

# Third-party recoveries —reprise

**T**he distribution of recoveries (i.e., financial settlements) involving injuries or death caused by third parties can sometimes be confusing; and this article reprises the concluding article in a three-article series published in the January through March 1997 issues of *The Postal Record*. Please refer to the earlier 1997 articles for a full understanding of third-party recoveries.

Distribution of third-party recoveries: Once a recovery is obtained, there is an established procedure to be followed:

- First, the cost of any personal damages, court costs, and a reasonable attorney’s fee, if a fee was paid, is deducted from the total sum recovered.
- Second, the injured employee or survivor retains one-fifth of the remainder of the recovery. This amount can be used by the employee or survivor for any purpose.
- Third, OWCP must be reimbursed from the remaining balance for the cost of all compensation and related benefits paid on account of the injury, *less an amount equivalent to a reasonable attorney’s fee proportionate to the refund made to OWCP*. By such action *OWCP contributes to the payment of the attorney’s fee*. Note also that the value of any continuation-of-pay (COP) paid by the Postal Service is not included in the amount to be reimbursed to OWCP.
- Fourth and last, the surplus remaining, if any, is turned over to the employee or survivor and is set up as a credit against any future compensation and/or medical expenses on account of the same injury or death. *Note that OWCP cannot pay any additional compensation or medical expenses until the surplus is reduced to zero*—i.e., any additional benefits are “credited” against the surplus until it is reduced to zero, thereby permitting OWCP to again pay applicable benefits.

**It is usually in the employee’s or survivor’s best interest to seek a recovery from a responsible third party**—inasmuch as the employee or survivor is guaranteed 20 percent of any recovery after any court costs and legal expenses have been deducted—and the employee or survivor also retains any remainder of the recovery after OWCP has been reimbursed.

Distribution of a third-party recovery can best be visualized by an example such as that shown at right. ☒

## Example of third-party recovery distribution

1. Third-party recovery (gross recovery)	<b>\$12,000</b>
2. Less	
a. Personal property damage	\$ 400
b. Attorney’s fee <sup>1</sup>	4,000
c. Court costs	<u>600</u>
	<b>\$5,000</b>
3. Net recovery	<b>\$ 7,000</b>
4. Less:	
a. One-fifth net recovery <sup>2</sup>	\$1,400
b. Medical expenses paid by employee <sup>3</sup>	300
c. Medical treatment at federal medical facilities <sup>4</sup>	<u>None</u>
	<b>\$1,700</b>
5. Adjusted net recovery	<b>\$ 5,300</b>
6. Less payments made by OWCP <sup>5</sup>	800
7. Surplus <sup>6</sup>	<b>\$ 4,500</b>

<sup>1</sup> Based on, in this example, one-third of the gross recovery.

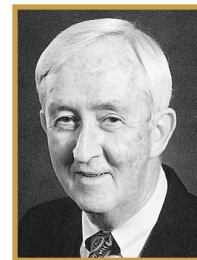
<sup>2</sup> Retained by employee.

<sup>3</sup> All medical expenses paid by the employee (and not those paid by OWCP or an insurance carrier). Copies of paid bills are required.

<sup>4</sup> Payment (reimbursement) for any such treatment must be made by the employee.

<sup>5</sup> Collected by OWCP. This amount consists of OWCP’s actual expenditures, less a portion of such expenditures representing the government’s participation in the fee paid the attorney. In this example OWCP’s actual expenditures were \$1,200 and the attorney charged one-third of the gross recovery for a fee; therefore, OWCP requested reimbursement of \$800—i.e., \$1,200 less one-third (or \$400) equals \$800.

<sup>6</sup> Retained by employee.



# Farewell

**T**his is my last article for *The Postal Record*. I plan to retire this month—after over 21 years with NALC.

I knew from my prior experience (31 years of federal service, much of it with the Department of Labor’s Office of Workers’ Compensation Programs) that the NALC was the top federal/postal union—and that letter carriers were great people.

The many, many contacts I have had with letter carriers—by correspondence/telephone and at numerous meetings and conventions—over the past 21-plus years has proved this to be the case.

Workers’ Compensation has been my life career and I have tried to provide NALC members with sound, practical information in my articles—information that will be of assistance in understanding a highly complicated and involved process.

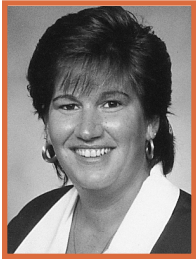
Leaving the NALC is bittersweet in that I like my work as well as the NALC officers, employees and members. I wish all the very best.

