Initial Action items for all newly presented medical documentation as the result of an updated medical or a new injury.

INITIAL ACTION

Existing Modified Assignment - Employee's Supervisor/Manager

- Current medical documentation must be used in reassessing all existing modified assignments.
- Review medical restrictions and make every effort to identify a modified assignment within the employee's regular hours of duty (tour), and currently assigned facility, following Priority for Assignment (Steps 1-4).
- Ensure the modified assignment is consistent with current medical restrictions and contains only necessary tasks within the employee's currently assigned facility. The established facility specific necessary task worksheets must be used to ensure the modified assignment contains only necessary tasks.
- When reviewing the medical restrictions determine the frequency and duration of necessary tasks and define the physical requirements and average time spent as required on PS Form 2499 in Section II.
- If no changes are necessary, proceed to Work Status Meetings.
- > If the current modified assignment or physical requirements need to be changed, complete a new PS Form 2499, Offer of Modified Assignment (Limited Duty).
- > At the completion of this action, employee's will be categorized as:
 - Full Day Work
 - Partial Day Work
 - Complete Day No Work

- **Full Day Work**, if necessary tasks within the employee's facility are identified maximizing the hours of work permitted by the employee's medical restrictions:

Examples:

1. Employee's medical states employee can work eight (8) hours and eight (8) hours of necessary work is identified.
2. Employee's medical states employee can work six (6) hours and six (6) hours of necessary work is identified.

Full Day Work (Continued)

- o If a full day's work is provided and completed by the employee, no further action is required.
- o If a full day's work of necessary tasks is not available, continue to Partial Day for action.

NOTE: If an employee is receiving a Full Day Work Limited Duty assignment, ensure a note is added to the PS Form 2499 that if the necessary work is not available on any particular day, fewer hours than those identified on the PS Form 2499 may be worked and the employees assignment for the remainder of that day would be handled as a Partial Day Work.

- **Partial Day Work**, when necessary tasks are not identified maximizing the hours of work permitted by the employee's medical restrictions (example: treating physician indicates the employee can work 8 hours with restrictions; USPS identifies only 4 hours of necessary work); the supervisor must:

Document the search for additional necessary tasks using the Priority for Assignment Worksheet (Steps 1, 2) providing the following information:

- The search within the employee's regular hours of duty (tour) and facility was fully completed as required and there were no additional necessary tasks available for the employee within the employee's medical restrictions.
- Expand the search for necessary work to the following tour if the employees workhours have not been maxed to the medical restrictions; and the employee is currently ending his/her modified assignment at or near the beginning or during the following tour. Document this search on the Priority for Assignment worksheet (Steps 3, 4)
- Expand the search for necessary work to offices within the surrounding area. Document this search on the Priority for Assignment worksheet (Steps 5, 6)

- **Complete Day No Work**, if there are no necessary tasks identified/available within the employee's current regular hours of duty (tour) and facility; and within their medical restrictions, the supervisor must:

Document the search for all necessary tasks using the Priority for Assignment Worksheet (Steps 1-4), providing the following information:

- The search within the employee's regular hours of duty (tour) and facility was fully completed as required and there were no necessary tasks identified/available for the employee within the employee's medical restrictions.

Complete Day No Work Determination – DAT Action

The District Assessment Team (DAT) consists of designees from Operations, Health and Resource Management (Injury Compensation and Occupational Health), and Labor Relations.

When the DAT receives notification from a supervisor/manager indicating there have been no necessary tasks identified/available for an employee, within the employee's regular hours of duty (tour) and facility, the DAT must:

1. Verify the search for necessary tasks for the employee within the employees currently assigned regular hours of duty (tour) and facility was properly completed and documented utilizing the Priority for Assignment worksheet (1-4).

Complete Day No Work Determination – DAT Action

2. HRM (Injury Compensation) must review the employee's injury compensation file to determine if the treating physician has established whether the duration of the current medical restrictions are determined to be short term or long term.
 - If the duration of the medical documentation is unclear or not identified, further guidance from HRM Occupational Health must be requested.
 - HRM Occupational Health should proceed as guided below:
 - o Using established resources (e.g.; MDA, ODG, etc.) must make every effort to establish anticipated duration of current medical restrictions.
 - o If the current medical restrictions are not specific as to the anticipated duration; HRM Occupational Health must seek medical clarification from the treating physician.
 3. When the anticipated duration of the medical restrictions has been determined to be:
 - short term (up to 14 days); no further action is required by the DAT.
 - long term (greater than 14 days); the DAT must continue the search beyond the employee's facility, utilizing the Priority for Assignment Steps 5-8.
 - o Priority for Assignment Steps 5-8 must be conducted within the Local Commuting Area (LCA), within the District boundaries. This activity must be completed prior to conducting the Work Status meeting with the employee to inform them of the Complete Day No Work Determination.
 - o All search activities must be properly documented using the Priority for Assignment Worksheet (Steps 5-8); capturing search activities completed, how search was performed, managers involved, responses, etc.
 4. If necessary tasks are identified outside the employee's assigned facility, the DAT Operations designee must:
 - o Complete a new PS Form 2499.
 - o Send a copy to the employee's supervisor/manager at the employee's assigned facility so it can be presented to the employee.
 - o Coordinate with current and new supervisors/managers the reporting date of the new modified assignment.
 5. If there are no necessary tasks identified/available outside the facility for the employee, within their medical restrictions, the DAT operations designee must;
 - o Document the search using Priority for Assignment (Steps 5-8) was fully completed within the Local Commuting Area (LCA) and District boundary.
- Upon completion of the Initial Actions, Managers/Supervisors will notify the DAT of readiness to proceed to the Work Status Meetings.

OUTCOME: The Managers/Supervisors will have conducted all Initial Action Items on newly presented medical and will proceed to the Work Status Meetings. The DAT will take action on all Complete Day No Work determinations.

**NRP, Phase 2 – Limited Duty
New Medical Documentation / New Injury
Step 3**

RESPONSIBLE TEAM MEMBER(S):

- Managers and Supervisors
- District NRP Team

ACTION: Managers and Supervisors to conduct NRP, Phase 2 Limited Duty, Initial Actions, Work Status meetings and Daily Determinations when employees present a new medical as the result of updating a medical or having a new injury.

1. Managers and Supervisors will conduct the Work Status meetings with the employees.
2. Managers and Supervisors will conduct the Daily Determinations meetings with the employees.

Work Status Meeting with the Employee – Manager / Supervisor

- If the current modified assignment or physical requirements need to be changed, complete a new PS Form 2499, Offer of Modified Assignment (Limited Duty).

NOTE: for MMI employees being reassessed as part of this process; ensure it is explained to them this modified assignment (PS Form 2499) is temporary and they will be reassessed under the NRP, Phase 2, Rehabilitation process and they will be notified of the results of that process when it is completed.

NOTE: If an employee is receiving a complete day work assignment, ensure they understand if the necessary work is not available on any particular day, fewer hours than identified on the PS Form 2499 may be worked and the employee's assignment for the remainder of that day would be handled as a Partial Day Work. Discuss the Partial Day letter with them at this time.

Work Status Meeting with the Employee (Continued)

- Review and discuss the proposed PS Form 2499 with the employee.
- Elicit feedback from the employee regarding his or her ability to perform the duties identified or other necessary tasks which may be available.
- Based on the feedback from the employee, make adjustments to the PS Form 2499 if necessary. Give the PS Form 2499 to the employee for signature reflecting acceptance or refusal.

- If accepted:

- NOTE: Accepted "under protest" is an acceptance. Employee must be asked to provide a reason for the; accept "under protest".
- Distribute PS Form 2499, Offer of Modified Assignment (Limited Duty):
 - Provide employee with original signed copy.
 - Forward (fax, scan, email) a copy of all documents to the HRM office
 - Retain copy in work unit
- Proceed forward to the Daily Determination – Work Status Meeting, Step 4, and discuss the applicable Daily Determination decisions (Full Day and Partial Day) with the employee.
- If refused or if the employee refuses to sign the Supervisor/Manager must;
 - Inform the employee that unless the employee elects to accept and/or sign the modified assignment, the employee will not be allowed to work.
 - Have the employee complete a PS Form 3971 for the remainder of the scheduled workday and also the remainder of the pay period. In addition, if the action takes place in week 2 of a pay period, then it is recommended that a PS Form 3971 be completed for the next pay period as well. The employee should request; COP, LWOP-IOD, or other leave. If the employee requests LWOP- IOD, the supervisor/manager must provide the employee with a CA7 and CA7a as per USPS policy and recommended bi-weekly submission by DOL/WCP.
 - Provide the employee with; NRP, Phase 2, Employee Leave information letter, Refusal, Supervisor/Manager. Following the employees review of the letter, ask them if they have any questions.
 - Inform the employee they may be contacted for clarification on the reason for the refusal and/or a decision on modified assignment offer compliance.

- Distribute PS Form 2499, Offer of Modified Assignment (Limited Duty):

1. Provide the employee with the original signed or unsigned copy.
2. Forward (fax, scan, email) a copy of all documents to the HRM office
3. Retain copy in work unit

Work Status Meeting with the Employee (Continued)

➤ No Necessary Tasks Identified/available (Complete Day No Work)

If there are no necessary tasks identified/available within the employee's current regular hours of duty (tour) and facility; and within their medical restrictions, the supervisor must:

1. Ensure the Priority for Assignment Worksheet (Steps 1-8), is available and has been properly completed documenting:
 - The search within the local commuting area (LCA) for this employee within the District boundaries was fully completed as required and there were no necessary tasks identified/available for the employee within the employee's medical restrictions.
2. Have the employee complete PS Form 3971 for the remainder of the scheduled workday and also for the remainder of the pay period or until the next scheduled medical appointment, depending on which is sooner. In addition, if the action takes place in week 2 of a pay period, then it is recommended that a PS Form 3971 be completed for the next pay period as well. The employee should request either; COP; LWOP-IOD; or other leave.
 - The supervisor/manager must obtain authorization from HRM for all injury related COP, LWOP-IOD, or "other leave" requests prior to approving PS Form 3971.
 - If the employee requests LWOP-IOD, the supervisor/manager must provide the employee with a CA7 for completion. The employee should complete the CA7 for the remainder of the pay period as recommended by DOL/OWCP.
 - Record workhours provided to the employee and any COP; LWOP-IOD or other leave requested by the employee for the remainder of the scheduled workday on the Priority for Assignment Worksheet.
3. Inform the employee if/when necessary tasks become available prior to their next scheduled medical appointment, they will be contacted.
4. Provide the employee with; NRP, Phase 2, Employee Leave information letter, Complete Day, DAT.
5. Forward all completed paperwork to the Manager, Health and Resource Management regarding the Supervisor/Manager decision that no necessary tasks were identified/available for this employee.

Documentation Review of Modified Assignment (Limited Duty) Offer – HRM

- If the modified assignment offer is accepted by the employee:
 - Submit copy of the PS form 2499, Offer of Modified Assignment (Limited Duty) reflecting the employee's written acceptance to OWCP and place a copy in employee's Injury Compensation and NRP Activity files.
 - Notify supervisor via email to remind employee of next medical appointment and medical report due date to ensure ongoing monitoring of improvement of medical condition and work capacity.
- If the modified assignment offer is refused by the employee or the employee refuses to sign the PS Form 2499.
 - HRM will immediately submit a copy of the modified assignment offer reflecting employees' refusal or refusal to sign with a cover letter to the employee's treating physician and also DOL/OWCP requesting a determination of whether or not the tasks and physical requirements of the modified assignment meets the medical restrictions.
 - HRM will monitor the case to ensure that the DOL/OWCP renders a decision whether or not the tasks and physical requirements of the modified assignment meets the medical restrictions.
 - Inform the employee they will be contacted after DOL/OWCP has rendered a ruling on whether or not the tasks and physical requirements of the modified assignment meets the medical restrictions
- Maintaining NRP, Phase 2, Case Management/Modified Assignment Tracking: In accordance with USPS policy, all employees in a modified assignment and those medically cleared for a modified assignment must be tracked/case managed on a continuing basis:
 - On a case specific basis, HRM will require an employee to provide updated medical reports on their duty status (e.g.; Form CA-17, Duty Status Report or other medical documentation).
 - Utilizing the NRP Workbook:
 - Enter last medical appointment dates where appropriate when medical documentation is received.
 - Enter dates of new Modified Assignments where appropriate when Modified Assignments are accepted.

Review of Accepted Modified Assignment (Limited Duty) - DAT

A District Assessment Team (DAT) composed of designees from Operations, Health & Resource Management (HRM), and Labor Relations has been established to accomplish the following:

- Ensure use of PS Form 2499, Offer of Modified Assignment (Limited Duty).
- Ensure each employee is placed in a modified assignment that maximizes the work capacity level of the injured employee by assigning necessary tasks within their medical restrictions.
- Ensure that all modified assignments comply with USPS and Department of Labor, Office of Workers' Compensation Programs (DOL/OWCP) regulations while at the same time, add value to the operation so the employee's assignment is recognized as contributing to the operations' overall performance.
- Communicate via email (as much as reasonably possible), fax, mail/pouch.
- Use email records to document individual case activity. (Must be printed and filed in the employees NRP Activity file)
- Must follow USPS regulations set forth in the ELM, 546.142
- When HRM receives a new PS 2499 from a supervisor/manager; medical restrictions and copies of the PS Form 2499 must be distributed to all other DAT team members.
- Review PS Form 2499, Offer of Modified Assignment (Limited Duty) DAT functional review; individually or collectively:
 - HRM Occupational Health designee must determine if employee is capable of performing identified tasks within medically defined restrictions. Identify any tasks that are "outside of medical restrictions" and notify other team members of their review determination.
 - Operations designee must determine that the maximum number of necessary tasks for the employees current assignment are assigned and listed; and ensure proper coding of work tasks with correct operation or labor distribution codes and notify other team members of their review determination.
 - HRM Injury Compensation designee must determine if assignment is in compliance with USPS regulations (ELM 546.142) and notify other team members of their review determination.
- If PS Form 2499 or Modified Assignment is agreed to be in compliance, initial the document indicating functional compliance.
- If the Modified Assignment and/or the PS Form 2499 are not in compliance, the DAT Operations designee must direct the supervisor in writing (email is acceptable), to complete a new PS Form 2499 addressing identified items.

Any new/updated PS Form 2499, Offer of Modified Assignment (Limited Duty) must be issued to the employee by their Supervisor / Manager.

Daily Determination of Necessary Work – (Managers / Supervisors)

- **Full Day Work**, if necessary tasks within the employee's facility are identified maximizing the hours of work permitted by the employee's medical restrictions:

Examples:

1. Employee's medical states employee can work eight (8) hours and eight (8) hours of necessary work is identified.
 2. Employee's medical states employee can work six (6) hours and six (6) hours of necessary work is identified.
- o If a full day's work is provided and completed by the employee, no further action is required.
 - o If a full day's work of necessary tasks is not available, continue to Partial Day Work for action.
- **Partial Day Work**, when necessary tasks are not identified maximizing the hours of work permitted by the employee's medical restrictions (example: treating physician indicates the employee can work 8 hours with restrictions; USPS identifies only 4 hours of necessary work); the supervisor must:

Document the search for additional necessary tasks using the Priority for Assignment Worksheet (Steps 1, 2) providing the following information:

- The search within the employee's regular hours of duty (tour) and facility was fully completed as required and there were no additional necessary tasks available for the employee within the employee's medical restrictions.
- Expand the search for necessary work to the following tour if the employee's work hours have not been maxed to the medical restrictions; and the employee is currently ending his/her modified assignment at or near the beginning or during the following tour. Document this search on the Priority for Assignment worksheet (Steps 3, 4)
- Expand the search for necessary work to offices within the surrounding area. Document this search on the Priority for Assignment worksheet (Steps 5, 6)
- If no necessary work is identified, have the employee complete PS Form 3971 for the remainder of the scheduled workday requesting: COP, LWOP-IOD, or other leave.
- The supervisor/manager must obtain authorization from HRM for all injury related COP, LWOP-IOD, or other leave requests prior to approving the PS Form 3971.
- If the employee requests LWOP-IOD, the supervisor/manager must provide the employee with a CA7 and CA7a as per USPS policy and recommended bi-weekly by ~~DOL/OWCP~~.
- Provide the employee with: NRP, Phase 2, Employee Leave Information Letter, Partial Day, Supervisor/Manager
- Record work hours provided to the employee and any COP, LWOP-IOD, or other leave requested by the employee for the remainder of the scheduled workday
- Direct the employee to report for duty on their next scheduled workday.

OUTCOME: Managers and Supervisors will have conducted Work Status and Daily Determination meetings when an employee presents an updated medical or has a new injury..

**NATIONAL REASSESSMENT PROCESS (NRP)
 PHASE 2 - LIMITED DUTY PROCESS
 WORK STATUS MEETINGS - OVERVIEW**

Responsible Team Member	Action	Description	Outcome
STEP 1 - HQs / Area / District NRP Teams	Meet with Managers and Supervisors to determine implementation readiness	Review all proposed assignment determinations for accuracy (Full Day/Partial Day/Complete Day No Work)	Managers and Supervisors will be cleared to conduct Work Status Meetings with injured employees
STEP 2 - HQs / Area / District NRP Teams	Train facility Manager or Supervisor on Work Status Meeting format	Walk through all possible Work Status assignment determinations	Manager or Supervisor will be prepared to conduct Work Status Meeting with injured employees
STEP 3 - DAT	Conduct review of all Modified Assignment Documentation	DAT will review all Modified Assignment documentation for compliance	DAT will have completed a review of all Modified Assignments documentation
STEP 4 - Manager or Supervisor	When required, conduct Daily Work Status Meetings with injured employees	On a daily basis, the Supervisors will review available necessary tasks and make assignment determinations and then hold a daily work status meeting with the employee.	Injured employee's status will be reviewed and the employee will have been advised of the Daily Work Status determination

**NRP, Phase 2 – Limited Duty
Work Status
Step 1**

RESPONSIBLE TEAM MEMBER(S):

- HQs and Area NRP Teams
- District NRP Team

ACTION: Meet with Managers and Supervisors to determine implementation readiness.

1. At individual facilities, meet with the Managers and Supervisors to ensure all Initial Action Items have been properly performed.
2. The purpose of this meeting is to validate all Initial Action items were completed in compliance with the guidelines of the NRP, Phase 2 Limited Duty process, and all the required forms/documentation have been properly completed.
3. If the required forms/documentation are not in compliance, the DAT will reschedule the validation meeting.
4. If the required forms/documentation are in compliance, the Managers and Supervisors will be eligible for training to conduct Work Status meetings.
5. The DAT must coordinate the scheduling of the Work Status Meeting Training and Work Status Meeting sessions with the employees.
 - a. The initial Work Status Meeting Training must take place on the first day of the Work Status Meetings with the employees.
 - b. There must be a two week notice to the unions prior to the first Work Status Meeting with the employees.

OUTCOME:

Managers and Supervisors at individual facilities will be cleared to proceed forward with the work status training and meetings.

