



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

September 23, 1988

MEMORANDUM FOR REGIONAL DIRECTORS AND FIELD DIRECTORS
HUMAN RESOURCES

GENERAL MANAGER
HEADQUARTERS PERSONNEL DIVISION

Subject: MSPB Precedent Affecting Light Duty

On April 6, 1988, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) issued a decision in Horner v. Schuck and Washington, et al., 843 F.2d 1368 (Fed. Cir. 1988), 88 FMSR 7013. The court affirmed the decision of the Merit Systems Protection Board (MSPB) that the placement of veteran preference eligible full-time regular employees who are in light duty assignments in a non-pay, non-duty status for a portion of the day whenever work is not available within their job restrictions constitutes a furlough. The effect of this decision is that the Postal Service may not work full-time regular veteran preference eligible employees on light duty assignments who are able to work for 8 hours a day or 40 hours a week for less than 8 hours a day or 40 hours a week without incurring possible liability in the event that an appeal is filed with the MSPB. Part-time flexible employees would be entitled only to their minimum guarantee under the contract.

Where an employee's own physician limits his or her time at work to less than 8 hours per day or less than 40 hours per week, that employee would not be considered furloughed when limited to the hours of work established by that employee's physician. In addition, employees may be permitted to voluntarily use sick leave, annual leave, or leave without pay for a portion of the day for which there is no work available within his or her medical restrictions.

The Federal Circuit's decision will be applied by the MSPB to any appeals which are filed by employees on light duty assignments who claim that they have been furloughed. The following courses of action may provide a means for offices to mitigate the effect of this decision.

o Requests for Light Duty

Careful consideration should be given to requests for light duty from all employees. Article 13 places certain obligations upon the employee requesting the light duty assignment, i.e., that the request for temporary light duty be in writing, that a supporting medical statement or certificate accompany requests for either temporary or permanent light duty, etc. See Article 13.2.A and B. Employees making requests for light duty should be expected to comply with these requirements. Further, verification of the information provided should be made prior to issuing a decision on the request.

o Offer of Light Duty Assignment

The decision on the request for light duty must be in writing to the employee. When considering requests for light duty from veteran preference eligibles who may appeal to the MSPB and those who are not preference eligibles, available hours should be given to the veteran preference eligible over a non-veteran preference eligible, regardless of seniority.

✓ If the decision is to deny the request for the light duty assignment, the employee must be advised of the reasons why the request has not been granted. Where the decision is to approve the light duty assignment, the employee should be advised of the nature of the assignment and that there is no guarantee of any number of hours of work per day or per week. The workweek of a light duty employee is based on the needs of the Service and may depart from the normal workweek as defined in the hours of work portions of the various collective bargaining agreements.

A sample letter has been enclosed for use in advising employees that their requests for a light duty assignment have been approved. You will note that where the offer is made to a veteran preference eligible employee with one year of current continuous service in the same or similar position, the letter provides for the acknowledgment by the employee that he or she understands and accepts the conditions of the light duty assignment. This acknowledgment should be signed and returned to the office prior to the employee commencing the light duty assignment.