For those who have asked, I am providing a list of the articles that have particular retention value—see below.

Many of these articles—actually all articles from the January 1998 through July 2000 issues—are available on NALC’s website at [www.nalc.org/cau](http://www.nalc.org/cau) or via the NALC Contract Administration Unit’s CD-ROM dubbed “Contract Materials CD” (see Vice President Ron Brown’s column this month or “Contract Talk” in August 2000 issue of *The Postal Record*). The CD-ROM may be ordered from the NALC supply department for \$20 (see also Secretary-Treasurer William R. Yates’ article in the November 2000 issue). ☒

## Select listing of Compensation Department articles

<b>Appellate rights</b>	January - June 2000	<b>Miscellaneous expenses/allowances</b>	December 1996
<b>Assaults (workplace)</b>	May 1995	<b>New FECA regulations</b>	March 1999
<b>Avoiding errors/omissions</b>	April 1998	<b>Nurse intervention program</b>	August 2000
<b>Burden of proof</b>	October 1995	<b>Occupational illness claims</b>	May 1998
<b>Carpal tunnel syndrome</b>	July 2000	<b>Overpayments</b>	October 1998
<b>Causal relationship</b>	July 1998	<b>Performance of duty</b>	November 1995 - January 1996
<b>Chiropractic limitations</b>	December 2000	<b>Premises rule</b>	September 1995
<b>Communicating with OWCP</b>	October - November 1999	<b>Reporting employment</b>	November 2000
<b>Consequential and intervening injuries</b>	July 1995	<b>Recurrences</b>	November 1998
<b>COP—traumatic injuries</b>	July - August 1999	<b>Returning to work</b>	August 1997
<b>Death benefits</b>	July 1996	<b>Schedule awards</b>	February - March 1995
<b>Deviations from duty</b>	February 1996	<b>Suitable work</b>	May - July 1997
<b>Emotional reaction claims</b>	August 1996	<b>Temporary vs. permanent aggravation</b>	October 1997
<b>Fitness for duty exams</b>	December 1998	<b>Third-party recoveries</b>	January 2001
<b>Five deadly mistakes</b>	October 2000	<b>Time frames</b>	April 1999
<b>Health benefit refunds</b>	September 1997	<b>Time limitations</b>	March 1998
<b>Injury compensation made simple</b>	January - February 1999	<b>To-and-from work injuries</b>	August 1995
<b>Leave buy-back</b>	November 1996	<b>Traumatic injury vs. occupational illness</b>	August 1998
<b>Medical evidence</b>	October 1996	<b>Understanding compensation benefits</b>	June 1998
<b>Medical rationale</b>	May - June 1996	<b>Workers’ Compensation is not retirement</b>	December 1999
<b>Medical treatment (initial)</b>	June 1999		
<b>Medical treatment (continuing)</b>	January 1995		



# Dual benefits

*Note: This article updates and replaces two articles on the same subject in the November and December 1988 issues of The Postal Record.*

**A**n injured letter carrier may be entitled to benefits under the Federal Employees' Compensation Act (FECA-OWCP) and various other sources for the same injury at the same time. Some of these other sources include: CSRS / FERS Disability Retirement and/or Spouse benefits, Veterans' Disability or Death benefits, and Social Security. Some of these benefits can be collected by an injured carrier at the same time that he/she is collecting OWCP benefits, while others are prohibited and considered to be a dual benefit.

**The following benefits are considered "dual benefits" and require an election:**

**Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS):** CSRS/FERS annuity benefits provided by the Office of Personnel Management (OPM), either regular retirement or disability retirement, cannot be collected by an injured carrier who is currently receiving workers' compensation benefits. The employee must make an election between workers' compensation benefits and retirement benefits. Once an election is made it can be revoked at any time. However, if any payments have been received from OPM, those payments must be repaid in full either directly by the employee, or by OWCP from FECA benefits due, before the employee may begin receiving OWCP benefits. If OPM benefits are elected, the employee is still entitled to have medical expenses for treatment of the accepted condition(s) paid by the Department of Labor.

This means that you could apply for both benefits and elect to receive OPM disability benefits while you are waiting for OWCP to adjudicate and approve your claim. Once OWCP approves your claim for a work-related injury, you will have to decide which benefit is more financially beneficial to you and notify both OWCP and OPM of your election.