**NRP, Phase 2 – Limited Duty
Work Status
Step 2**

RESPONSIBLE TEAM MEMBER(S):

- HQ and Area NRP Teams
- District NRP Team

ACTION: Train DAT, Managers, and Supervisors to conduct NRP, Phase 2 Limited Duty, Work Status meetings.

1. Provide Managers and Supervisors with a list of all District Assessment Team Members they can contact for assistance when required.
2. At individual facilities, train the Managers and Supervisors to conduct Work Status meetings as guided below.
3. Walk through all possible Work Status assignment determinations.
4. The purpose of this meeting is to inform the employee of the results of the Initial Action steps of the NRP, Phase 2 Limited Duty process.
5. Managers and Supervisors will conduct the interactive meetings with employees.

Work Status Meeting with the Employee – Manager / Supervisor

- If the current modified assignment or physical requirements need to be changed, complete a new PS Form 2499, Offer of Modified Assignment (Limited Duty).

NOTE: for MMI employees being reassessed as part of this process; ensure it is explained to them this modified assignment (PS Form 2499) is an interim assignment and they will be reassessed under the NRP, Phase 2, Rehabilitation process and they will be notified of the results of that process when it is completed.

NOTE: If an employee is receiving a complete day work assignment, ensure they understand if the necessary work is not available on any particular day, fewer hours than identified on the PS Form 2499 may be worked and the employee's assignment for the remainder of that day would be handled as a Partial Day Work. Discuss the Partial Day letter with them at this time.

Work Status Meeting with the Employee (Continued)

- Review and discuss the proposed PS Form 2499 with the employee.
- Elicit feedback from the employee regarding his or her ability to perform the duties identified or other necessary tasks which may be available.
- Based on the feedback from the employee, make adjustments to the PS Form 2499 if necessary. Give the PS Form 2499 to the employee for signature reflecting acceptance or refusal.

- If accepted:

- NOTE: Accepted "under protest" is an acceptance. Employee must be asked to provide a reason for the "accept under protest".

- Distribute PS Form 2499, Offer of Modified Assignment (Limited Duty):
 - Provide employee with original signed copy.
 - Forward (fax, scan, email) a copy of all documents to the HRM office
 - Retain copy in work unit

- Proceed forward to the Daily Determination – Work Status Meeting, Step 4, and discuss the applicable Daily Determination decisions (Full Day and Partial Day) with the employee.

- If refused or if the employee refuses to sign the Supervisor/Manager must;

- Inform the employee that unless the employee elects to accept and/or sign the modified assignment, the employee will not be allowed to work.

- Have the employee complete a PS Form 3971 for the remainder of the scheduled workday and also the remainder of the pay period. In addition, if the action takes place in week 2 of a pay period, then it is recommended that a PS Form 3971 be completed for the next pay period as well. The employee should request; COP, LWOP-IOD, or other leave. If the employee requests LWOP-IOD, the supervisor/manager must provide the employee with a CA7 and CA7a as per USPS policy and recommended bi-weekly submission by DOL/OWCP.

- Provide the employee with; NRP, Phase 2, Employee Leave information letter, Refusal, Supervisor/Manager. Following the employees review of the letter, ask them if they have any questions.

- Inform the employee they may be contacted for clarification on the reason for the refusal and/or a decision on modified assignment offer compliance.

Work Status Meeting with the Employee (Continued)

- Distribute PS Form 2499, Offer of Modified Assignment (Limited Duty):

1. Provide the employee with the original signed or unsigned copy.
2. Forward (fax, scan, email) a copy of all documents to the HRM office
3. Retain copy in work unit

➤ No Necessary Tasks identified/available (Complete Day No Work)

If there are no necessary tasks identified/available within the employee's current regular hours of duty (tour) and facility; and within their medical restrictions, the supervisor must:

1. Ensure the Priority for Assignment Worksheet (Steps 1-8), is available and has been properly completed documenting:
 - The search within the local commuting area (LCA) for this employee within the District boundaries was fully completed as required and there were no necessary tasks identified/available for the employee within the employee's medical restrictions.
2. Have the employee complete PS Form 3971 for the remainder of the scheduled workday and also for the remainder of the pay period or until the next scheduled medical appointment, depending on which is sooner. In addition, if the action takes place in week 2 of a pay period, then it is recommended that a PS Form 3971 be completed for the next pay period as well. The employee should request either; COP; LWOP-IOD; or other leave.
 - The supervisor/manager must obtain authorization from HRM for all injury related COP, LWOP-IOD, or "other leave" requests prior to approving PS Form 3971.
 - If the employee requests LWOP-IOD, the supervisor/manager must provide the employee with a CA7 for completion. The employee should complete the CA7 for the remainder of the pay period as recommended by DOL/OWCP.
 - Record workhours provided to the employee and any COP; LWOP-IOD or other leave requested by the employee for the remainder of the scheduled workday on the Priority for Assignment Worksheet.

Work Status Meeting with the Employee (Continued)

3. Inform the employee if/when necessary tasks become available prior to their next scheduled medical appointment, they will be contacted.
4. Provide the employee with; NRP, Phase 2, Employee Leave information letter, Complete Day, DAT.
5. Forward all completed paperwork to the Manager, Health and Resource Management regarding the Supervisor/Manager decision that no necessary tasks were identified/available for this employee.

OUTCOME: Managers and Supervisors at individual facilities will be cleared to proceed forward with the work status training and meetings.

**NRP, Phase 2 – Limited Duty
Work Status
Step 3**

RESPONSIBLE TEAM MEMBER(S):

- HQ and Area NRP Teams
- District NRP Team
- Operations Postmasters, Managers and Supervisors

ACTION: Conduct Review of all documentation to ensure compliance

1. Managers and Supervisors and District NRP Team members have conducted the Work Status meetings with the employees and their union representatives.
2. The HRM office must take the appropriate actions as described below when the documents are received.

Documentation Review of Modified Assignment (Limited Duty) Offer – HRM

- If the modified assignment offer is accepted by the employee:
 - Submit copy of the PS form 2499, Offer of Modified Assignment (Limited Duty) reflecting the employee's written acceptance to OWCP and place a copy in employee's Injury Compensation and NRP Activity files.
 - Notify supervisor via email to remind employee of next medical appointment and medical report due date to ensure ongoing monitoring of improvement of medical condition and work capacity.
- If the modified assignment offer is refused by the employee or the employee refuses to sign the PS Form 2499.
 - HRM will immediately submit a copy of the modified assignment offer reflecting employees' refusal or refusal to sign with a cover letter to the employee's treating physician and also DOL/OWCP requesting a determination of whether or not the tasks and physical requirements of the modified assignment meets the medical restrictions.
 - HRM will monitor the case to ensure that the DOL/OWCP renders a decision whether or not the tasks and physical requirements of the modified assignment meets the medical restrictions.

Documentation Review of Modified Assignment (Limited Duty) Offer – HRM (Continued)

- Inform the employee they will be contacted after DOL/OWCP has rendered a ruling on whether or not the tasks and physical requirements of the modified assignment meets the medical restrictions
- Maintaining NRP, Phase 2, Case Management/Modified Assignment Tracking: In accordance with USPS policy, all employees in a modified assignment and those medically cleared for a modified assignment must be tracked/case managed on a continuing basis:
 - On a case specific basis, HRM will require an employee to provide updated medical reports on their duty status (e.g.; Form CA-17, Duty Status Report or other medical documentation).
 - Utilizing the NRP Workbook:
 - Enter last medical appointment dates where appropriate when medical documentation is received.
 - Enter dates of new Modified Assignments where appropriate when Modified Assignments are accepted.

Review of Accepted Modified Assignment (Limited Duty) - DAT

A District Assessment Team (DAT) composed of designees from Operations, Health & Resource Management (HRM), and Labor Relations has been established to accomplish the following:

- Ensure use of PS Form 2499, Offer of Modified Assignment (Limited Duty).
- Ensure each employee is placed in a modified assignment that maximizes the work capacity level of the injured employee by assigning necessary tasks within their medical restrictions.
- Ensure that all modified assignments comply with USPS and Department of Labor, Office of Workers' Compensation Programs (DOL/OWCP) regulations while at the same time, add value to the operation so the employee's assignment is recognized as contributing to the operations' overall performance.
- Communicate via email (as much as reasonably possible), fax, mail/pouch.
- Use email records to document individual case activity. (Must be printed and filed in the employees NRP Activity file)
- Must follow USPS regulations set forth in the ELM, 546.142

Review of Accepted Modified Assignment (Limited Duty) - DAT (Continued)

- When HRM receives a new PS 2499 from a supervisor/manager; medical restrictions and copies of the PS Form 2499 must be distributed to all other DAT team members.
- Review PS Form 2499, Offer of Modified Assignment (Limited Duty) DAT functional review; individually or collectively:
 - HRM Occupational Health designee must determine if employee is capable of performing identified tasks within medically defined restrictions. Identify any tasks that are "outside of medical restrictions" and notify other team members of their review determination.
 - Operations designee must determine that the maximum number of necessary tasks for the employees current assignment are assigned and listed; and ensure proper coding of work tasks with correct operation or labor distribution codes and notify other team members of their review determination.
 - HRM Injury Compensation designee must determine if assignment is in compliance with USPS regulations (ELM 546.142) and notify other team members of their review determination.
- If PS Form 2499 or Modified Assignment is agreed to be in compliance, initial the document indicating functional compliance.
- If the Modified Assignment and/or the PS Form 2499 are not in compliance, the DAT Operations designee must direct the supervisor in writing (email is acceptable), to complete a new PS Form 2499 addressing identified items.

Any new/updated PS Form 2499, Offer of Modified Assignment (Limited Duty) must be issued to the employee by their Supervisor / Manager.

OUTCOME: The DAT will have completed a review the Modified Assignment Offer

**NRP, Phase 2 – Limited Duty
Work Status
Step 4**

RESPONSIBLE TEAM MEMBER(S):

- HQ and Area NRP Teams
- District NRP Team
- Operations Postmasters, Managers and Supervisors

ACTION: Modified Assignments – Daily Determination of Necessary Work

1. Managers and Supervisors on a daily basis will determine the availability of necessary work for all Modified Assignments. When necessary work is not available, management will meet with the employee.
2. The purpose of this meeting is to inform the employee of the results of the daily search for necessary tasks.
3. Managers and Supervisors will conduct the interactive meeting as described below.
4. Managers and Supervisors must ensure they elicit feedback from the employee regarding proposed assignment/action. They should make adjustments when possible and if necessary based on employee feedback.
5. All documents must be properly completed and forwarded timely to the District Health and Resource Management office.

Daily Determination of Necessary Work – (Managers / Supervisors)

- **Full Day Work**, if necessary tasks within the employee's facility are identified maximizing the hours of work permitted by the employee's medical restrictions:

Examples:

1. Employee's medical states employee can work eight (8) hours and eight (8) hours of necessary work is identified.
2. Employee's medical states employee can work six (6) hours and six (6) hours of necessary work is identified.
 - If a full day's work is provided and completed by the employee, no further action is required.
 - If a full day's work of necessary tasks is not available, continue to Partial Day Work for action.

Daily Determination of Necessary Work – (Managers / Supervisors) (Continued)

- **Partial Day Work**, when an employee has completed all necessary tasks identified on the PS Form 2499 and additional necessary tasks are no longer available for the remainder of the employee's scheduled workday as identified on the PS Form 2499, the supervisor must:
 - Document the search for additional necessary tasks using the Priority for Assignment Worksheet (Steps 1, 2) providing the following information:
 - The search within the employee's regular hours of duty (tour) and facility was fully completed as required and there were no additional necessary tasks available for the employee within the employee's medical restrictions.
 - Expand the search for necessary work to the following tour if the employees workhours have not been maxed to the medical restrictions; and the employee is currently ending his/her modified assignment at or near the beginning or during the following tour. Document this search on the Priority for Assignment worksheet (Steps 3, 4)
 - Expand the search for necessary work to offices within the surrounding area. Document the search on the Priority for Assignment worksheet (Steps 5, 6)
 - If no necessary work is identified, when the employee has completed all available necessary tasks and there are no other necessary tasks available, meet with the employee and have the employee complete PS Form 3971 for the remainder of the scheduled workday requesting: COP, LWOP-IOD, or other leave.
 - The supervisor/manager must obtain authorization from HRM for all injury related COP, LWOP-IOD, or other leave requests prior to approving the PS Form 3971.
 - If the employee requests LWOP-IOD, the supervisor/manager must provide the employee with a CA7 and CA7a as per USPS policy and recommended bi-weekly by DOL/OWCP.
 - Provide the employee with: NRP, Phase 2, Employee Leave Information Letter, Partial Day, Supervisor/Manager
 - Record workhours provided to the employee and any COP, LWOP-IOD, or other leave requested by the employee for the remainder of the scheduled workday
 - Direct the employee to report for duty on their next scheduled workday.

OUTCOME: Managers and Supervisors will conduct Daily Determinations of Necessary Work for all Modified Assignments.

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2 - LIMITED DUTY PROCESS IMPLEMENTATION - OVERVIEW

Responsible Team Member	Action	Description	Outcome
STEP 1 - HQ HRM Team Leader	Meet with Area and first selected District NRP teams	Train the Area Assessment Teams on the Phase 2 Limited Duty Process	Area and District NRP teams will be prepared to initiate implementation of the NRP Phase 2 Limited Duty process
STEP 2 - HQ's and Area NRP Team	Meet with District Senior Leadership	To introduce and initiate NRP Phase 2 Limited Duty and to confirm full Leadership and District Assessment Team support	District Senior Management will have been briefed on NRP Phase 2 Limited Duty process
STEP 3 - District Senior Management and designated DAT members	Schedule and hold a meeting with representatives of all unions and management organizations in the district	To inform the groups about the NRP Phase 2 Limited Duty process	All unions and management organizations will have been briefed on the NRP Phase 2 Limited Duty process
STEP 4 - Area HRM Team Leader, District HRM staff	Review the NRP workbook and Limited Duty employee Activity files	Update the NRP workbook and Activity files to ensure all Limited Duty employees are listed	NRP workbook will be prepared for Phase 2 Limited Duty implementation
STEP 5 - Area and District NRP Teams	Train District Management via MeetingPlace	Area and District teams will train management on their role in the process. District Management will be trained on the process and initial actions	District Management will be tasked with completing Initial Actions
STEP 6 - Area and District NRP Teams	DAT conducts Initial Actions and Area team commences review of the Initial Actions	District NRP Team will conduct all Initial Actions.	Managers and Supervisors will have completed Initial Actions and the DAT will take action on all Complete Day No Work determinations.

**NRP, Phase 2 – Limited Duty
Implementation
Step 1**

RESPONSIBLE TEAM MEMBER(S):

- Headquarters Health and Resource Management Team Leader

ACTION – Meet with the Area Team to present and train the team on all aspects of the NRP Phase 2 Limited Duty process.

Meeting Attendees: Area

- Health and Resource Management (HQ/AO))
- Operations (Area)
- Legal (Area)
- Labor Relations (Area)
- HRM Occupational Health (HQ/AO)
- EEO (HQ/AO)

Train the responsible Headquarters/Area domiciled, Area Team on the NRP Phase 2 Limited Duty process. An overview of the entire Phase 2 Limited Duty process will also be covered.

OUTCOME:

The HQ/AO, Area Team will be prepared to initiate the NRP Phase 2 Limited Duty process.

**NRP, Phase 2 – Limited Duty
Implementation
Step 2**

RESPONSIBLE TEAM MEMBER(S):

- HQ/AO domiciled and Area NRP Team

ACTION: Meet with Senior District Management and District Assessment Team

1. The purpose of this meeting is to initiate NRP Phase 2 Limited Duty and to confirm full District NRP team implementation.

- Cover the steps that will be taken during the NRP, Phase 2 Limited Duty process. Discuss the following:
 - Implementation
 - Work Status meetings
 - New Medical Documentation
New Injury
- Present the District Manager with the employee service talk and request that it be sent out to the field to be read and posted following the meeting with the unions (Implementation Step 3).

OUTCOME:

District Senior Management will have been briefed on NRP, Phase 2 Limited Duty process.

**NRP, Phase 2 – Limited Duty
Implementation
Step 3**

RESPONSIBLE TEAM MEMBER(S):

Area and District Office

- District Sr. Management
- Manager Health and Resource Management (HRM)
- HRM Team Leader
- Operations Team Leaders
- Manager Labor Relations

ACTION – Immediately conduct a meeting with representatives of all unions and management associations associated with the district. Area and District Labor Relations determines who to invite from the unions (NBA, Local Presidents, etc.)

The purpose of this meeting is to inform all unions that the NRP, Phase 2, Limited Duty is being initiated in the District.

- Provide a copy of Overviews to attendees.
- Provide a copy of the employee service talk to attendees.
- Notify attendees they will receive a copy of a list of employees included in this process once it has been established.

The list will include all employees currently working in a modified assignment with the exception of:

- MMI employees who are staying in their current bid position with modifications.
- MMI employees who have been reassessed, presented, and accepted a Rehabilitation assignment as a result of the NRP, Phase 2; Rehabilitation process.

OUTCOME:

All designated unions and management associations will have been briefed on the NRP, Phase 2, Limited Duty process.

**NRP, Phase 2 – Limited Duty
Implementation
Step 4**

RESPONSIBLE TEAM MEMBER(S):

- District Health and Resource Management staff
- HQ/AO HRM Team Leader

ACTION – Review NRP workbook and Activity files to ensure all Limited Duty (non-MMI) employees are listed.

1. Update the NRP workbook and ensure all non-MMI employees are listed on the Limited Duty worksheet.
2. Review the Activity files for all Limited Duty (non-MMI) employees to ensure they are complete and up-to-date.

OUTCOME:

The NRP workbook and Activity files will be prepared for NRP, Phase 2, Limited Duty implementation.

**NRP, Phase 2 – Limited Duty
Implementation
Step 5**

RESPONSIBLE TEAM MEMBER(S):

- Area NRP Team
- District Manager Human Resources

ACTION – The Manager of Human Resources at the District is responsible for ensuring the coordination for training of all DAT team members, Postmasters, Operations Managers, and designated Supervisors on all aspects of the NRP, Phase 2, Limited Duty process.

The training will be conducted by the HQ/AO, Area and District NRP team members via MeetingPlace.

Training sessions will last approximately one hour and will cover an overview of the NRP, Phase 2, Limited Duty process and discuss the following items;

- Implementation
- Work Status meetings
- New Medical / Injury

Purpose

This process must be applied to existing injured-on-duty employees: 1) where the treating physician has determined the restrictions to be temporary (Limited Duty); 2) where the employee has reached Maximum Medical Improvement (MMI) but the employee has not been reassessed during NRP, Phase 2 for the MMI/rehabilitation employees at this time.

Note: The NRP, Phase 2, Rehabilitation (MMI) activities must proceed forward concurrently with the NRP, Phase 2, Limited Duty activities.

