

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



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Process" expands across the country, we expect that a growing number of limited duty and/or rehabilitation jobs will be withdrawn.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First, an injured employee who has a limited duty/rehabilitation job withdrawn, and who wants to claim wage loss compensation from OWCP, should file a **Form CA-7, Claim for Compensation**.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 rolls 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

OPM has job surf on their website.

SMC:cae

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 with 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.