There is no prohibition against receipt of an OPM disability annuity during the period that a third-party credit is being absorbed by OWCP. The claimant is not actually receiving compensation from OWCP during this period, so the payment of an OPM annuity does not constitute a dual benefit. Once the third party credit is exhausted, the claimant should be given the opportunity to elect between OWCP benefits and continuation of the OPM annuity.

You should also note that a Schedule Award payable by OWCP for the loss or loss of use of a member or function of the body is payable concurrently with OPM benefits.

**CSRS/FERS survivor benefits:** OWCP does not consider the election of OPM benefits to be irrevocable. However, OPM considers an informed election of death benefits provided by OWCP to be irrevocable. This means that once a survivor selects OWCP benefits, he/she can not change their mind and start receiving OPM survivor benefits at a later date. If OPM benefits have been paid, the lump sum payment provided as part of the death benefit must be repaid in full either directly by the beneficiary, or by OWCP from benefits due, before the beneficiary may begin receiving OWCP benefits.

Where a survivor is entitled to both an OPM annuity in his or her own right because of his or her own Federal service, and an entitlement to death benefits under OWCP for a spouse, no election is required between the two benefits.

**Veterans' disability or death benefits:** The election is irrevocable only in those cases where the disability or death of the employee has resulted from an injury sustained in civilian employment by the United States, and the Department of Veterans Affairs has held that the same disability or death was caused by military service. What this means is that the VA has determined that the disability or death was caused by events or hazards experienced during military service *and* OWCP has determined that the same disability or death is related to the employee's civilian employment. An injured worker may be entitled to both benefits; however, once an election is made, he or she cannot switch back to the other.

**The following benefits are not considered "dual benefits" and may be received in addition to OWCP benefits:**

**Military:** There is no limitation on the right to receive OWCP compensation because of the receipt of a pension for military service in the armed forces. There is also no limitation on the right to receive OWCP compensation concurrently with retainer pay, retirement pay, or equivalent pay for service in the armed forces or other uniformed service.

**Social Security Act benefits:** Injured employees receiving a Social Security Disability benefit shall have their Social Security benefit reduced by the amount of OWCP compensation that is payable.

If an injured carrier is receiving regular Social Security benefits (age 62) and is covered under the Federal Employees' Retirement System (FERS), the OWCP benefits will be reduced by the amount of Social Security attributable only to their service with the US Postal Service. The same holds true for a survivor of a FERS employee who is receiving Social Security spousal benefits. Their OWCP benefits for the death of an employee will be reduced by the amount of Social Security attributable to the employee's federal service. ☐



# Schedule awards

**A**s a result of OWCP adopting the newly released American Medical Association's *Guides to the Evaluation of Permanent Impairment, Edition 5*, I felt it was important to update this article.

Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment.

Permanent impairment is defined as the loss or loss of use of a part of the body, whether total or partial. The degree of impairment is established by medical evidence and expressed as a percentage of loss of the member involved. Permanent impairment may originate either within the affected member or in another part of the body. For instance, a back injury may result in impairment to a leg, for which a schedule award would be payable. A claimant may also receive an award for more than one part of the body in connection with a single injury.

Compensation for schedule awards is computed by multiplying the indicated number of weeks by 66 2/3 percent (without dependents) or 75 percent (with dependents) of the pay rate.

**OWCP evaluates the degree of impairment to scheduled members, organs and functions as defined in 5 USC 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's *Guides to the***

## OWCP adopts Edition 5 of the AMA Guides to the Evaluation of Permanent Impairment.

*Evaluation of Permanent Impairment.* Currently that edition is Edition 5.

To support a schedule award, the file must contain competent medical evidence which:

1. Shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement).
2. Describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability; and
3. Gives a percentage evaluation of the impairment (in terms of the affected member or function, not the body as a whole, except for impairment to the lungs).

The attending physician should make the evaluation whenever possible. The report of the examination must always include a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment.