Overview - Existing Modified Assignments (Limited Duty and Rehabilitation)

For existing modified assignments; when the employee is capable of working a modified assignment with medical restrictions, this process establishes a standard procedure that accomplishes the following:

- Requires all injured employees who have medical restrictions to report, as normally scheduled, to their regular supervisor for assignment; unless directed otherwise.
- Directs supervisors/managers to make every effort to identify appropriate duties on a daily basis for the employee within the medical restrictions imposed by their treating physician. Utilizing established updated facility specific necessary task worksheets, supervisors/managers must determine availability of:
 - o Employee specific tasks within an employee's current bid assignment; in order to maximize the modified assignment to the bid.
 - o Employee specific tasks within an employee's current modified assignment; in order to maximize their modified assignment.
 - o Employee specific tasks within available bid or modified assignment tasks the employee is capable of performing (e.g., available bid assignment tasks due to absence, detail, unassigned, not the current bid assignment of the employee, etc.). If/when this occurs the supervisor/manager must annotate on PS Form 2499 the reason these bid or modified assignment tasks are available (e.g., bid assignment task available due to employee out of work on scheduled or unscheduled leave, etc.).
- Requires the supervisors/managers to review current modified assignments, and if required, issue a PS 2499 utilizing only necessary tasks. (Not required if the entire current modified assignment is determined to contain only necessary tasks).

Note: All modified assignments must contain only necessary tasks as determined by operations management and must not include any "make work" tasks.

- Requires supervisors/managers to review and discuss employee specific modified assignments with each injured employee and elicit feedback regarding identified tasks and/or other available necessary tasks.
- Requires the District Assessment Team (DAT) to review all modified assignments identified by supervisors/managers, or assist them in locating additional necessary tasks.
- Requires HRM to track all employees in modified assignments.
- Requires HRM to monitor each injured employee's medical status and work capacity.

Established Roles and Responsibilities – District Assessment Team

A District Assessment Team (DAT) consisting of designees selected from Operations, Health and Resource Management (Injury Compensation and Occupational Health), and Labor Relations has been established by District Senior Leadership.

Purpose is to provide training to Managers, Postmasters, Supervisors, 204Bs on:

- Their role and responsibilities in the NRP, Phase 2, Limited Duty process.
- USPS and OWCP regulations pertaining to modified assignments.
- Proper completion of PS Form 2499, Offer of Modified Assignment (Limited Duty).

Activity Files for Existing Modified Assignments – HRM

- Ensure NRP Activity file exists for all employees in modified assignments. If an Activity file does not exist, one must be created.

District Leadership will determine Office implementation order at this time.

Once the implementation list is established:

- HRM prepares materials to train Managers/Supervisors on Initial Actions completion
- Copies of the current medical restrictions, current modified assignment (Limited Duty or Rehabilitation), and updated facility necessary work sheets must be provided to the supervisor/manager in the facility implementation order to begin reassessing all employees in modified assignments (Implementation, Step 6).

OUTCOME:

District Operations team members will have been trained on all aspects of the NRP, Phase 2, Limited Duty Process and tasked with preparing training for Managers/Supervisors on Initial Actions.

NRP, Phase 2 – Limited Duty Implementation Step 6

RESPONSIBLE TEAM MEMBER(S):

- Area and District NRP Teams

ACTION – Conduct training to Managers/Supervisors on Initial Action Items for all existing Limited Duty employees and MMI employees not yet reassessed under the NRP, Phase 2, Rehabilitation process.

INITIAL ACTION

Existing Modified Assignment - Employee's Supervisor/Manager

- Current medical documentation must be used in reassessing all existing modified assignments.
- Review medical restrictions and make every effort to identify a modified assignment within the employee's regular hours of duty (tour), and currently assigned facility, following Priority for Assignment (Steps 1-4).
- Ensure the modified assignment is consistent with current medical restrictions and contains only necessary tasks within the employee's currently assigned facility. The established facility specific necessary task worksheets must be used to ensure the modified assignment contains only necessary tasks.
- When reviewing the medical restrictions determine the frequency and duration of necessary tasks and define the physical requirements and average time spent as required on PS Form 2499 in Section II.
- If no changes are necessary, proceed to Work Status Meetings.
- If the current modified assignment or physical requirements need to be changed, complete a new PS Form 2499, Offer of Modified Assignment (Limited Duty).
- At the completion of this action, employee's will be categorized as:
 - Full Day Work
 - Partial Day Work
 - Complete Day No Work
- **Full Day Work**, if necessary tasks within the employee's facility are identified maximizing the hours of work permitted by the employee's medical restrictions:

Examples:

1. Employee's medical states employee can work eight (8) hours and eight (8) hours of necessary work is identified.
2. Employee's medical states employee can work six (6) hours and six (6) hours of necessary work is identified.

Full Day Work (Continued)

- o If a full day's work is identified, no further action is required.
- o If a full day's work of necessary tasks is not available, continue to Partial Day for action.

NOTE: If an employee is receiving a Full Day Work Limited Duty assignment, ensure a note is added to the PS Form 2499 that if the necessary work is not available on any particular day, fewer hours than those identified on the PS Form 2499 may be worked and the employees assignment for the remainder of that day would be handled as a Partial Day Work.

- **Partial Day Work**, when necessary tasks are not identified maximizing the hours of work permitted by the employee's medical restrictions (example: treating physician indicates the employee can work 8 hours with restrictions; USPS identifies only 4 hours of necessary work); the supervisor must:

Document the search for additional necessary tasks using the Priority for Assignment Worksheet (Steps 1, 2) providing the following information:

- The search within the employee's regular hours of duty (tour) and facility was fully completed as required and there were no additional necessary tasks available for the employee within the employee's medical restrictions.
- Expand the search for necessary work to the following tour if the employees workhours have not been maxed to the medical restrictions; and the employee is currently ending his/her modified assignment at or near the beginning or during the following tour. Document this search on the Priority for Assignment worksheet (Steps 3, 4)
- Expand the search for necessary work to offices within the surrounding area. Document this search on the Priority for Assignment worksheet (Steps 5, 6)

- **Complete Day No Work**, if there are no necessary tasks identified/available within the employee's current regular hours of duty (tour) and facility; and within their medical restrictions, the supervisor must:

Document the search for all necessary tasks using the Priority for Assignment Worksheet (Steps 1-4), providing the following information:

- The search within the employee's regular hours of duty (tour) and facility was fully completed as required and there were no necessary tasks identified/available for the employee within the employee's medical restrictions.

Complete Day No Work Determination – DAT Action

The District Assessment Team (DAT) consists of designees from Operations, Health and Resource Management (Injury Compensation and Occupational Health), and Labor Relations.

When the DAT receives notification from a supervisor/manager indicating there have been no necessary tasks identified/available for an employee, within the employee's regular hours of duty (tour) and facility, the DAT must:

1. Verify the search for necessary tasks for the employee within the employees currently assigned regular hours of duty (tour) and facility was properly completed and documented utilizing the Priority for Assignment worksheet (1-4).

Complete Day No Work Determination – DAT Action (Continued)

2. HRM (Injury Compensation) must review the employee's injury compensation file to determine if the treating physician has established whether the duration of the current medical restrictions are determined to be short term or long term.
 - If the duration of the medical documentation is unclear or not identified, further guidance from HRM Occupational Health must be requested.
 - HRM Occupational Health should proceed as guided below:
 - o Using established resources (e.g.; MDA, ODG, etc.) must make every effort to establish anticipated duration of current medical restrictions.
 - o If the current medical restrictions are not specific as to the anticipated duration; HRM Occupational Health must seek medical clarification from the treating physician.
3. When the anticipated duration of the medical restrictions has been determined to be:
 - short term (up to 14 days); no further action is required by the DAT.
 - long term (greater than 14 days); the DAT must continue the search beyond the employee's facility, utilizing the Priority for Assignment Steps 5-8.
 - o Priority for Assignment Steps 5-8 must be conducted within the Local Commuting Area (LCA), within the District boundaries. This activity must be completed prior to conducting the Work Status meeting with the employee to inform them of the Complete Day No Work Determination.
 - o All search activities must be properly documented using the Priority for Assignment Worksheet (Steps 5-8); capturing search activities completed, how search was performed, managers involved, responses, etc.
4. If necessary tasks are identified outside the employee's assigned facility, the DAT Operations designee must:
 - o Complete a new PS Form 2499.
 - o Send a copy to the employee's supervisor/manager at the employee's assigned facility so it can be presented to the employee.
 - o Coordinate with current and new supervisors/managers the reporting date of the new modified assignment.
5. If there are no necessary tasks identified/available outside the facility for the employee, within their medical restrictions, the DAT operations designee must;
 - o Document the search using Priority for Assignment (Steps 5-8) was fully completed within the Local Commuting Area (LCA) and District boundary.

Complete Day No Work Determination – DAT Action (Continued)

6. The DAT notifies the Manager/Supervisor of their Step 5 – 8 determination for every Complete Day No Work.
- Upon completion of the Initial Actions, Managers/Supervisors will notify the DAT of readiness to proceed to the Work Status Meetings.

OUTCOME: District NRP Operations team members will have conducted all Initial Action Items on Limited Duty (non-MMI) employees and have requested permission to proceed to the Work Status Meetings. The DAT will take action on all Complete Day No Work determinations.

APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

July 14, 2009

Susan M. Carney
Human Relations Director
202-842-4270 (Office)
202-216-2634 (Fax)

Edward Duncan, Deputy Director, Operations and Claims Management
Stephanie Semmer, Chief, Branch of Technical Assistance
Department of Labor, Office of Workers Compensation Programs
Division of Federal Employees Compensation
200 Constitution Avenue, Suite 3229
Washington, D.C. 20210

Re: Suitability determinations and payment of wage loss compensation

National Executive Board

William Burrus
President

Cliff Guffey
Executive Vice President

Terry R. Stapleton
Secretary-Treasurer

Greg Bell
Director, Industrial Relations

James "Jim" McCarthy
Director, Clerk Division

Steven G. Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Bill Marley
Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Dear Ed and Stephanie,

I appreciate each of you taking the time to meet with me and Richard on June 25, 2009 at your headquarter office. As we shared with you, APWU anticipates disconcerting issues will continue to surface as a result of the USPS National Reassessment Process. Therefore, we certainly appreciate DFEC's willingness to issue guidance to its District Offices as an effort to ensure that the proper application of the FECA regulations and procedures is understood and adhered to. However, as you are aware we repeatedly expressed our concerns during the meeting regarding the issue of job suitability determinations, particularly regarding wage loss compensations under the "four hour" rule. As I am sure you can understand, this issue remains a paramount concern for APWU. We would like to take this opportunity to reiterate our position and to discuss the applicable controlling language which we believe supports our position.

The APWU strongly rejects the idea that employees who are capable of working four or more hours but are offered less than four hours of work will be denied wage loss compensation by DFEC for the hours of work they were offered. At our meeting, reference was made to 5 USC 8106(c) 2 as being supportive of your position regarding this issue; however, this cited section of the FECA in fact states, "A partially recovered employee who - refuses or neglects to work after *suitable* work is offered to, procured by, or secured for him; is not entitled to compensation" (Emphasis added.)

Furthermore, The Federal (FECA) Procedure Manual Part2, Chapter 814-4b(1) makes a clear distinction by stating, "A job which involves less than four hours of work per day where the claimant is capable of working four or

more hours per day will be considered unsuitable" Clearly, based on this language, such work cannot be considered suitable, and 5 USC 8106 specifically requires that work be suitable in order for DFEC to deny payment of *any* wage loss compensation. Additionally, Part 2 of the Procedure Manual at-813 -12 defines a sanction decision as "any reduction or termination of benefits applies to compensation for wage loss, whether total or partial" (Emphasis added.) Therefore, it continues to be the opinion of APWU that if a job is "unsuitable" there can be no denial of compensation, be it sanctioned or "*unsanctioned*".

On the other major issue we continue to stand firm in our opinion that employing agencies do not have the right to make "daily determinations" in respect to making job offers to partially recovered employees. As evidenced in the USPS document which we presented you with at the meeting, it is clear the Service's intention is to make "day-to-day, daily determinations" regarding the availability of work for partially recovered employees. Such daily determinations of work availability must be construed as an offer of a temporary position, and, according to the Procedure Manual - Part 2,814-4b (3), "A temporary job will be considered *unsuitable* unless the claimant was a temporary employee when injured *and* the temporary job reasonably represents the claimant's WEC. Even if these conditions are met a job which will terminate *in less than 90 days* will be considered *unsuitable*." (Emphasis added.) Therefore, logic requires the conclusion that a job offer that can appear or disappear on a daily basis can only be described as "temporary" and therefore "unsuitable" for a career employee.

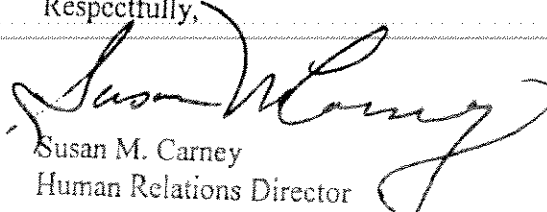
In regards to these two issues, since FECA regulations and procedures dictate that such offers should be declared unsuitable, it is our opinion that DFEC would be violating its own regulations and procedures in denying payment of wage loss compensation to claimants who found themselves in these circumstances. Despite the Postal Service's desire to diminish its chargeback liability as a result of the economic plight it has put itself in, the APWU continues to assert that the FECA regulations and procedures, fully support the position that we have taken in regards to job suitability determinations.

The ECAB has consistently held that the Office must follow its own regulations and procedures in assessing the suitability of a job offer, e.g. Dantzler and the Department of Veterans Affairs, Veterans Hospital, Docket No. 97-2760. Therefore, the APWU anticipates that DFEC will continue to take the necessary action to ensure compliance with its regulations and procedures.

Please Note:

On July 15, 2009 APWU forwarded to DFEC, ECAB decision: Nolan and the Department of Veterans Affairs, Veterans Hospital, Docket No. 05-1710 in further support of our position.

Respectfully,


Susan M. Carney
Human Relations Director

cc: William Burrus, President

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer <p style="text-align: center;">U.S. Postal Service</p>	b. Number of workers employed <p style="text-align: center;">Approx. 700,000</p>	
c. Address <i>(street, city, state, zip code)</i> 475 L'Enfant Plaza, S.W. Washington, D.C. 20260-4100	d. Employer Representative Doug Tulino, Manager, Labor Relations Policies & Programs	e. Telephone No. <p style="text-align: center;">(202) 268-7852</p>
f. Type of Establishment <i>(factory, mine, wholesaler, etc.)</i> U.S. Mail	g. Identify principal product or service U.S. Mail	
n. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and <i>(list subsections)</i> <u>(5)</u> of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		
2. Basis of the Charge <i>(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)</i>		
<p>Since on or about March 17, 2009, and continuing to date, the Postal Service has failed and refused to bargain in good faith with the American Postal Workers Union, AFL-CIO, ("APWU") by, among other things, refusing to meet, delaying meetings, and failing to give the Postal Service representative sufficient authority to make decisions about the manner in which the Postal Service assesses the working conditions, job assignments, and restoration rights of the Postal Service's injured workforce (i.e., through the National Reassessment Program), and making unilateral changes in the manner in which the Postal Service assesses the working conditions, job assignments, and restoration rights of the Postal Service's injured workforce, reducing the disability rights and benefits for such employees.</p>		
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and the Postal Reorganization Act.		
3. Full name of party filing charge <i>(if labor organization, give full name, including local name and number)</i> American Postal Workers Union, AFL-CIO		
4a. Address <i>(street and number, city, state, and ZIP code)</i> 1300 L Street, N.W. Washington, D.C. 20005	4b. Telephone No. <p style="text-align: center;">(202) 842-4271</p>	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit <i>(to be filled in when charge is filed by a labor organization)</i> <p style="text-align: center;">AFL-CIO</p>		
6. DECLARATION		
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		
By <u>Anton Hajjar</u> <i>(signature of representative or person making charge)</i>	Attorney	
Address <u>1300 L Street, N.W.</u> Washington, D.C. 20005	<u>(202) 898-1707</u> <i>(Telephone No.)</i>	<u>April 15, 2009</u> <i>(date)</i>

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

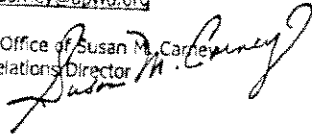
APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

(202) 842-4271 Office
(202) 216-2634 Fax
E-mail: SCarney@apwu.org

From the Office of Susan M. Carney
Human Relations Director



March 27, 2009

To: Resident Officers, Regional Coordinators, National Business Agents

Re: Postal Service Pilot Test: Limited Duty Modified Assignments

The Postal Service recently notified the APWU that they were initiating a pilot program in four Districts: Los Angeles, Sierra Coastal, Santa Ana, and S.E. New England.

The purpose of the pilot is to expand the application of the National Reassessment Process (NRP) from its current use in reviewing permanent rehabilitation modified assignments, to also use these protocols when reviewing limited duty modified assignments.

A rehabilitation assignment is used when the work place injury has become "permanent", i.e. the employee has reached maximum medical improvement (MMI). A limited duty assignment is made when the medical condition is still temporary, i.e. not at MMI.

We will be meeting with the Postal Service on April 22, 2009, in order to receive detailed information about this pilot program. Specifically, we need to know if the current NRP protocols are going to remain essentially unchanged. If there have been changes to these existing protocols, then we need to be provided with the new limited duty assignment guidelines. We also will be seeking feedback regarding the results of these four pilot programs, and information regarding the next steps that the Postal Service will take regarding any national program for limited duty assignments.

We will continue to provide you with details regarding this new Postal Service initiative as they become available.

SMC:eee

American Postal Workers Union, AFL-CIO

Memorandum

Telephone
(202) 842-4246

1300 I. Street, NW
Washington, DC 20005

From the Office of WILLIAM BURRUS
President

March 17, 2009

TO: **Sue Carney**

SUBJECT: **USPS Will Conduct a Pilot Test Concerning NRP Phase 2 Modified Assignments (Notification No. GCCG200941)**

Please find attached a copy of a letter dated 3/13/2009 from Alan Moore, regarding the above reference matter.

You are designated as the APWU contact person in this matter. Contact the USPS representative as soon as possible for discussion, if appropriate. Please provide notification of your review to me by 4/17/2009.

Please note: Your secretary should update the Notification Tracking Module in Step 4 CAS as necessary.

Attachment

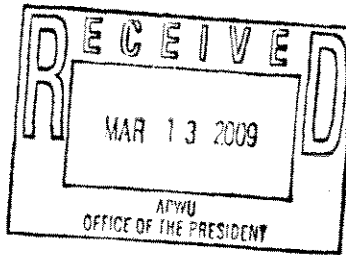
WB/lbb
opeiu #2/afi-cio



LABOR RELATIONS



March 13, 2009



Mr. William Burrus
President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20006-4128

Dear Bill:

As a matter of general interest, the Postal Service will conduct a pilot test concerning National Reassessment Program (NRP) Phase 2 modified assignments.