Injuries sometimes leave objective or subjective impairments which cannot easily be measured by the *AMA Guides*. Some examples are: pain, atrophy, deformity, loss of sensation, loss of strength, sensitivity to heat or cold, or soft tissue damage (scarring, discoloration). The effects of any such factors should be explicitly considered along with the impairment measurable by the *AMA Guides* and correlated as closely as possible with the factors set forth there. ☒

The following table shows the number of weeks payable for each schedule member if the loss or loss of use is total:

MEMBER	WEEKS	MEMBER	WEEKS
Arm	312	Hearing (one ear)	52
Leg	288	Hearing (both ears)	200
Hand	244	Breast	52
Foot	205	Kidney	156
Eye	160	Larynx	160
Thumb	75	Lung	156
First Finger	46	Penis	205
Great Toe	38	Testicle	52
Second Finger	30	Tongue	160
Third Finger	25	Ovary (including Fallopian tube)	52
Toe (other than the great toe)	16	Uterus/Cervix	205
Fourth Finger	15	Vulva/Vagina	205

*\*Note: The law does not allow for payment of a schedule award for impairment to the back, heart or brain.*

**Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. For example: A 6% loss of use of the arm would be 6% of 312 weeks or 18.72 weeks worth of compensation. A 40% loss of use of the hand would be 40% of 244 weeks or 97.6 weeks worth of compensation.**

Form CA-7 may be used to file a claim for a schedule award, or consideration may be requested by narrative letter. Com-



## USPS looks to cut workers' compensation costs

**W**e have all heard the grumblings at USPS Headquarters about their financial situation and the need for Postal Reform. They claim that mail volume is down so they float the idea of cutting back on the six-day delivery schedule. We hear that labor costs are up so they attempt to revamp the arbitration procedure. Now they are going after workers' compensation.

In the USPS 2000 Annual report, it was stated that workers' compensation costs for 2000 exceeded the budget by more than \$180 million, or 25 percent. The total reached \$925 million in workers' compensation costs. Since the USPS pays all workers' compensation costs out of postal funds, the bottom line is directly affected every time an employee is injured.

As a result of this increased financial burden, the USPS has been in contact with the US Department of Labor, OWCP. During a meeting that took place between the Acting Director of OWCP and the Chief Financial Officer of the USPS, there was

**“USPS discusses desire to discontinue accommodating injured employees through limited duty and permanent modified positions.”**

discussion of the postal service's desire to discontinue their practice of accommodating injured employees through limited duty. Their intention is to scale back both limited duty and permanent modified positions for injured postal employees.

If this were to occur, the Department of Labor would treat these injured employees' cases as recurrence of disability (CA-2a) claims. OWCP would reinstate FECA benefits and pay the employees for the wage loss associated with the withdraw of limited duty. What this means for injured letter carriers is that they would then be placed in the Vocational Rehabilitation process and eventually placed in the private sector by OWCP.

To this end, the USPS is attempting to enter into a Joint OWCP/USPS Rehabilitation Agreement. This agreement would separate any injured postal employee who could not perform their full duties from the postal service rolls. The proposal was submitted to OWCP for review on March 1, 2001. In its current form the Agreement will *not* be signed by

OWCP. However, the issue is still being pursued by the USPS so it is important to be aware of future actions.

In pertinent part, the initial agreement reads:

“The goal of the Postal Service is to return all injured employees to their date of injury position, or if that is not possible, to return them to a productive alternative position in the Postal Service according to established regulations contained with the Postal Service's Employee and Labor Relations Manual (ELM). However, current economic changes with the Postal Service have necessitated an ongoing reduction in the employee complement agency wide and have produced situations where it has become increasingly more difficult to find some employees productive work due to their restrictions and the type of productive work available. This new agreement is an effort by both the OWCP and USPS to continue to assist injured postal employees in returning to productive postal work or, when necessary, to assist those employees in returning to productive careers outside of the Postal Service.”

The postal service's contention is that if an injured employee can't be re-employed in a “productive” job, they are going to move them off of the employment rolls. Under OWCP regulations this is a proper action and is currently being taken by many federal agencies covered under the FECA, however, there are other factors that must and will be considered. The Rehabilitation Act and the Employee and Labor Relations Manual address reassignment and accommodation and must be adhered to in each and every case.

**Each injured employee who is currently performing limited duty or a modified reassignment will shortly be receiving a letter from the USPS. This letter will request medical information as to the likelihood of the employee being able to perform their original date of injury job and what their current restrictions are. This information will be used to determine if the employee is eligible for accommodation or whether they will be asked to leave the office and be compensated by OWCP. If the employee is made to file a CA-2a and CA-7 to claim lost wages, OWCP will begin taking steps to place them in the Vocational Rehabilitation program, which will be discussed in future issues of the Postal Record. This process will include possible training, placement with another federal agency or private sector employer and the issuance of a loss of wage earning capacity determination.** ☒



# Rehabilitation program

Last month's issue of the *Postal Record* addressed the potential changes to limited duty and permanent modified positions within the Postal Service. If the Postal Service were to withdraw these assignments, injured employees would be subject to the OWCP Rehabilitation Program.