The following is a list of participating districts, the planned beginning and end dates, and the anticipated dates assignments may change:

<u>District</u>	<u>Pilot Begin</u>	<u>Pilot End</u>	<u>Assignment Change</u>
Los Angeles	March 17	April 17, 2009	March 20
Sierra Coastal	March 23, 2009	April 24, 2009	March 27
Santa Ana	March 23, 2009	April 24, 2009	March 27
SE New England	March 23, 2009	April 24, 2009	March 27

The primary purpose of the pilot is to test application of established processes used for rehabilitation employees in NRP Phase 2 in making modified assignments for employees with temporary medical restrictions (Limited Duty). Assignments made or modified during this pilot test will be consistent with current relevant regulations.

If you have any questions, please contact Victor Smith at 202-268-5842.

Sincerely,

Alan S. Moore
Manager
Labor Relations Policy and Programs

Step 4 Case Numbers

Seniority (October, 2006)

USPS: Q00C4QC07006778

APWU: HQTG200613

Commuting Area (February, 2007)

USPS: Q00C4QCO7078116

APWU: HQTG20071

Separation-Disability (April, 2007)

USPS: Q06C4QC07153792

APWU: HQTG20076



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-371-0992 (Fax)

October 20, 2006

Via Facsimile and First Class Mail
Mr. Doug Tulino, Vice President
Labor Relations
United States Postal Service
475 L'Enfant Plaza, SW, Room 9014
Washington, DC 20260-4100



National Executive Board
William Burrus
President

Gill "G.J." Guffey
Executive Vice President

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Secretary-Treasurer

Greg Bell
Industrial Relations Director

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute.

The issues and facts involved are as follows:

On May 5, 2006, Ms. Susan Carney, APWU Human Relations Director, wrote to the Postal Service expressing our belief that an employee's seniority should be an integral part of the Postal Service's "Reassessment Process". Specifically, the decision making process regarding the availability of medically suitable employment for groups of injured employees should be conducted by order of seniority (from most senior to least senior).

Your letter of July 26, 2006, informed Ms. Carney that OPM restoration regulations do not allow certain employees to be considered as having more of a priority for restoration over a less senior employee. We disagree with the Postal Service's position that OPM regulations specifically prohibit any application of employee seniority when making modified assignments.

Actually, OPM regulations state that every effort should be made to restore partially recovered individuals "according to the circumstances in each case". It is the position of the APWU, without prejudice to our position regarding the Postal Service "Reassessment Process", that if two or more partially recovered employees are undergoing reassessment in the same time period, then an employee's seniority is a legitimate circumstance for consideration when making a job offer.

Regional Coordinators

Sharyn M. Stone
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Frankie L. Sanders
Southern Region

Omar M. Gonzalez
Western Region

Mr. Doug Tulino, Vice President
October 20, 2006
Page 2

Also, it is well established that when accommodating employees with medical restrictions agencies should avoid violating seniority provisions of a collective bargaining agreement.

In the APWU/USPS Collective Bargaining Agreement (CBA) the principles of seniority are established in the craft Articles (except as specifically provided in Article 12), and these craft Articles establish that the seniority rules apply to all employees when a guide is necessary for filling vacant assignments and for other purposes.

Section 546.21 ("Compliance") of the *Employee and Labor Relations Manual (ELM)* states that reassignment or reemployment of employees injured on duty must be in compliance with applicable collective bargaining agreements, and that individuals so reassigned or reemployed must receive all appropriate rights and protection under the collective bargaining agreement.

It is the position of the APWU, without prejudice to our position regarding the Postal Service "Reassessment Process", that when two or more employees who have been injured on duty are being considered for reassignment or reemployment during the same time period, the Postal Service, in order to be in compliance with the CBA, must conduct the interactive evaluation and job offer process in order of seniority (most senior to least senior).

Article 15 provides that within thirty days after initiation of a dispute the parties shall meet in an effort to define the precise issues involved, develop all necessary facts and reach an agreement.

Please contact Susan Carney, case officer, to discuss this dispute at a mutually scheduled time.

Sincerely,


Greg Bell, Director
Industrial Relations

GB/SC:ee
OPEIU#2
AFL-CIO

cc: Sue Carney, Director, Human Relations

Confirmation Report - Memory Send

Page : 001
Date & Time: 10-20-06 03:17pm
Line 1 :
Machine ID :

Job number : 509
Date : 10-20 03:15pm
To : 92683074
Number of pages : 003
Start time : 10-20 03:15pm
End time : 10-20 03:17pm
Pages sent : 003
Status : OK

Job number : 509 *** SEND SUCCESSFUL ***



American Postal Workers Union, AFL-CIO

1200 L Street, NW, Washington, DC 20005

October 20, 2006

Greg Bell, Director
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1300 L Street, NW
Washington, DC 20005
202-462-6279 (Office)
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National Executive Board
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Assistant, Civil Division

Steven G. "Steve" Reynolds
Director, Maintenance Division
Robert C. "Bob" Johnson
Director, AHS Division

Regional Coordinators
Dwayne M. Brown
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Midwestern Region

Frankie L. Sanders
Southern Region

Orlando M. Gonzalez
Western Region

Via Facsimile and First Class Mail
Mr. Doug Tulino, Vice President
Labor Relations
United States Postal Service
475 L'Enfant Plaza, SW, Room 9014
Washington, DC 20260-4100

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute.

The issues and facts involved are as follows:

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Actually, OPM regulations state that every effort should be made to restore partially recovered individuals "according to the circumstances in each case". It is the position of the APWU, without prejudice to our position regarding the Postal Service "Reassessment Process", that if two or more partially recovered employees are undergoing reassessment in the same time period, then an employee's seniority is a legitimate circumstance for consideration when making a job offer.



American Postal Workers Union, AFL-CIO

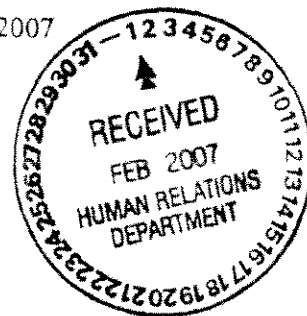
1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

Initiate National Dispute

February 1, 2007

VIA FACSIMILE AND REGULAR MAIL



National Executive Board

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President

Cliff "CJ" Guffey
Executive Vice President

Terry R. Stapleton
Secretary-treasurer

Greg Bell
Industrial Relations Director

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTG20071, Reassignment of a Partially Recovered Employee Limited to Local Commuting Area

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Section 2 and 4, of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute.

The issues and facts involved in this dispute are as follows:

On May 5, 2006, Ms. Susan Carney, APWU Human Relations Director, wrote to the Postal Service expressing our belief that the reassignment of an injured Postal Service employee who partially recovers more than one year from the date eligibility for compensation begins should not be limited to the local commuting area. Such reassignment should also be made available agency wide.

On July 26, 2006, the Postal Service responded stating that OPM's restoration regulations specifically state that the Postal Service "must make every effort to restore in the local commuting area, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty." It was further stated that the Postal Service considers this regulatory language to be mandatory and not permissive.

There is no disagreement that 5 CFR 353.301(d) requires the Postal Service to make every effort to restore a partially recovered employee to a medically suitable job in the local commuting area. This regulatory language establishes the action that the Postal Service, at a minimum, is required to take.

Regional Coordinators

Shayn M. Stone
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

William E. "Bill" Sullivan
Southern Region

Omar M. Gonzalez
Western Region

It is the position of the APWU, without prejudice to our position regarding the Postal Service "Reassessment Process," that the Postal Service has promulgated Article 19 handbook and manual language which establishes a binding obligation which exceeds the minimum required by federal regulation. In Chapter 546.142 of the ELM, the Postal Service establishes a policy which exceeds the requirements set forth in 5 CFR 353.301(d). Also, unlike the cited CFR language, the Postal Service policy makes no distinction between employees who have partially recovered within one year and those whose partial recovery took more than one year.

The cited ELM language obligates the Postal Service to "make every effort" to assign partially recovered employees to jobs which are consistent with their medically defined work limitation tolerances. There is no language which limits the required "effort" to specific geographic areas. Furthermore, the Postal Service clearly anticipates that their effort to find medically suitable work can extend beyond the work facility to which the employee was regularly assigned. The only geographic limitation established by this ELM language is that such out-of- facility assignments must be as close as possible to the original work facility. There is no language which limits such assignments to the local commuting area.

Also, the language of ELM 546.142 obligates the Postal Service to minimize any adverse or disruptive impact on the employees who are experiencing this reassignment process. By unilaterally applying a standard ("commuting area") that necessarily limits the area of the reassignment effort, the Postal Service has not only failed to minimize any adverse or disruptive impact on the employee, but has actually created the potential for such impact. If this new standard causes the Postal Service to be unable to find a medically suitable assignment, the employee will experience further negative impacts as a result of the eventual loss of their Postal Service employment.

Please contact Sue Carney, case officer, to discuss this dispute at a mutually scheduled time.

Sincerely,


Greg Bell, Director
Industrial Relations

APWU #: HQTG20071

Dispute Date: 2/1/2007

cc: Resident Officers
File

Case Officer: Sue Carney

Contract Article(s): 5; 15; 19; ELM 546,
Reassignment of Partially Recovered
Employees

Confirmation Report - Memory Send

Page : 001
Date & Time: 02-01-07 02:38pm
Line 1 :
Machine ID :

Job number : 908
Date : 02-01 02:37pm
To : 92686946
Number of pages : 003
Start time : 02-01 02:37pm
End time : 02-01 02:38pm
Pages sent : 003
Status : OK

Job number : 908

*** SEND SUCCESSFUL ***



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20004

Initiate National Dispute

February 1, 2007

Greg Ball, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20004
(202) 642-6278 (Office)
(202) 371-0992 (Fax)

VIA FACSIMILE AND REGULAR MAIL

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTG20071, Reassignment of a Partially Recovered Employee Limited to Local Commuting Area

National Executive Board
National Staff
President
Chris "EJ" Gentry
Executive Vice President
Terry R. Brubaker
Executive Treasurer
ONE ONE
National Relations Director
James "Jim" McCannery
Director, Client Division
Stephen D. "Steve" Meyer
Director, Maintenance Division
Susan C. "Sue" Michalek
Director, AVE Division

Dear Mr. Tulino:

In accordance with the provisions of Article 13, Section 2 and 4, of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute.

The issues and facts involved in this dispute are as follows:

On May 5, 2006, Ms. Susan Carney, APWU Human Relations Director, wrote to the Postal Service expressing our belief that the reassignment of an injured Postal Service employee who partially recovers more than one year from the date eligibility for compensation begins should not be limited to the local commuting area. Such reassignment should also be made available agency wide.

On July 26, 2006, the Postal Service responded stating that OPM's restoration regulations specifically state that the Postal Service "must make every effort to restore in the local commuting area, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty." It was further stated that the Postal Service considers this regulatory language to be mandatory and not permissive.

There is no disagreement that 5 CFR 353.301(d) requires the Postal Service to make every effort to restore a partially recovered employee to a medically suitable job in the local commuting area. This regulatory language establishes the action that the Postal Service, at a minimum, is required to take.

Regional Coordinators
Margie M. Stone
Central Region
Jim Bluma
Eastern Region
Elizabeth "Liz" Powell
Midwest Region
William E. "Bill" Surber
Southern Region
Doreen M. Gendron
Western Region



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
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1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

May 7, 2007

Sent via Facsimile and US Mail
Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza SW
Washington, DC 20260



National Executive Board
William Burrus
President

CHR "C.J." Guffey
Executive Vice President

Terry R. Stapleton
Secretary-Treasurer

Greg Bell
Industrial Relations Director

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Re: APWU No. HQTG20076, Separation-Disability before the
Expiration of One Year of Continuous LWOP/IOD

Dear Mr. Tulino:

This letter is to advise you that, due to a typographical error, all three
ELM citations in the above-referenced national dispute are in error.

The correct citation for all three ELM references is:

ELM Section 545.9.

A corrected copy of the dispute letter is attached.

Sincerely,

Greg Bell
Greg Bell, Director
Industrial Relations

Regional Coordinators
Sharyn M. Stone
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

William E. "Bill" Sullivan
Southern Region

Omar M. Gonzalez
Western Region

GB:LB:pjr
Opelu#2,aff-cio

Enclosure



CORRECTED COPY

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Initiate National Dispute

VIA FACSIMILE AND REGULAR MAIL

April 27, 2007

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-371-0992 (Fax)

National Executive Board
William Burrus
President

Cliff "C.J." Guffey
Executive Vice President

Terry R. Stapleton
Secretary-Treasurer

Greg Bell
Industrial Relations Director

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" Reymert
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Regional Coordinators

Sharyn M. Stone
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Frankie L. Sanders
Southern Region

Omar M. Gonzalez
Western Region

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTG20076, Separation-Disability before the
Expiration of One Year of Continuous LWOP/IOD

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Section 2 and 4, of the
Collective Bargaining Agreement, the American Postal Workers Union is
initiating a Step 4 dispute.

The issues and facts involved in this dispute are as follows:

On November 16, 2006, Ms. Susan Carney, APWU Human Relations Director,
wrote to the Postal Service expressing the union's belief that the Employee and
Labor Relations Manual (ELM) Section 545.9, "Managing Extended Leave
Cases," does not permit the Postal Service to initiate a Separation-Disability
before the expiration of one year of continuous LWOP/IOD.

On February 7, 2007, the Postal Service responded by stating that if an
employee on the rolls of OWCP is placed in non-postal employment as a result
of participating in the OWCP Vocational Rehabilitation Program, the Postal
Service will initiate a Separation-Disability in accordance with Section 545.9 of
the ELM.

We take this to mean that an employee placed in non-postal employment as
described above will automatically be issued a Disability-Separation whether or
not that employee has been in continuous LWOP/IOD for one year.

Re: APWU #HQTG20076, Disability-Separation
April 27, 2007
Page 2

It is the position of the APWU, without prejudice to our position regarding the Postal Service's "National Reassessment Process," that Section 545.9 of the ELM does not permit initiation of a Disability-Separation if an employee has not been in continuous LWOP/IOD for one year.

Please contact Sue Carney, case officer, to discuss this dispute at a mutually scheduled time.

Sincerely,


Greg Bell, Director
Industrial Relations

APWU #: HQTG20076
Dispute Date: 4/27/2007

Case Officer: Sue Carney
Contract Article(s): ELM, Disability-
Separation/Extended Leave Cases;

cc: Resident Officers
File

GB/LB

American Postal Workers Union, AFL-CIO

(202) 842-4271 Office
(202) 682-2528 Fax
E-mail: SCarney@apwu.org

From the Office of Susan M. Carney
Human Relations Director

Memorandum

1100 L Street, NW
Washington, DC 20005

USPS Withdrawal of a Limited Duty/Permanent Rehabilitation Assignment

As the Postal Service's "Reassessment Process" expands across the country, we expect that a growing number of limited duty and/or rehabilitation jobs will be withdrawn. At the national level the APWU will continue to monitor each phase of the reassessment process. Local and State Organizations are encouraged to keep us informed, as we are paying special attention to the way that the USPS implements their program at each site. At the moment our particular concerns are whether management is making a good faith effort in finding work for these injured employees, and whether seniority rights are being adhered to when these reassignments are made.

At the local level, if management determines that there is no medically suitable work for an employee, they will inform the employee of their decision, and the employee will be sent home. When this occurs there are normally two basic actions which the employee and the Union should consider.

Filing a Claim with OWCP

First, an injured employee who has a limited duty/rehabilitation job withdrawn, and who wants to claim wage loss compensation from OWCP, should file a **Form CA-7, Claim for Compensation**. In addition we suggest that **Form CA-2a, Notice of Recurrence**, be filed. Specifically, the recurrence of disability (inability to work) in these cases is the result of a work stoppage caused by the Postal Service's withdrawal (for reasons other than misconduct) of a specific limited duty/rehab assignment which was created specifically for the injured employee.

The employee should indicate in Block #16 on OWCP **Form CA-2a** that the recurrence claim is for "Time Loss From Work", and indicate in Block #21 that the recurrence is the result of work stoppage caused by the Postal Service's withdrawal of the limited duty/rehabilitation assignment.

We suggest that if the employee has a copy of the original limited duty/rehab job offer they attach it to the **Form CA-2a**. Also, ask the Postal Service to document in writing the withdrawal of the rehab job and to provide a copy to the employee. This should also be attached to the **CA-2a**. If refused, a written statement from the employee and/or union should suffice. The employee should submit **Forms CA-7** and **CA-2a** to the USPS, retaining a copy of each for their personal records. The USPS must also provide the employee completed copies of these forms and submit them to OWCP in a timely manner.

Conditions previously accepted by OWCP are not automatically approved Recurrence claims. Generally, if the employee has returned to work for a period of 90 days following a compensable injury, OWCP requires updated medical documentation. We expect that in almost all cases OWCP will authorize payment of wage loss compensation if the current medical documentation establishes that the injured employee continues to suffer from residual restrictions caused by their accepted injuries. After OWCP accepts the recurrence of disability we expect that OWCP will place these employees into their vocational rehabilitation program in an effort to find them medically and vocationally suitable work in the private sector.

Filing a Grievance

Second, the specific fact circumstances in each case should be developed by conducting a grievance investigation. The fundamental obligation of the Postal Service is to make every effort to provide medically suitable employment to employees who have partially recovered from compensable disabilities. In making such assignments the USPS should minimize any adverse or disruptive impact on these employees (see specific references below).

Since these are contract grievances the Union has the burden to provide specific fact information in order to prove that such medically suitable work exists and to detail the specific duties which the injured employee is capable of performing. Normally, the first place to look would be to the job the employee was performing before the implementation of the "Reassessment Process". (Sample questions: Where did the work go? Will anyone else be performing the work? Is the work still medically suitable, etc?)

As part of a grievance investigation the steward should request the "546 Worksheet" (copy enclosed). This Postal Service worksheet should be generated by management during their search for a rehab job for the impacted employee. All details relating to the search should be requested: all supervisors contacted, offices searched, and dates of contact. Also, interview, as appropriate, the supervisors who indicated on the worksheet that there was no medically suitable work available in their area of responsibility. (Sample questions: What efforts were made to reasonably accommodate the employee with medically suitable work? Did the Postal Service meet their obligation to minimize any adverse or disruptive impact on the employee? Did their search for medically suitable work include all facilities?)

It may also be useful to examine the record of clock rings/move reports of the impacted employee over a period of time. This might be used to document the work which the rehab employee had been performing. If moves (labor distribution codes) were not used to track the actual duties performed by the employee, the employee should provide a written statement detailing this information.

Keep in mind that the Postal Service's obligation is to provide medically suitable work. There is no language in applicable Article 19 handbooks and manuals that requires such jobs to consist of "productive" or "necessary" work. Normally, rehabilitation jobs are uniquely created assignments which consist of a subset of duties which are included in a standard position description. They are assignments which "would not have existed, but for the [Postal Service's] obligation to find work for the injured employee", and are assignments "not created to meet operational needs of the Postal Service, but to fit medical restrictions of the injured employee with minimum disruptive impact on the employee" (Shyam Das, E90C-4E-C95076238).

The remedy which would normally be requested in this type of grievance would be to provide medically suitable employment as required by the ELM, EL 505, *Injury Compensation*, and the Code of Federal Regulations (See references below). Because the employee was ready, willing and able to continue working and the USPS withdrew the available work, the make-whole remedies should include: returning the employee to pay status, paying for lost work hours, restoring annual and sick leave.

References

ELM 546.11 "The USPS has legal responsibilities to employees with job-related disabilities under 5 USC 8151 and the Office of Personnel Management's (OPM) regulations..." [See **CFR 353.306** cited below for OPM regulations.]

ELM 546.142 a. "When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance. In assigning such limited duty the USPS should minimize any adverse or disruptive impact on the employee."

ELM 546.142 a.(4) "An employee may be assigned limited duty (rehabilitation assignment) outside of the work facility...only when there is not adequate work available...at the employee's facility..." *The ELM does not limit the search to find medically suitable work to the commuting area.* Therefore, it is our opinion that the USPS must conduct a search agency wide when work is not available in the employee's facility, making every effort to assign the employee to work within the employee's craft, schedule, and as near as possible to the regular work facility to which the employee is normally assigned.

ELM 546.65 and EL 505, Injury Compensation, Chapter 11-6. Both of these cites establish in detail that if management refuses to accommodate a partially disabled employee, then that employee must be provided with a copy of Postal Service Headquarters' final concurrence of such refusal, be notified in writing of the USPS refusal to accommodate, and also be notified of their right to appeal to the Merit System Protection Board (MSPB). (See also **EL 546.3** and **546.4**).

EL 505, Injury Compensation Chapter 11. "Procedures." "It is the policy of the USPS to make every effort to reemploy or reassign IOD employees with permanent partial disabilities..."

EL 505, Injury Compensation Chapter 11.7 "Identifying a Modified Job Assignment." A current employee who "is capable of performing his or her core duties with only minor modifications" is not considered to be in a modified job assignment. Therefore, in our opinion, these employees should not be subject to the Reassessment Process.

CBA, Article 3, "Management Rights" directs that the application of management rights must be "consistent with applicable laws and regulations." The applicable regulation is **Part 353.306 of Title 5, Code of Federal Regulations (CFR)**, which states that "agencies must make every effort to restore, according to the circumstances in each case, an employee or former employee who has partially recovered from a compensable injury and who is able to return to limited duty."

CBA, Article 21.4, "Benefit Plans" establishes that employees are covered by the **Federal Employees Compensation Act (i.e., subchapter I of chapter 81 of Title 5)** and that the USPS will promulgate (publish officially) regulations which comply with the applicable regulations of OWCP. The applicable regulation is **Part 10.505 of Title 20, CFR** which states:

"What actions must the employer take?... (a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions.
(b) Where the employer has no specific alternative positions available for an employee who can perform restricted or limited duties, the employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury".

CBA, Article 2, "Non-Discrimination and Civil Rights" states that "In addition, consistent with the other provisions of this Agreement, there shall be no unlawful discrimination against handicapped employees, as prohibited by the Rehabilitation Act. [See **EL 307, Reasonable Accommodation** (January, 2000), which states, for example: "In other words, the Rehabilitation Act requires the employer to look for new or innovative ways to alter, restructure, or change the ways of doing a job in order to allow a qualified person with a disability to perform the essential functions of a particular job".]

CBA, Article 5, "Prohibition of Unilateral Action" establishes that "the employer will not take any actions affecting wages, hours and terms and conditions of employment as defined in Section 8 (d) of the National Labor Relations Act which violate the terms of this agreement or are otherwise inconsistent with its obligations under law."

CBA, Article 34, "Work and/or Time Standards" establishes in "Part B" that "the employer agrees that any work measurement systems or time or work standards shall be fair, reasonable, and equitable". Article 34 then goes on to describe in "Part B" through "Part I" the detailed process that must be followed if the USPS intends to change current, or institute new, work measurement systems, or work or time standards. The USPS at the Headquarters' level has not given the APWU any notification, nor have they even suggested that they intend to create a specific standard of "productivity" for injured employees in rehab positions. The current applicable work standard for all employees is cited in "Part A" of Article 34: "The principle of a fair day's work for a fair day's pay is recognized by all parties to this agreement."

In support of the argument that a partially disabled employee working in a rehabilitation job is in compliance with the principle of "a fair days work" we refer to the **ELM, Chapter 546.21, "Compliance"** which states that: "Reemployment or reassignment under this section must be in compliance with applicable collective bargaining agreements. Individuals so reemployed or reassigned must receive all appropriate rights and protection under the newly applicable Collective Bargaining Agreement". We argue, then, that just like any other bargaining unit employee, a rehab employee is protected by Article 34 language from arbitrary work measurement systems or work or time standards.

Grievance Summary

When the USPS withdraws a limited duty and/or a permanent rehabilitation job the Union should argue, as appropriate according to the specific fact circumstances of the case, that such action:

- (1) Violates Clear CBA and handbook language;
- (2) Is inconsistent and noncompliant with USPS obligations under applicable law and regulations;
- (3) Contravenes the long standing criteria which has been applied consistently and uniformly by both the USPS and OWCP when making rehabilitation assignments, *i.e.* not whether an assignment is "necessary" or "productive", but whether the job assignment is medically suitable or appropriate;
- (4) Is inconsistent with clear and unambiguous controlling language and a longstanding mutually recognized practice;
- (5) Is arbitrary and capricious in that "productive" and "necessary" are not contractually established work measurement standards;
- (6) Violates Article 34 protection against arbitrarily created and selectively applied work measurement systems, or work or time standards;
- (7) May give the appearance of violating **ELM 542.33, "Penalty For Refusal to Process Claim"** because if the USPS denies medically suitable employment to partially disabled employees, such behavior may induce and/or compel injured employees to forego filing claims because they observe the employer taking what appears to be retaliatory and punitive action against an employee who has an accepted OWCP claim.

Other Options

Light Duty Assignment

An employee whose limited duty/rehab job has been withdrawn should consider requesting a light duty assignment under Article 13 of the CBA. Normally, an employee who has medical restrictions resulting from a

workplace injury would not request a light duty job since the language of 546 of the *ELM* and of *EL 505* provide greater protection than Article 13. However, light duty assignments are available to "full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties". The language does not make a distinction between medical conditions resulting from on duty or off duty incidents. If the limited duty/rehab job has been withdrawn, employees who want to exercise all of their contractual options might want to pursue a light duty assignment by writing to the installation head and requesting a light duty assignment. The installation head must "show the greatest consideration", and reassign the requesting employee "to the extent possible in the employee's office."

If a light duty request is refused, the installation head must notify the employee "in writing, stating the reasons for the inability to reassign the employee". Of course, if an investigation reveals that the refusal violated Article 13, then a grievance could be filed. It is worth noting that with light duty assignments the installation head determines the type and area of assignment, hours of duty, etc. Obviously, any employee thinking about making a light duty request should become familiar with the language of Article 13, "Assignment of Ill or Injured Regular Workforce Employees".

Since light duty assignments are available for employees who sustain injuries on duty, applying for light duty would not be an indication that the medical condition was not work related.

Unemployment Compensation

The Unemployment Compensation for Federal Employees Program (UCFE) is administered by the states under separate agreements with the US Secretary of Labor. Requirements for unemployment compensation benefits vary from state to state in accordance with each state's employment security law. An employee who has a limited duty/rehab job withdrawn, and who wants to apply for unemployment compensation, should ask the Postal Service to provide them with form *SF 8*, "Notice to Former Employee About Unemployment Insurance." The use of the term "Former Employee" in the title of the form does not mean that if you receive the form you are no longer a Postal Service employee. If the Postal Service has withdrawn your medically suitable job, you are still on the roles of the Postal Service, but they have "unemployed" you. However, you remain both able to work and available for work.

Keep in mind that if an employee receives unemployment for a period of time, and then eventually receives OWCP compensation for the same period of time, the state unemployment compensation will probably have to be repaid to the state. Check the rules for your state. However, OWCP will not offset their wage loss compensation payment as a result of simultaneous payment of unemployment compensation.

Appeal to the Merit System Protection Board (MSPB)

The Code of Federal Regulations at **5 CFR 353**, "**Restoration to Duty from Uniformed Service or Compensable Injury**", permits individuals with accepted compensable injuries to appeal to MSPB (whether the individual is a preference eligible veteran or not) the Postal Service's failure to restore, improper restoration, or failure to return an employee following a leave of absence.

When the USPS separates, grants LWOP, restores or fails to restore an employee because of a compensable injury, they are required to notify the employee of his or her rights and obligations, including any appeal and grievance rights. However, regardless of notification, an employee is still required to exercise due diligence in ascertaining his or her rights.

When an employee has partially recovered from a compensable injury the Postal Service must make every effort to restore the employee and return them to limited duty. At a minimum, this would mean treating the employee substantially the same as other handicapped individuals under the Rehabilitation Act.

A partially recovered employee may appeal to MSPB for a determination of whether the USPS acted arbitrarily and capriciously in denying restoration. Ordinarily, an agency's failure to comply with their own rules and regulations would indicate that they acted in an arbitrary and capricious manner.

Individuals who would like to learn more about MSPB appeals can go to MSPB's website: www.mspb.gov. Also, the APWU Store has two booklets for sale regarding MSPB: "Merit Systems Protection Board: The Hearing", and "Merit Systems Protection Board: Principles & Procedures".

EEO Complaints

The **Rehabilitation Act of 1973, as amended, Sections 501, 504, and 505** prohibits employment discrimination on the basis of disability. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

The Equal Employment Opportunity Commission protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. It requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

Any Postal Service employee who believes that he or she has been illegally discriminated against can contact an EEO counselor at (888) 336-8777. This counseling request must be made within 45 calendar days of the alleged discriminatory act. The counselor will attempt to help the parties agree on a resolution. The Postal Service may offer mediation as part of the EEO process. If the matter is not resolved the EEO counselor will advise the employee of the procedures for filing a formal complaint.

Disability Retirement

Interested employees should request individual pre-retirement counseling. This counseling is conducted by a Postal Service official who can provide detailed information on retirement health benefits and life insurance programs, and provide basic annuity estimates. OPM makes the final decision regarding disability retirement. They will determine if the permanent medical condition has resulted in a deficiency in the employee's performance, conduct, or attendance, or is otherwise incompatible with useful or efficient service. Application for disability retirement must be received by OPM within one year after the date of separation. (See the attached documents prepared by the APWU Retirees Department.)

Separation-Disability

Reference: **ELM 365.34**

Separation-Disability is an administrative action that can be taken by the Postal Service. It is not a retirement program and should not be confused with disability retirement. An employee who suffers a job-related illness or injury for which OWCP compensation is being paid should be granted LWOP for an initial period of up to one year from the date OWCP compensation begins. If an employee is unable to return to work at the end of one year of continuous LWOP, and is not likely to return to work within the next six months, the Postal Service may remove the employee from Postal Service rolls by issuing a separation by disability. This separation action should be initiated only after permission has been received from Postal Service Headquarters. Employees should not be separated for disability until given a written notice of the proposed action. Eligible employees have one year from separation to file for disability retirement or their rights will lapse. If a separated

employee recovers either partially or totally, he or she can request that the Postal Service restore them to duty. If the Postal Service refuses, the employee may appeal to MSPB (see above: "Appeal to MSPB").

OWCP's Vocational Rehabilitation Program

If the Postal Service does not provide medically suitable work to an injured employee, OWCP will offer vocational rehabilitation services to such employees in an effort to find them work in another federal agency or in the private sector. OWCP will assign a rehabilitation counselor, who is under contract to OWCP, to that employee in order to provide services such as counseling and guidance, vocational testing, training programs, and placement help. These placement services may be provided for up to ninety days. If the counselor determines that there are at least two jobs within commuting distance which the employee can perform, the employee will be notified, and will be expected to acquire that job. Whether an employee gets a job or not, OWCP compensation will be reduced by the earnings, or potential earnings, of that position. A voc-rehabbed employee remains eligible for the Federal Employees Health Benefit Program as long as they receive one dollar of wage loss compensation from OWCP. It is our opinion that employees should not be involuntarily separated from Postal Service employment while they are receiving vocational rehabilitation services. (See "Separation-Disability").

October, 2006

SMC cdc

Example
(THIS IS A "US POSTAL SERVICE" DOCUMENT)

Date: _____ Facility: _____

Injured Employee Name: _____ Date of Injury _____

Postal Manual Reference: ELM 546.142

When an employee has partially overcome the injury or disability, the Postal Service has the following obligation:

Current Employees. When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

- (1) To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.

I certify that every effort was made to identify an assignment for this employee with either a limited duty or rehabilitation assignment (if appropriate) in the employee's regularly assigned craft, facility and tour, and that no such assignment was available.

Postmaster/Manager or designee name (print) and initials _____
Signature: _____

- (2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.

I certify that every effort was made to identify an assignment for this employee with either a limited duty or rehabilitation assignment (if appropriate) in the employee's regularly assigned facility and tour, and in all available crafts within this facility, and that no such assignment was available.

Postmaster/Manager or designee name (print) and initials _____
Signature: _____

- (3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

I certify that every effort was made to identify an assignment for this employee with either a limited duty or rehabilitation assignment (if appropriate) in the employee's regularly assigned facility within a different tour, and that no such assignment was available.

Postmaster/Manager or designee name (print) and initials _____
Signature: _____

Example
(THIS IS A "US POSTAL SERVICE" DOCUMENT)

- (4) An employee may be assigned limited duty or outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.

NOTES: Please provide details of your search outside of employee's facility. These details should include all the facilities called, dates facilities called, who spoke you with about limited duty opportunities, etc. . . .

The Manager/Postmaster conducting the search must include this information in the space below (attach additional pages if necessary).

I certify that every effort was made to identify an assignment for this employee outside of my facility. I contacted facilities within the local commuting area (e.g.; other post offices, stations, or plant supervisors in the area considered a reasonable commute for the employee) and was unable to identify an assignment for this employee within their current work tolerances. I then notified my superior Name: _____ (e.g.; MPOO, MDO, etc.) in order to identify either a limited duty or rehabilitation assignment (if appropriate) for this employee.

Postmaster/Manager or designee name (print) and initials _____
Signature: _____

Other Management name, title and initials contacted and involved in the determination of task availability (e.g.; MPOO, MDO, etc.) _____

DISABILITY RETIREMENT FERS

Eligibility:

1. 18 months Federal civilian service which is creditable under FERS.
2. Become disabled, while employed, from disease or injury for useful and efficient service in current position.
3. Disability must last more than year.
4. Employer must verify that is unable to accommodate your disabling medical condition.
5. Must apply before separation or within one year thereafter.
6. You must apply for Social Security disability benefits when you apply for FERS disability. If you withdraw you Social Security disability application, OPM will dismiss the FERS disability retirement application.

Required Criteria:

OPM considers the documentary evidence you, your physician, and your agency provide. Your claim can be allowed only if the evidence established that you meet all of the following criteria:

1. A medical condition, which is defined as a health impairment resulting from a disease or injury, including a psychiatric disease.
2. Disability must last more than one year.
3. Become disabled while serving under FERS.
4. A deficiency in service with respect to performance, conduct or attendance, OR in the absence of service deficiency, show that your medical condition is incompatible with either useful service or retention in the position.
5. Your medical condition has caused a service deficiency.
6. Your employer is unable to reasonably accommodate your medical condition.
7. The absence of another available position, within the employing agency and commuting area at the same grade or pay level and tenure for which you are qualified for reassignment.

Required Forms:

1. SF 3107 – Application for Immediate Retirement with associated forms.
2. SF 3112 – Application for Disability Retirement including 5 parts, Schedules A, B, C, D, and E.

DISABILITY RETIREMENT FERS

Once OPM has received your application, you will receive an acknowledgement letter with information and a claim number (beginning with letters "CSA"). Receipt on a CSA number means that your application has been received and will be reviewed to determine your eligibility for disability retirement. OPM will review the application and contact you or the employer, if necessary, before a final opinion is rendered. If disallowed, you will also be given information about requesting reconsideration.

Annuity Computation:

Disability benefits under FERS are computed in different ways depending on the retiree's age and amount of service at retirement. In addition, FERS disability retirement benefits are recomputed after the first 12 months and again at age 62, if the annuitant is under age 62 at the time of disability retirement.

1. If at disability retirement you are already 62, or you meet the age and service requirements for immediate retirement, you will receive your "earned" annuity based on the general FERS formula:

1% of your "high-3" average salary multiplied by your years and months of service.

(However, if you are at least 62 years old at retirement and have completed at least 20 years of service your annuity will be computed with a 1.1% factor)

2. If at disability retirement you are under age 62 and are not eligible for voluntary retirement, you will receive the following benefit:

a) For the first 12 months ---

60% of your "high-3" average salary minus 100% of your Social Security disability benefits for any month in which you are entitled to SS benefits.

b) After the first 12 months ---

40% of your "high-3" minus 60% of your Social Security benefits for any month in which you are entitled to SS benefits.

DISABILITY RETIREMENT FERS

It is important to realize the amount of your OPM annuity will be reduced by a percentage of your Social Security benefits if approved. Do not overlook this and find later that you owe a large amount to OPM.

3. When you reach age 62 ---

Your annuity will be recomputed using an amount that represents the annuity you would have received if you had continued working until the day before your 62nd birthday. The total years used in the computation will be increased by the amount of time you have received a disability annuity.

Medical Recovery:

If you are a disability retiree under age 60, OPM may require periodic reevaluations of your medical condition to determine if you have recovered from your disability. If OPM finds you recovered your disability payments will stop one year from the date of the medical examination showing your recovery or on the date you are reemployed in Federal service, whichever occurs first.

Restoration of Earning Capacity:

If you are a disability retiree under age 60, there is a limit on the amount you can earn from wages and self-employment and still be entitled to your annuity. Each year OPM will send you a questionnaire to complete and return in order to determine your earning for the previous calendar year. If your earnings in any calendar year equal at least 80% of the current salary rate of the position from which you retired, your earning capacity will be restored. After you turn age 60, there is no restriction on the amount of wages or earning from self-employment you may receive.

Receipt of Benefits from OWCP:

The approval of a claim for benefits by OWCP, US Dept of Labor, for work related injury or illness, does not automatically entitle an employee to FERS disability retirement. A claim for FERS disability retirement must also be filed with the Office of Personnel Management. If you are approved for disability retirement and elect to provide survivor benefit protection, you will protect the rights of your eligible survivors to receive annuity benefits after your death. In addition, this will protect your own annuity rights in the event you lose entitlement benefits from OWCP.

DISABILITY RETIREMENT CSRS

Eligibility:

1. 5 years creditable civilian service
2. Become disabled, while employed, from disease or injury for useful and efficient service in current position.
3. Disability must last more than year.
4. Employer must verify that is unable to accommodate your disabling medical condition.
5. Must apply before separation or within one year thereafter.

Required Criteria:

OPM considers the documentary evidence you, your physician, and your agency provide. Your claim can be allowed only if the evidence established that you meet all of the following criteria:

1. A medical condition, which is defined as a health impairment resulting from a disease or injury, including a psychiatric disease.
2. Disability must last more than one year.
3. Become disabled while serving under CSRS.
4. A deficiency in service with respect to performance, conduct or attendance, OR in the absence of service deficiency, show that your medical condition is incompatible with either useful service or retention in the position.
5. Your medical condition has caused a service deficiency.
6. Your employer is unable to reasonably accommodate your medical condition.

Required Forms:

1. SF 2801 – Application for Immediate Retirement with associated forms.
2. SF 3112 – Application for Disability Retirement including 5 parts, Schedules A, B, C, D, and E.

Once OPM has received your application, you will receive an acknowledgement Letter with information and a claim number (beginning with letters "CSA"). OPM will review the application and contact you or the employer, if necessary, before a final opinion is rendered. If disallowed, you will also be given information about requesting reconsideration.

Annuity Computation:

If the "earned" annuity is less than the guaranteed minimum, the minimum becomes the basic annuity. The guaranteed minimum is not a fixed amount but varies from one employee to another, depending on age, service and average salary. It is the lesser of the following:

1. 40% of the employee's 'high-3' average salary, or

DISABILITY RETIREMENT CSRS

2. The amount obtained under the general formula after increasing the actual creditable service by the time remaining from the commencing date of annuity to the date of the employee's 60th birthday

A redeposit must be made if previous service retirement deductions were refunded and you want to guarantee all that service time is credited.

A deposit must be paid for service performed on or after October 1, 1982, during which retirement contributions were not withheld from pay, if the service is to be used in the computation of the annuity. If contributions are not paid under this time, the annuity is reduced by 10% of the amount of unpaid deposit for service before October 1, 1982.

Medical Recovery:

If you are a disability retiree under age 60, OPM may require periodic reevaluations of your medical condition to determine if you have recovered from your disability. If OPM finds you recovered your disability payments will stop one year from the date of the medical examination showing your recovery or on the date you are reemployed in Federal service, whichever occurs first.

Restoration of Earning Capacity:

If you are a disability retiree under age 60, there is a limit on the amount you can earn from wages and self-employment and still be entitled to your annuity. Each year OPM will send you a questionnaire to complete and return in order to determine your earning for the previous calendar year. If your earnings in any calendar year equal at least 80% of the current salary rate of the position from which you retired, your earning capacity will be restored. After you turn age 60, there is no restriction on the amount of wages or earning from self-employment you may receive.

Receipt of Benefits from OWCP:

The approval of a claim for benefits by OWCP, US Dept of Labor, for work related injury or illness, does *not* automatically entitle an employee to FERS disability retirement. A claim for FERS disability retirement must also be filed with the Office of Personnel Management. If you are approved for disability retirement and elect to provide survivor benefit protection, you will protect the rights of your eligible survivors to receive annuity benefits after your death. In addition, this will protect your own annuity rights in the event you lose entitlement benefits from OWCP.

EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW

Federal law requires the Postal Service™ to afford equal employment opportunity to employees and applicants for employment regardless of race, color, religion, national origin, sex, age (40+), or physical or mental disability. Employment discrimination or retaliation for engaging in an EEO-protected activity is prohibited.

How to Begin the EEO Process

Who If you are a Postal Service employee or an applicant for Postal Service employment, and you feel that you have been discriminated against because of race, color, religion, national origin, sex, age (40+), physical or mental disability, or in retaliation for engaging in an EEO-protected activity, you must consult an EEO counselor before filing a complaint of discrimination.

When You must bring individual and class-action complaints to the attention of the EEO office by requesting counseling within 45 calendar days of the date of the alleged discriminatory act, within 45 calendar days of the date you knew or reasonably should have known about the discrimination, or if a personnel action is involved, within 45 calendar days of its effective date. If you bring an individual complaint and later believe that your case has class-action implications, you may move for class certification at any reasonable point during the processing of your original complaint.

How Request EEO counseling by calling one of these TOLL-FREE numbers:

888-EEO-USPS (888-336-8777)

TTY: 800-877-8339 (Federal Relay Service)

You will be asked to provide the following information: your name, Social Security number, address, telephone number, finance number, and office location:

What Will Happen A package of EEO information and forms will be sent to you. After you complete and return the applicable forms to the address provided, an EEO professional will contact you. The EEO professional will look into your problem and try to help the parties reach a resolution within 30 days. If the parties are unable to agree on a resolution, and you agree to extend the time period, the precomplaint processing period will be no longer than 90 calendar days.

As an alternative to traditional counseling, the Postal Service may offer mediation as a part of the EEO process. If the matter is not resolved by the conclusion of the counseling process, or if the matter is mediated without resolution, the EEO professional will advise you of the procedures for filing a formal complaint.

You may request that your name not be disclosed during the counseling portion of the EEO complaint process.

Injury Compensation for Federal Employees



U.S. Department of Labor
Alexis M. Herman, Secretary

Employment Standards Administration
Bernard E. Anderson,
Assistant Secretary for Employment Standards

CA-810
Revised January 1999

Vocational Rehabilitation Services

The FECA at 5 U.S.C. 8104 provides for vocational rehabilitation services to assist disabled employees in returning to gainful employment consistent with their physical, emotional, and educational abilities. An employee with extended disability may be considered for rehabilitation services if requested by the attending physician, the employee, or agency personnel. In addition, OWCP will routinely consider a case for rehabilitation services if the agency cannot reemploy the employee.

A. Services Provided.

An OWCP Rehabilitation Specialist will contact the employee for an initial interview. The employee will then be referred to a state or private Rehabilitation Counselor for development of a rehabilitation plan. A plan may include one or more of the following: selective placement with the previous employer, placement with a new employer, counseling, guidance, testing, work evaluations, training, and job follow-up. Each employee is provided the services most suitable for him or her, and not every service will be included in a given plan.

B. Advice to Employee. When suitable jobs are identified, OWCP will advise the employee that it appears that he or she has a wage-earning capacity of a specific dollar amount which will likely determine future compensation entitlement; that he or she is expected to return to work in a job similar to the one identified; that partial compensation based on the wage-earning capacity of the indicated job will probably be paid at the end of this effort; and that when he or she has completed any necessary training or other preparation, OWCP will provide 90 days of placement services.

C. Benefits Payable.

An employee in an approved vocational rehabilitation program may be paid an allowance in connection with this program not to exceed \$200 per month. The employee is also entitled to compensation at the rate for total disability during the rehabilitation program (payment of a schedule award meets this requirement).

When the employee returns to work, OWCP will reduce compensation to reflect the wage-earning capacity if the new job pays less than the old. If reemployment is at the same or higher pay rate than the job held at time of injury, OWCP will terminate compensation benefits. Even if the employee does not return to work, compensation will in all likelihood be reduced.

D. Penalties.

Should an employee refuse to participate in an OWCP rehabilitation program or refuse to make a good faith effort to obtain reemployment, OWCP may reduce or terminate compensation depending on the circumstances of the refusal.

E. Constructed Positions.

In some situations, reemployment does not occur despite the best efforts of the employee and OWCP. When this happens, OWCP may determine the employee's wage-earning capacity on the basis of a position which the medical evidence indicates the employee can perform and which is available in his or her commuting area. OWCP will determine the suitability of the position in accordance with the following factors:

- (1) The nature of the injury;
- (2) The degree of physical impairment;
- (3) The usual employment;
- (4) The employee's age;
- (5) Qualifications for other employment, including education, previous employment, and training.

OWCP will issue a formal decision, including appeal rights, in any case where the benefit level is affected.

F. Continued Disability Payments.

Only after careful medical and vocational development will OWCP determine that an employee has no current wage-earning capacity, and should therefore be carried on the long-term compensation rolls at the rate for total disability.

8-6.

Assisted Reemployment

OWCP may reimburse an employer who was not the employer at the time of injury for part of the salary of a reemployed worker. This wage subsidy is intended to assist in reemploying workers who have been difficult to place with their former employers. It is available to other Federal employers as well as to State and local governments and the private sector.

A. Eligibility.

To be eligible, the agency cannot have been the worker's employer at the time of the injury, as identified by OWCP chargeback billings, appropriations account number and agency hiring authority. Intra-departmental salary reimbursements are limited to agencies with a separate appropriation number from that of the original employing agency. It is not proper to use assisted reemployment where an employee is transferred within the agency, or where an agency uses more than one appropriation number but hiring is controlled at a higher organizational level.

B. Conditions of Participation.

The rate of reimbursement may not exceed 75 percent of the employee's gross wage. The actual rate of reimbursement available is decided on a case-by-case basis by OWCP and the agency.

NRP PHASE 1

NRP ACTIVITY FILE CHECKLIST

THIS CHECKLIST MUST BE ATTACHED TO THE LEFT SIDE OF THE NRP ACTIVITY FILE

The NRP Activity file created in the NRP Phase 1 must contain the below list of documents. Any other documents that may be pertinent to the NRP process should also be included. Documents should be filed in the sequence of documents listed below (#1 on top and #11 on bottom).

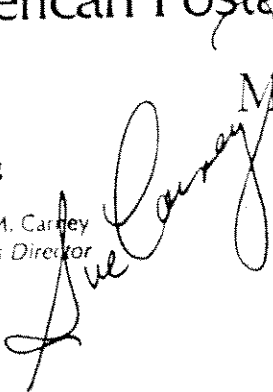
- _____ 1, THE MOST CURRENT MEDICAL IN THE FILE
- _____ 2, THE MOST CURRENT MEDICAL WITH RESTRICTIONS (IF THE MEDICAL ABOVE DOES NOT CONTAIN RESTRICTIONS)
- _____ 3, CURRENT MODIFIED ASSIGNMENT/POSITION WORKSHEET FROM SUPERVISOR INDICATING ACTUAL DUTIES BEING PERFORMED
- _____ 4, THE CURRENT LIMITED DUTY MODIFIED ASSIGNMENT OR REHABILITATION MODIFIED POSITION OFFER

- _____ 5, THE EMPLOYEE'S EARLIEST MEDICAL INDICATING MMI OR PERMANENCY (MMI/PERMANENCY STATEMENT SHOULD BE HI-LITED)
- _____ 6, THE D254 AND/OR FORM 50
- _____ 7, AQS PRINTOUT BY SSN INDICATING ALL OWCP FILE NUMBERS FOR THIS EMPLOYEE
- _____ 8, ICPAS PRINTOUT FOR THIS INJURY
- _____ 9, THE ORIGINAL CLAIM FORM (CA1 OR CA2) AND ANY SUBSEQUENT CA2a's
- _____ 10, ANY OTHER PERTINENT INFORMATION REQUIRED IN REASSESSING THIS EMPLOYEE (EX. EEO/GRIEVANCE/MSPB SETTLEMENTS RELATIVE TO THIS CLAIM)
- _____ 11, ANY OWCP RECORDS THAT INDICATE THE EMPLOYEE HAS:
 - AN LWEC DETERMINATION
 - RECEIVED A SCHEDULED AWARD
 - CURRENTLY HAS A THIRD PARTY SURPLUS

American Postal Workers Union, AFL-CIO

(202) 842-4271 Office
(202) 682-2528 Fax
E-mail: SCarney@apwu.org

From the Office of Susan M. Carney
Human Relations Director



Memorandum

1300 L Street, NW
Washington, DC 20005



INFORMATION REGARDING THE MERIT SYSTEMS PROTECTION BOARD

If the Postal Service fails to restore an individual to employment because of compensable injury, that employee may file a grievance and also appeal to the Merit Systems Protection Board (MSPB). An employee does not have to be "preference eligible" to go to MSPB on the issue of restoration rights. An employee who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the Postal Service is acting arbitrarily and capriciously in denying restoration.

In the opinion of the APWU, an employee with a compensable injury who appeals to MSPB does not fall under the CBA language found in Article 16.9, "Veterans' Preference". Therefore, the employee does not have to make a choice between MSPB and the grievance process after Step 3. Such an employee may pursue both avenues of appeal without contractual limit.

An employee making an appeal to MSPB should become thoroughly familiar with the procedures as explained on their website: www.mspb.gov. This website provides the appeal form (MSPB FORM 185) and contact information for their regional offices and the areas of jurisdiction. It also provides access to MSPB's "Judges' Handbook", a very technical, but necessary, guide to MSPB procedures.

MSPB has strict time limits! An appeal must be filed before the end of the 30th calendar day after the effective date of the action or decision being appealed, or on the 30th calendar after the date the employee received the decision, whichever is later. A late appeal may be dismissed as untimely.

(THIS IS NOT AN OFFICIAL DOCUMENT. IT IS OFFERED AS A POSSIBLE GUIDE TO BE USED BY A PARTIALLY RECOVERED EMPLOYEE WHO IS APPEALLING TO MSPB THE POSTAL SERVICE'S FAILURE TO PROVIDE RESTORATION RIGHTS)

PROCEEDINGS BEFORE
(name of administrative judge)
of
THE MERIT SYSTEMS PROTECTION BOARD
_____ REGION, in the matter of:
(appellant's name) v. United States Postal Service
MSPB Docket Number: _____

Appellant's Statement of Facts and Issues
and
Offer of Exhibits

Factual Background

My name is _____. I am currently a *(career full time regular/part time flexible/fulltime flexible)* bargaining unit employee of the United States Postal Service (USPS). The American Postal Workers' Union (APWU) is my exclusive bargaining representative. My service seniority date is _____. I am a member of the _____ craft, and I am assigned to the *(USPS installation)*. **Exhibit A.** *(Form 50)*

The medical condition which the Office of Workers' Compensation Programs (OWCP) accepted as having been *(caused, or aggravated, or accelerated, or precipitated)* by my work activity is _____.
Exhibit B. *(OWCP acceptance letter)*

I accepted my most recent medically suitable (limited duty) Postal Service job offer on _____. **Exhibit C.** *(written job offer)*

On *(date of the first USPS National Reassessment Process (NRP) interview)*, the Postal Service notified me that they were withdrawing my medically suitable job. On *(date of second NRP interview)*, I was required to surrender my Postal Service identification, was escorted from the facility, and placed in a leave without pay (LWOP) status without time limitation. **Exhibit D.** *("Notice of No Work Available" letter)*

I completed and submitted to the USPS OWCP Form CA-2a, "Notice of Recurrence" and OWCP Form CA-7, "Claim for Compensation". Exhibit E. and Exhibit F.

Applicable Rules and Regulations

The Postal Service's personnel manual, the *Employee and Labor Relations Manual (ELM)* at Chapter 540, *Injury Compensation Program*, establishes the procedures that they must follow when administering the injury compensation program as established by the Federal Employees' Compensation Act and the Code of Federal Regulations.

Specifically, ELM Chapter 546.142 describes the obligation that the Postal Service has when a current employee has partially overcome his or her injury or disability:

When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance... In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee.

It is worth noting that, in effect, Article 19 of the Collective Bargaining Agreement (CBA) between the APWU and the USPS gives the ELM language the same weight as contract language. Article 19 states that:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

Title 5, Part 353 of the Code of Federal Regulations establishes the procedures to be followed for restoration to duty from a compensable injury.

With regard to employees who have partially recovered, Part 353.301(d) states that:

Agencies must make every effort to restore in the local commuting area, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended.

Argument

The record establishes that previous to this recent action the Postal Service had been meeting their obligation to provide me with medically suitable employment. However, when their newly created "National Reassessment Process" was implemented in my Postal Service installation, they withdrew this job from me, and told me that they no longer had any limited duty work available for me. Since by this action they have "disabled" me, I (*have applied for/am receiving*) OWCP wage loss compensation.

As part of the NRP the Postal Service has made a unilateral decision that all restoration assignments (limited duty/permanent rehabilitation) may now consist only of work which they have identified as "necessary and productive", "operationally necessary", and/or meeting the Postal Service's "operational needs".

The creation and application of these new criteria are inconsistent not only with the Postal Service's long standing practice of creating limited duty assignments based simply on the employee's work limitation tolerances, but also contravene the clear language of ELM 546.142(a) and 5 CFR 103(d).

~~This controlling language does not grant the Postal Service the discretion to limit restoration only to jobs that are "necessary and productive", etc. In their use of these new and unilaterally created criteria the Postal Service has materially altered the meaning and effect of the above cited language.~~

By limiting their restoration obligation to jobs that fit their self-serving criteria, they have not only violated their own personnel policy, but they have also violated both my contractual and legal rights. They have improperly denied my restoration rights and have failed to "minimize any adverse or disruptive impact".

It is my understanding that the Board has previously held that when an agency is bound by agency policy, regulation, or contractual provision requiring them to offer limited duty, but they fail to do so, such action constitutes a *prima facie* demonstration of an "arbitrary and capricious" denial of the employee's restoration rights.

Conclusion

It is my belief that the facts of my case establish that the Postal Service violated their own personnel policy, violated federal regulations, and violated the CBA when they refused to provide me with medically suitable employment. Therefore, their failure to restore me to employment as a partially recovered employee with a compensable injury is "arbitrary and capricious", and I request that you order the Postal Service to restore me to medically suitable employment.

Respectfully submitted,

(appellant's name)

(date)

American Postal Workers Union, AFL-CIO

Memorandum

Telephone
(202) 842-4246

1300 L Street, NW
Washington, DC 20005

From the Office of WILLIAM BURRUS
President

January 9, 2009

TO:

SUBJECT:

Sue Carney

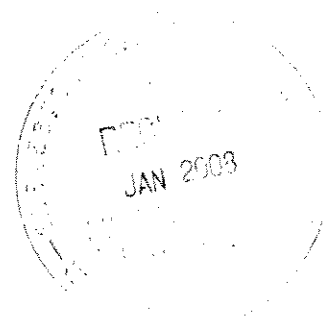
The definition of an individual with a disability as defined under the Rehabilitation act will be expanded 1/1/09 (Notification No. GCCG20093)

Please find attached a copy of a letter dated 1/6/2009 from John Cavallo, regarding the above reference matter.

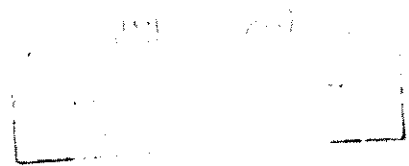
You are designated as the APWU contact person in this matter. Contact the USPS representative as soon as possible for discussion, if appropriate. Please provide notification of your review to me by 2/9/2009.

Please note: Your secretary should update the Notification Tracking Module in Step 4 CAS as necessary.

Attachment
WB: RR
opeiu #2/afl-cio



United States Postal Service



January 6, 2009

Mr. William Burrus
President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

As a matter of general interest, passage of the Americans with Disabilities Act Amendments Act (ADAAA) set new standards for determining disability status. The definition of an individual with a "disability" as defined under the Rehabilitation Act and the Americans with Disabilities Act will be expanded effective January 1, 2009. The enclosed synopsis of changes resulting from passage of the ADAAA is provided for your information.

Please contact John Cavallo at (202) 268-3804 if you have questions concerning this matter.

Sincerely,

Alan S. Moore
Manager
Labor Relations Policy and Programs

Enclosure

TO: MANAGERS, HUMAN RESOURCES (AREA)
MANAGERS, HUMAN RESOURCES (DISTRICT)
MANAGERS, REMOTE ENCODING CENTERS
MANAGER, CORPORATE PERSONNEL MANAGEMENT

SUBJECT: Changes to the Rehabilitation Act

Effective January 1, 2009, the definition of an individual with a "disability" as defined under both the Rehabilitation Act and the Americans with Disabilities Act (ADA) will be significantly expanded. This is due to the passage of the ADA Amendments Act (ADAAA) that sets new standards for determining disability status. Managers, supervisors and the Reasonable Accommodation Committees (RACs) need to be aware of the extent of the changes in the ADAAA so they can assess requests for reasonable accommodation in accordance with these new standards.

Although the Equal Employment Opportunity Commission (EEOC) will issue regulations implementing these new provisions, the regulations will not be published by January 1. Nonetheless, employers must still comply with the law. Consequently, we are providing you with the attached synopsis of the changes in the law so that you are fully informed about the new standards and for use as a guide in making reasonable accommodation decisions.

As a part of the reasonable accommodation process, RACs first evaluate through an interactive process whether applicants or employees are persons with covered disabilities. When a RAC finds that an individual does not have a covered disability, the RAC advises the manager of its recommendation. The manager is required to decide whether he/she agrees with the RAC's findings. The manager then advises the person of his/her decision.

With the ADAAA, more individuals will have covered disabilities and the RAC will need to engage them in the interactive process that includes determination of essential functions, identifying abilities and limitations, and determining reasonableness of accommodations.

Although there is nothing in the statute or its legislative history which indicates that the ADAAA is retroactive, an individual who is currently before the RAC and ultimately files an Equal Employment Opportunity (EEO) complaint will almost certainly have his or her EEO claim heard after the ADAAA goes into effect. Therefore, cases now pending before the RACs should be evaluated under the new standards, as should any request for reasonable accommodation that arises from now on. If a RAC is unsure whether a person has a covered disability, the RAC should contact the appropriate field law office to obtain guidance in determining the person's status.

Please share this information with your RAC and others who are involved in the Reasonable Accommodation process.

Mangala P. Gandhi
Manager
Selection, Evaluation, and Recognition

Synopsis of Changes to Rehabilitation Act by ADA Amendments Act (ADAAA)

Broad Coverage Intended: A New Definition for a "Substantially Limiting" Impairment

The primary purpose of the amended law was to broaden the universe of individuals who qualify as disabled under the Act. The Act states, for example, that it aims to eliminate disability discrimination by "reinstating a broad scope of protection to be available under the ADA." To carry out this intention, the Act specifically overturned long-standing case law defining a substantial limitation as one that "prevents or severely restricts" performance of a major life activity. That standard, says Congress, was "too high." Instead, the term "substantially limits" must be interpreted consistently with the broad remedial purpose of the Act and the focus should now be on whether employers have complied with their obligations under the law.

Notably, the Act does not define exactly what "substantially limits" means. Rather, that responsibility falls upon the EEOC who is charged with rewriting the ADA regulations to define that term "to provide a broad scope of protection." Consequently, in view of the Act's clear mandate, we can expect that the inquiry whether a disability exists will be far simpler and less involved than in the past. Indeed, Congress states that the inquiry "should not demand extensive analysis."

The Act also institutes a number of other significant changes which provide guidance in how employers are to assess a disability. These changes are discussed below.

Major Life Activities

The Act now defines major life activities. They are:

Caring for oneself, performing manual tasks, seeing, hearing, eating
sleeping, walking, standing, lifting, bending, speaking, breathing, learning,
reading, concentrating, thinking, communicating, and working.

The Act specifies that this list is not meant to be exhaustive, thereby opening the door to those who wish to make the case that other activities should be included. Moreover, Congress also included "the operation of a major bodily function" as a major life activity. The Act lists functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Again, this list is nonexhaustive.

Mitigating Measures

In another notable break from the past, the Act forbids consideration of mitigating measures in assessing whether a disability exists. This means employers cannot consider the mitigating effects of medication, hearing aides, cochlear implants, prosthetics, equipment, assistive technology, or "learned behavioral or adoptive neurological modifications." The sole survivor of this sweeping edict is "ordinary eyeglasses" or contact lenses. Employers are still allowed to consider their effect on determining whether an impairment substantially limits a major life activity.

On a practical level, this modification will extend protection to employees suffering from diabetes, hypertension, cancer, amblyopia and other conditions that can be managed through treatment and medication.

Impairments that are Episodic or in Remission

The Act states that "[a]n impairment which is episodic or in remission is a disability if it would substantially limit a major life activity when active."

Like the mitigating measures provision, this too is targeted to bring a potentially large group of individuals within the protection of the law. Under ADAAA, employees with seizure disorders, allergies, bipolar disorder, depression and other chronic conditions prone to flare-ups can seek accommodation in the workplace.

Regarded as Disabled

In a radical departure from prior law, the Act amends what it means to regard an individual as being disabled. Previously, employees had to show that their employer regarded their impairment as one that substantially limited a major life activity. This often meant that individuals had to show that the employer regarded them as incapable of performing a broad range of jobs, not just the job they held or desired. Under ADAAA, however, an individual can meet the requirements of a "regarded as" claim simply by showing that he or she was subjected to an adverse action prohibited by the Rehabilitation Act because of an actual or perceived impairment. It does not matter whether that impairment actually limits a major life activity or is perceived to limit a major life activity. Consequently, it will be far easier for individuals to assert claims under this prong of the Rehabilitation Act.

However, there are two important qualifiers to this otherwise broad revision. First, regarded as claims cannot be based upon "transitory and minor" impairments. The Act defines a transitory impairment as one with an actual or expected duration of 6 months or less. At the very least, this ensures that employees will not bring claims of discrimination based upon a broken leg or case of flu. Second, the Act states that no reasonable accommodation is required for an individual who is regarded as disabled, but who does not actually have a disability. While this may help offset the number of individuals who would otherwise bring such claims, it is unlikely to make a significant dent in those numbers given how broadly the term "disability" is now defined.

Other Notable Statutory Changes

Findings and Purposes: In keeping with the congressional intent that the ADA provide broad protection, the Act strikes key language from the "Findings and purpose" section of the ADA at 42 U.S.C. §12101(a). It amends paragraph (1) which states that "some 43,000,000 Americans have one or more physical or mental disabilities..." In its stead, is a general statement condemning disability discrimination and this statement does not reference any numbers of individuals. A more telling change is the wholesale deletion of paragraph (7) which states that "individuals with disabilities are a discrete and insular minority..." Given that this is no longer consistent with Congress' view that a disability be broadly construed, it is not surprising that it was eliminated.

Discrimination: 42 U.S.C. §12112(a) sets forth the general rule that "no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual..." That provision will now read: "no covered entity shall discriminate against a qualified individual on the basis of disability." A similar change was made to the term "discriminate" in subpart (b) of this same section. This brings the ADA and Rehabilitation Act in line with other civil rights laws to cover discrimination on the basis of the individual's protected status. The goal is to focus attention on the merits of the alleged discriminatory conduct, rather than on the individual's impairment.

Qualification Standards: The Act adds a new section to the "Defenses" provision of 42 U.S.C. §12113, entitled "Qualification Standards and Tests Related to Uncorrected Vision." It provides, in pertinent part, that employers can not use qualification standards, employment tests, or other selection criteria "based on an individual's uncorrected vision unless the standards, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity." Essentially, this amendment serves simply to codify established case law.

Exhibit 2-1 (continued)

U.S. Postal Service Confirmation of Request for Reasonable Accommodation

U.S. Postal Service Confirmation of Request for Reasonable Accommodation (p.2)
<p>3. Reason for Request</p> <p>A. Nature of Impairment:</p> <p>B. Major Life Activity Affected:</p> <p>C. Extent or Degree of Limitation to Major Life Activity</p> <p>D. Mitigating Devices/Drugs:</p> <p>E. Essential Functions Requiring Accommodation(s):</p>
<p>4. If accommodation is time sensitive, please explain:</p>
<p><i>Supervisor, manager, examiner, or selecting official: Use this form to document a verbal request for reasonable accommodation from an applicant or employee. You may also ask the applicant or employee to furnish their request in writing along with appropriate substantiating documentation, if necessary. Refer to Handbook EL-307 and complete a Reasonable Accommodation Decision Guide to document decision making related to this request.</i></p> <p><i>Applicant: Return form to the examination administration office, selecting official, or local manager of Human Resources.</i></p> <p><i>Employee: Give this form to your supervisor, manager, or any other management official whom you reasonably believe has authority to implement a reasonable accommodation.</i></p>
<p>Privacy Act Statement: The collection of this information is authorized by 29 USC 791 et seq. This information will be used to process a request for reasonable accommodation. As a routine use, the information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain information relevant to USPS decision(s) concerning reasonable accommodation, to a congressional office in order to obtain information relevant to USPS decision(s) concerning reasonable accommodation, to an expert, consultant or other person under contract with the USPS to fulfill an agency function, to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; to a labor organization as required by the National Labor Relations Act; to the Office of Personnel Management in making determinations related to disability retirement and benefit entitlement; to officials of the Office of Workers' Compensation Programs; Department of Veterans Affairs; to an employee's private treating physician and to medical personnel retained by the USPS to provide medical services in connection with an employee's health or physical condition related to employment; and to the Occupational Safety and Health Administration and the National Institute of Occupational Safety and Health when needed by that organization to perform its duties under 29 CFR Part 1910. Completion of this form is voluntary. If this information is not provided, processing the request for reasonable accommodation may not be possible.</p>

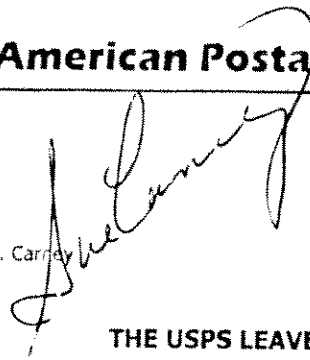
APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

(202) 842-4271 Office
(202) 216-2634 Fax
E-mail: SCarney@apwu.org

From the Office of Susan M. Carney
Human Relations Director



**THE USPS LEAVE BUY BACK (LBB) PROCESS:
A STEP-BY-STEP DESCRIPTION**

1. Claimant completes Form CA-7 and/or Form CA-7a (if absences are intermittent) and submits forms to supervisor.
2. The supervisor forwards the forms to USPS Health and Resource Management (HRM) Control Office (previously known as the Injury Compensation Control Office.)
3. HRM reviews forms for accuracy using payroll records.
4. HRM prepares Form CA-7b to show an estimate of how much it will cost claimant to buy back the leave identified on the CA-7/7a.
5. The claimant signs the CA-7b if he or she wishes to continue the LBB process. If the claimant does not sign, then the LBB process stops and the forms are retained in the HRM Control Office.
6. HRM sends the completed CA-7/7a (as applicable) and the signed CA-7b to the Postal Service's Accounting Sectional Center (ASC) in Eagan, MN.
7. ASC reviews the documents. If they are incomplete and/or inaccurate, they are returned to HRM for correction. If all forms are in order, they are forwarded to OWCP. ASC sends the claimant an "Account Receivable" invoice for the amount that must be paid to buy back the leave. This invoice is for the total amount owed by the claimant *and* by OWCP, and is for information purposes only. When ASC eventually receives the compensation payment from OWCP, that amount will be subtracted from the original total, and a new invoice will be sent to the claimant indicating the balance which he or she must pay. The leave will not be restored until the claimant pays all of the balance owed.
8. OWCP reviews the CA-7b, determines the proper amount of compensation entitlement, and then compares it to the estimated amount shown on the CA-7b. If the two calculations *vary by more than 10%*, OWCP will evaluate the medical evidence. If there is sufficient medical evidence, OWCP sends the claimant form letter CA 1207 showing the corrected amount. If the claimant wishes to proceed, he or she signs the letter and returns it to OWCP. If OWCP's calculation and the Postal Service's calculation are *within 10%* of each other, then OWCP makes a decision regarding entitlement to compensation based on the medical documentation, and;

- If all claimed absences are supported by medical evidence, OWCP approves the compensation and sends form letter CA 1208 to the claimant, and also sends a copy of the letter, along with the compensation payment, to ASC. An adjusted invoice is then sent by ASC to the claimant.
- If some, but not all, of the claimed absences are approved, OWCP sends form letter CA 1208a to the claimant, and also sends a copy, along with the partial compensation payment, to ASC. An adjusted invoice is sent to ASC to the claimant, who pays the balance to have leave restored. If the claimant chooses, he or she may initiate another LBB process by submitting a new CA7/CA-7b, *with additional medical documentation*, for the unapproved absences.
- If OWCP denies compensation for all the absences claimed, they will notify the claimant and give him or her 30 days to submit additional medical documentation supporting disability caused by the accepted medical condition. If no additional medical documentation is received, or it is insufficient, OWCP will issue a formal denial (with appeal rights) of the LBB request.

ADDITIONAL INFORMATION

- The Postal Service will not process LBB for leave used *after* a claim has been accepted. This policy is the subject of a national level grievance (*APWU: HQTG200113; USPS: Q98C-4Q-C01208677*). Individual grievances should still be filed if the Postal Service refuses to process a LBB.
- LBB must be initiated within one year of return to work, or OWCP approval of a claim, whichever is later.
- Leave can only be bought back by current employees.
- When leave is bought back, the original period of leave is retroactive converted to LWOP. This will cause a reduction in previously accrued leave balance.

March 2009

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS A. DANTZLER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HOSPITAL, Coatesville, PA

*Docket No. 97-2670; Submitted on the Record;
Issued July 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits for refusal to accept suitable work.

Appellant injured his right arm when a ladder kicked out under him on July 2, 1992. The Office accepted the claim for strain right arm, right shoulder impingement syndrome. Appellant stopped work on July 2, 1992 and he received appropriate disability compensation through June 6, 1995.

In an attending physician's report dated May 31, 1995, Dr. Michael J. Maggitti, an attending Board-certified orthopedic surgeon and appellant's treating physician, checked that appellant was unable to return to his regular work and that his disability would continue for 90 days or more. He noted that appellant was partially disabled and that he should not perform any overhead use of his right upper extremity, avoid repetitive use of the right upper extremity and not carry or lift over five pounds.

In a letter dated July 5, 1995, the employing establishment advised appellant that Dr. Maggitti indicated that he was disabled from performing his usual employment, but was capable of light-duty work. The employing establishment requested appellant to report for light-duty work in engineering services on July 10, 1995 from 8:00 a.m. to 4:30 p.m. The employing establishment informed appellant that his refusal to perform the offered light-duty position would result in any leave taken being charged to his annual leave, sick leave, leave without pay or absence without leave.¹ The employing establishment did not provide a description of the position offered or the physical requirements of the position.

¹ By letter dated October 24, 1995, appellant's representative indicated that appellant had submitted CA-8's, but had not received compensation in the past three months.

In attending physician reports dated September 5, October 6, November 3, December 1 and December 29, 1995, Dr. Maggitti indicated that appellant was capable of performing light-duty work provided he avoid repetitive work involving his right upper extremity, restricted overhead use of his right upper extremity and he was not required to lift more than 10 pounds.

In a November 3, 1995 treatment note, Dr. Maggitti² noted that appellant had been involved in an automobile accident on October 16, 1995 and appellant denied any injury to his right shoulder.

By letter dated December 1, 1995, the Office advised appellant that payment could not be authorize for periods when appellant was not totally disabled and requested appellant to provide information on his October 16, 1995 automobile accident.

In a letter dated January 10, 1996, the employing establishment offered appellant a light-duty position which was not permanent and advised that appellant would be returned to his original position of industrial equipment mechanic when released for full duty. The position duties included generator testing, minor equipment repair and miscellaneous assignments such as performing inventory checks for chemicals and inventory parts, etc. The employing establishment noted that the work mentioned was within the restrictions noted by his physician. Under the position duties, the employing establishment noted that the work could be performed within the appellant's physical restrictions. The employing establishment requested appellant to report for the position on Monday, January 29, 1996. Dr. Maggitti indicated on February 2, 1996 that the position was appropriate for appellant as described.

In a letter dated February 14, 1996, the Office advised appellant that the position of light-duty worker, engineering services was currently available, that it would consider any reasons for refusal and that if he did not accept the offered position within the next 30 days, a decision would be issued terminating benefits under 5 U.S.C. § 8106(c) if he failed to adequately justify why he refused the job offer.

In a letter to the employing establishment dated February 14, 1996, the Office indicated that appellant had not been paid compensation since June 6, 1995. The Office noted that it had received the employing establishment's light-duty offer, but that the offer failed to address whether light duty was made available to appellant since June 7, 1995.

By letter dated February 22, 1996, the employing establishment stated that appellant had been on leave without pay since June 7, 1995 and that at no time did he advise the employing establishment that he was capable of returning to light duty nor did he seek a light-duty position. The employing establishment did not advise whether the 1995 light duty was made available to appellant after he was placed on leave without pay.

By letter dated March 12, 1996, appellant's representative enclosed appellant's responses indicating that he required "clarity on the duty of positions offered and a position description" before accepting or declining. Appellant's representative requested further details of the position

² The note was initialized "MJM" which are Dr. Maggitti's initials.

such as the number of hours he would be required to lift, stand, sit, walk and the weight he would be expected to lift and carry.

By letter dated March 28, 1996, the Office found the requests for clarification on the position description requested by appellant and his representative were insufficient to justify refusal of the offered position. The Office informed appellant that he had 15 days to accept the position and that no further reason for refusal of the offer would be considered.

By decision dated April 16, 1996, the Office terminated appellant's compensation benefits effective July 10, 1995 on the grounds that he refused an offer of suitable employment. The decision stated that he remained entitled to medical treatment for treatment of his employment-related conditions.

By letter dated April 18, 1996, appellant, through his representative, requested a hearing which was held on November 21, 1996.

In a report dated April 29, 1996, Dr. Maggitti noted appellant's work injury history and opined that appellant would not be able to return to his preinjury position. He indicated that the restrictions of limited overhead use of the right arm, avoiding repetitive use of the right upper extremity and no lifting more than 10 pounds were permanent.

Appellant submitted medical reports from Dr. Maggitti dated February 23, July 19, August 23 and September 20, 1996 which opined that appellant could not return to his preinjury job without restrictions.

In a report dated August 5, 1996, Dr. Maggitti opined that appellant had reached maximum medical improvement in his right shoulder and that the restrictions for activities involving his right upper extremity were permanent. He stated that appellant's back problems were related to his automobile accident and unrelated to his accepted employment injury.

By decision dated January 31, 1997, the hearing representative affirmed the Office's April 16, 1996 decision terminating appellant's compensation benefits effective July 10, 1995.

By letter dated February 21, 1997, appellant, through his representative, requested reconsideration of the January 31, 1997 decision and submitted a January 28, 1997 report by Dr. Maggitti in support of his request. In his January 28, 1997 report, Dr. Maggitti noted that appellant cannot lift or carry more than 10 pounds, cannot perform repetitive work using his right upper extremity and restricted use of his right arm.

In a merit reconsideration decision dated May 19, 1997, the Office denied appellant's request for modification of its prior decision.

The Board finds that the Office improperly terminated appellant's compensation benefits on the grounds that he refused suitable work.

Once the Office accepts a claim it has the burden of proving that the disability has ceased or lessened before it may terminate or modify compensation benefits.³ This burden of proof is applicable if the Office terminates compensation, under 5 U.S.C. § 8106(c), for refusal to accept suitable work.⁴ The Office has not met its burden in the present case.

Under section 8106(c)(2) of the Federal Employees' Compensation Act⁵ the Office may terminate the compensation of a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.⁶ Section 10.124(c) of Part 20 of the Code of Federal Regulations⁷ provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation.⁸ To justify termination, the Office must show that the work offered was suitable⁹ and must inform appellant of the consequences of refusal to accept such employment.¹⁰

The Board finds that the Office improperly terminated benefits on the basis that appellant refused suitable employment for several reasons.

First, in initially assessing the suitability of the offered position, the Office procedures¹¹ provide that a temporary job would be considered unsuitable unless the claimant was a temporary employee when injured and the temporary job reasonably represents the claimant's wage-earning capacity. The procedure manual also states that a temporary job would be unsuitable if it would terminate in less than 90 days.¹² In the instant case, appellant was a full-

³ *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

⁴ See *Leonard W. Larson*, 48 ECAB ____ (Docket No. 95-1102, issued May 12, 1997).

⁵ 5 U.S.C. § 8106(c)(2).

⁶ *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

⁷ 20 C.F.R. § 10.124(c).

⁸ *Camillo R. DeArcangelis*, *supra* note 6; see 20 C.F.R. § 10.124(e).

⁹ See *Carl W. Putzier*, 37 ECAB 691, 700 (1986); *Herbert R. Oldham*, 35 ECAB 339, 346 (1983).

¹⁰ See *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, Chapter 2.814.11(c) (July 1997).

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, Chapter 2.814.4(b) (July, 1997). *Gerald R. Wilman*, 49 ECAB ____ (Docket No. 97-317, issued January 30, 1998).

¹² *Id. Cf. Arthur C. Reck*, 47 ECAB 339 (1996). (The Office found that a temporary job would be unsuitable if it would terminate in less than 90 days. The Board found that if, on the date of injury, the employee was temporary and the position was modified to reflect that the temporary position would last at least three months, then the temporary nature of the position did not make it unsuitable).

time employee and the employing establishment offered him a modified position which was temporary. There is no indication that the employing establishment offered appellant a permanent position. The January 10, 1996 letter notes that the position was temporary in nature. The Office erred in terminating appellant's compensation benefits on the basis of his refusal of the temporary position as such an offer did not conform with the Office's procedural requirements. Consequently, appellant demonstrated a valid reason for rejecting the job offering as it was a temporary position.

The Office failed to follow the regulations governing the Act and the Office's procedure manual provide several steps which must be followed prior to a determination that the position offered was suitable and that, therefore, an employee refused or neglected to work after suitable work was secured for him.

The Office's procedure manual states that to be valid, an offer of light duty must be in writing and must include the following information: (1) a description of the duties to be performed; (2) the specific physical requirements of the position and any special demands of the workload or unusual working conditions; (3) the organizational and geographical location of the job; (4) the date on which the job will first be available; and (5) the date by which a response to the job offer is required.¹³

Section 10.124(b) of the Office's regulations reads:

"Where an employee has been advised by the employing agency in writing of the existence of specific alternative positions within the agency, the employee shall furnish the description and physical requirements of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties."¹⁴

In this case, the Office found appellant was not entitled to wage-loss compensation for the period beginning on July 10, 1995 on the grounds that he refused to work after suitable work had been procured for him. There is no evidence that the Office followed its procedure manual or the regulations in reaching this conclusion.¹⁵ The July 5, 1995 light-duty job offer contained no description of the limited-duty position as to the physical requirements or the duties or the pay rate. Instead, the Office determined that appellant had refused to work after suitable work had been procured for him, without following the established procedures to determine if indeed the position procured on July 5, 1995 for appellant was suitable.¹⁶

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, 2.814.4(a) (July 1997).

¹⁴ 20 C.F.R. § 10.124(b).

¹⁵ The Board notes that, at the time of its April 16, 1996 decision, the Office was required to show that the work offered appellant on July 5, 1995 was suitable, that it was available and provide appellant an opportunity to accept it; see *Oleita G. Spiers*, 32 ECAB 1297 (1981); *Lee B. Hawkins*, 30 ECAB 1305 (1979).

¹⁶ *John R. Gerety*, Docket No. 86-2162 (issued July 29, 1987). The Board notes that the January 10, 1996 job offer by the employing establishment did comply with the Office regulations.

In determining that appellant was not entitled to compensation after July 10, 1995, there is no evidence that the Office secured confirmation from the employing establishment that the light-duty position in engineering services, first offered to appellant on July 5, 1995, remained open and available to appellant as of January 10, 1996, the date of the second light-duty offer by the employing establishment. In a February 14, 1996 letter, the Office asked the employing establishment whether the light-duty position was still available. In its response dated February 22, 1996, the employing establishment did not confirm that the position had been available from July 10, 1995 to January 10, 1996, only that appellant had been placed on leave without pay. Thus, the Office failed to obtain confirmation from the employing establishment that the light-duty position remained available.

Because the Office failed to make a valid offer of employment,¹⁷ the Board finds that the penalty provision of section 8106(c)(2) was not properly invoked. The record, therefore, establishes that the Office did not meet its burden of proof in terminating wage-loss compensation under 5 U.S.C. § 8106(c). For these reasons, the Board finds that the Office improperly invoked the penalty provision of 5 U.S.C. § 8106(c).

The decisions of the Office of Workers' Compensation Programs dated May 19 and January 31, 1997 are hereby reversed.

Dated, Washington, D.C.
July 20, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, 2.814.4 (c) (July 1997) (advising appellant).

United States Department of Labor
Employees' Compensation Appeals Board

KAREN M. NOLAN, Appellant)
)

and)
)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, West Roxbury, MA, Employer)
_____)

Docket No. 05-1710
Issued: May 16, 2006

Appearances:
Francis Hurley, Esq., for the appellant
Miriam Ozur, Esq., for the Director

Oral Argument April 4, 2006

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 15, 2005 appellant filed a timely appeal of a May 18, 2005 decision of the Office of Workers' Compensation Programs' hearing representative, affirming a July 8, 2004 decision terminating appellant's compensation on the grounds that she refused an offer of suitable work. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation effective July 11, 2004 on the grounds that she refused an offer of suitable work.

FACTUAL HISTORY

On October 15, 1989 appellant, then a 32-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury in the performance of duty on that date from turning over a patient. She stopped working on October 15, 1989. The Office accepted the claim for a back strain and an L5-S1 herniated disc, and appellant began receiving compensation

for temporary total disability.¹ Appellant underwent back surgeries on November 29, 1989, October 17, 1990, October 25, 1991, July 9, 1996 and July 18, 2002.

On March 23, 1995 the employing establishment offered appellant a position as a modified registered nurse at 16 hours per week. The record contains a note from an Office claims examiner noting that the Office's procedures state that a job offer of less than four hours per day is unsuitable if the claimant is capable of working four or more hours per day. Appellant continued to receive compensation for temporary total disability.

The Office referred appellant, together with medical records and a statement of accepted facts, to Dr. Mordechai Kamel, a Board-certified orthopedic surgeon. In a report dated June 17, 2003, he provided a history and results on examination. Dr. Kamel diagnosed foot drop secondary to surgical complication and chronic degenerative disc disease secondary to herniated discs at L5-S1 and L4-5. He noted that appellant had not reached maximum medical improvement as the foot drop could recover over the next year. Dr. Kamel completed a work capacity evaluation (Form OWCP-5c) indicating that appellant could work eight hours per day with restrictions. The restriction included a 10-pound lifting restriction of 1 hour, 10 pounds pushing and pulling of 2 hours per day and 10-minute breaks every hour.

On May 3, 2004 the employing establishment offered appellant a position as a staff nurse acute care bed control. The offer stated that the position was for 16 hours per week, working on Tuesday and Wednesday. The physical requirements included 10 pounds pushing, pulling at 2 hours per day, "10 pounds squatting" (sic) at 1 hour per day, and the offer stated that the position would allow frequent changes in position if needed.

By letter dated May 10, 2004, the Office advised appellant that it found the offered position to be suitable. Appellant was advised of the provisions of 5 U.S.C. § 8106(c)(2) and if she failed to accept the position she must provide a written explanation within 30 days. In a letter dated June 1, 2004 and received by the Office June 14, 2004, appellant's representative indicated that he had tried to contact the Office and wished to discuss the May 10, 2004 letter. By letter dated June 16, 2004, the Office found that appellant had not offered valid reasons for refusing the position, and advised appellant that she had 15 days to accept the position or her compensation would be terminated.

On June 28, 2004 the Office received a June 24, 2004 report from the attending physician, Dr. Stephen Lipson, a Board certified orthopedic surgeon, who opined that he did not think appellant could tolerate a full eight-hour day. He stated that appellant required frequent change of position and had an intermittent need to recline, could not lift more than 10 pounds and he did not believe she could bend, lift or care for patients.

By decision dated July 8, 2004, the Office terminated appellant's compensation on the grounds that she refused an offer of suitable work. The Office did not refer to Dr. Lipson's report. Appellant requested a hearing before an Office hearing representative, which was held on March 15, 2005. On May 10, 2005 appellant submitted an unsigned treatment note from Dr. Lipson.

¹ Appellant received compensation based on a weekly pay rate of \$721.20 (40 hours per week at \$18.03 per hour).

In a decision dated May 18, 2005, the Office hearing representative affirmed the July 8, 2004 Office decision. The hearing representative found that the Office had properly terminated compensation pursuant to section 8106.

LEGAL PRECEDENT

Under 5 U.S.C. § 8106(c) “[a] partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation.” It is the Office’s burden to terminate compensation under section 8106(c) for refusing to accept suitable work or neglecting to perform suitable work.² To justify such a termination, the Office must show that the work offered was suitable.³ An employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.⁴

In determining whether an offered position is suitable, the Office procedures state: “[a] job which involves less than four hours of work per day where the claimant is capable of working four or more hours per day will be considered unsuitable.”⁵

ANALYSIS

In the present case, the position of staff nurse acute care bed control was offered to appellant at 16 hours per week. As noted above, and as noted by the Office in 1995 when the employing establishment offered appellant a 16-hour per week position, a position of less than 20 hours per week is not suitable when the claimant is capable of working more than 20 hours per week. In this case, the Office based its determination of medical suitability on the June 17, 2003 report of Dr. Kamel, the second opinion physician, who opined that appellant could work eight hours per day with restrictions.

The Board has held that 5 U.S.C. § 8106(c) is a penalty provision and is narrowly construed.⁶ Based on the Office’s procedures, a job which involves less than four hours of work per day is not considered a suitable position in this case. Since the job offer was limited to 16 hours per week, the Board finds that it does not represent a suitable job offer. Accordingly, the Board finds that the Office improperly terminated compensation pursuant to 5 U.S.C. § 8106(c)(2).

² *Henry P. Gilmore*, 46 ECAB 709 (1995).

³ *John E. Lemker*, 45 ECAB 258 (1993).

⁴ *Catherine G. Hammond*, 41 ECAB 375, 385 (1990); 20 C.F.R. § 10.517(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4(b) (December 1993).

⁶ *Stephen R. Lubin*, 43 ECAB 564 (1992).

CONCLUSION

The Office did not meet its burden of proof to terminate compensation under 5 U.S.C. § 8106(c)(2).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 18, 2005 is reversed.

Issued: May 16, 2006
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant)

and)

U.S. POSTAL SERVICE, CHICAGO BULK)
MAIL CENTER, Chicago, IL, Employer)
_____)

Docket No. 08-1286
Issued: March 10, 2009

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2008 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated August 8, 2007 and March 7, 2008 that denied modification of her wage-earning capacity determination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied modification of appellant's March 25, 2004 wage-earning capacity determination.

FACTUAL HISTORY

On March 16, 1999 appellant, then a 45-year-old mail handler, sustained an employment-related lumbosacral strain and right knee contusion when she fell at work. The Office subsequently accepted aggravation of degenerative disc disease and she underwent spinal fusion surgery on October 28, 1999. The surgical hardware became infected and was surgically removed on August 21, 2000. Appellant was placed on the periodic rolls and underwent repeat

surgery due to an osteomyelitis infection. She returned to a modified position on March 24, 2003. By decision dated January 14, 2004, the Office found that appellant's actual earnings fairly and reasonably represented her wage-earning capacity, which was at three percent of her prior earnings. On March 25, 2004 it modified the wage-earning capacity decision, finding that she had no loss of wage-earning capacity, as her current wages exceeded her date-of-injury wages.

Appellant received compensation for intermittent periods of disability and when no appropriate work was available at the employing establishment. She filed a CA-7 on June 19, 2007 for the period June 12 to 19, 2007. On a Form CA-7a, the employing establishment certified that appellant was sent home for this period because no work was available within her restrictions. By letter dated June 28, 2007, the Office informed her that, because a formal loss of wage-earning capacity decision was in place, it would remain unless one of the described criteria for modifying the loss of wage-earning capacity was met. By decision dated August 8, 2007, it denied modification of the March 25, 2004 loss of wage-earning capacity decision. The Office concluded that, even though the employing establishment sent appellant home intermittently because no work was available, she had not met one of the criteria for modifying the loss of wage-earning capacity determination.¹

On August 20, 2007 appellant requested a telephonic hearing that was scheduled for 2:00 p.m. on December 13, 2007. She did not call in at the scheduled time. Appellant thereafter called the Office and a review of the written record was done. In a December 16, 2007 letter, she informed the Office that she had not received the March 25, 2004 decision, that there had been no material change in her medical condition, and that she was sent home by the employing establishment on the days of claimed compensation because no work was available within her restrictions. By decision dated March 7, 2008, an Office hearing representative affirmed the August 8, 2007 decision denying modification of the March 25, 2004 loss of wage-earning capacity decision.

The relevant medical evidence includes a January 22, 2007 report in which Dr. Steven M. Mardjetko, a Board-certified orthopedic surgeon, who had performed appellant's surgery in July 2001, advised that appellant's infection was currently quiescent and provided examination findings. In a July 16, 2007 form report, Dr. Marjetko advised that appellant was at maximum medical improvement, could work with a 20-pound lifting restriction, that she avoid repetitive bending at the waist, and should be allowed to change positions from sitting to standing. In a July 16, 2007 treatment note, he noted the history of injury, diagnosed lumbar spine degenerative disease and opined that he was pleased with appellant's outcome to date although advising that

¹ The Office also advised appellant that she had been incorrectly paid for intermittent periods from June 12 through July 15, 2007, and that she would later be advised that an overpayment had been created. There is no indication in the record that an overpayment notification was issued for these periods. The record, however, contains a final overpayment decision dated June 22, 2007 regarding an overpayment totaling \$1,640.89 that was created because the Office incorrectly determined that the job appellant returned to on March 24, 2003 paid less than the salary for her date-of-injury position and thus compensated her at an incorrect rate for the period March 24, 2003 to January 24, 2004. Appellant has filed an appeal with the Board of the June 22, 2007 overpayment decision, Docket No. 08-649, that will be adjudicated separately.

she could require additional surgery in the future. He concluded that she should return in one year's time.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages. Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.² The Office's procedure manual provides that, "[i]f a formal loss of wage-earning capacity decision has been issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss. In this instance the [claims examiner] will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity."³ Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.⁴ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁵

In addition, Chapter 2.814.11 of the Office's procedure manual contains provisions regarding the modification of a formal loss of wage-earning capacity. The relevant part provides that a formal loss of wage-earning capacity will be modified when: (1) the original rating was in error; (2) the claimant's medical condition has changed; or (3) the claimant has been vocationally rehabilitated. Office procedures further provide that the party seeking modification of a formal loss of wage-earning capacity decision has the burden to prove that one of these criteria has been met. If the Office is seeking modification, it must establish that the original rating was in error, that the injury-related condition has improved or that the claimant has been vocationally rehabilitated.⁶

The Office is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued.⁷

ANALYSIS

Applicable case law and Office procedures require that once a formal wage-earning capacity decision is in place, a modification of such determination is not warranted unless there

² *Katherine T. Kreger*, 55 ECAB 633 (2004).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995).

⁴ *Stanley B. Plotkin*, 51 ECAB 700 (2000).

⁵ *Id.*

⁶ See Federal (FECA) Procedure Manual, *supra* note 3 at Chapter 2.814.11 (June 1996).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.⁸ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁹

The Board finds that appellant did not submit sufficient evidence to show that the Office's March 25, 2004 wage-earning capacity determination was erroneous.¹⁰ There is no evidence of record that the decision was in error or that appellant was retrained or otherwise vocationally rehabilitated and the medical evidence submitted is insufficient to show that there was a material change in the nature and extent of the injury-related condition beginning in June 2007.

In a January 22, 2007 report, Dr. Mardjetko, appellant's attending orthopedist, advised that her osteomyelitis infection was quiescent, and on July 16, 2007 reported that she was at maximum medical improvement, that he was pleased with her outcome and she should return to see him in one year. These reports are insufficient to establish that the March 25, 2004 wage-earning capacity determination should be modified. As noted above, the burden of proof is on the party attempting to show a modification of the wage-earning capacity. In this case, appellant has not submitted medical evidence to establish a material change in the nature and extent of her employment-related conditions.¹¹

Appellant, however, is not precluded from receiving wage-loss compensation for intermittent periods, even though a formal wage-earning capacity determination has been issued.¹² Beginning in June 2007, she claimed intermittent wage-loss compensation because she was sent home as no light duty was available at the employing establishment. Thus, upon return of the case record to the Office, her CA-7 claims for compensation should be adjudicated.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the March 25, 2004 wage-earning capacity determination should be modified. This, however, does not preclude her from receiving intermittent wage-loss compensation.

⁸ *Stanley B. Plotkin*, *supra* note 4.

⁹ *Id.*

¹⁰ *Katherine T. Kreger*, *supra* note 2; *Sharon C. Clement*, 55 ECAB 552 (2004); Federal (FECA) Procedure Manual, *supra* note 3.

¹¹ *Stanley B. Plotkin*, *supra* note 4.

¹² *Sandra D. Pruitt*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2008 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: March 10, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board