The purpose of the OWCP rehabilitation program is to assist disabled employees who are covered under the Federal Employees' Compensation Act (FECA) to minimize their disabilities and return to gainful work. Rehabilitation helps injured workers to become self-supporting and productive, and saves money by eliminating or reducing workers' compensation payments.

There are two different types of rehabilitation programs within the FECA:

Medical Rehabilitation refers to those medical services necessary to correct, minimize, or modify the impairment caused by a disease or injury with the goal of returning the injured worker to an adequate level of function and employment. Medical rehabilitation may include services such as physical, occupational or speech therapy, orthotics, prosthetics, psychiatric counseling, occupational rehabilitation programs and others.

Vocational Rehabilitation services can be defined as services which enhance the ability of an injured worker to achieve gainful employment. These include testing, evaluation, counseling, guidance, training, placement and follow up.

**OWCP may, in its discretion provide vocational rehabilitation services authorized by 5 U.S.C. 8104.** These services include assistance from registered nurses working under the direction of OWCP. Among other things, these nurses visit the workplace, ensure that the duties of the position do not exceed the medical limitations as represented by the weight of medical evidence established by OWCP, and address any problems the employee may have in adjusting to the work setting. The nurses do not evaluate medical evidence; OWCP claims staff perform this function. (For more information on the Nurse Intervention Program please review the August 2000 *Postal Record* article on this topic.)

Vocational rehabilitation services may also include vocational evaluation, training and placement services with either the original employer or a new employer, when the injured employee can not return to the job held at the time of injury. These services also include functional capacity evaluations, which help to tailor individual rehabilitation programs to the employee's physical reconditioning and behavioral modification needs, and help employees to meet the demands of current or potential jobs.

Placement is an integral part of a comprehensive rehabilitation program and represents the culmination of the rehabilitation efforts. Placement with the previous employer is often the preference of injured workers, and can often be achieved without extensive retraining. For federal workers, it preserves valuable retirement and other benefits.

**Selective placement is the matching of the experience, training, aptitudes, skills, and physical and mental requirements of the job, so that the abilities and interests of the worker are optimally matched in the job.** Selective placement ensures that injured workers are placed in jobs where their disability does not limit their competing with non-disabled employees.

Re-employment with the former employer should be the first option considered, and should be attempted whenever the previous employer indicates willingness to develop alternative limited duty positions for the injured worker. It is the quickest way to return a person to work; it usually involves less salary loss for the injured worker, when compared to the pre-injury salary, than placement with a new employer; it returns an experienced employee who is ready to be a productive part of the organization; and it reduces or eliminates workers' compensation payments.

Federal injured workers have a right to return to their original jobs if they recover within one year, and it is much easier for agencies to offer jobs to injured workers if they have not been separated from Federal service, which often happens routinely after one year of disability.

If the previous employer has stated that no job is available or has made no good faith effort to find a job, the OWCP can authorize placement with other employers. This placement can also include assisted reemployment. The objective of assisted reemployment is to increase the number of permanently disabled workers who make a successful transition from the FECA rolls to regular, unsubsidized productive employment. The temporary wage subsidy incentive is intended to increase the number of job offers made by employees in the public or private sector for injured employees who have been hard to place.

**A thorough vocational evaluation should be performed before jobs are identified.** The goal is to identify jobs which can be successfully obtained by the injured worker using present skills and education, or with on-the-job training or short training programs, and which significantly reduce the loss of wage-earning capacity. Low-paying jobs which do not significantly reduce the compensation should be considered as a last resort, after training potential is considered.

The next issue of the *Postal Record* will address Loss of Wage Earning Capacity (LWEC). 



# Wage earning capacity

**T**he loss of wage earning capacity benefit insures that an injured worker will not be penalized for returning to a lower-paying job because of a disabling condition. It also permits the adjustment of compensation to reflect partial rather than total disability, if the requirements of the law are strictly met.

If there is any permanent disability resulting from the injury identifiable at the time of maximum medical improvement which prevents the employee from returning to the job held at time of injury or to other work paying a comparable wage, then the Office of Workers' Compensation Programs (OWCP) must determine what work the employee can perform in his or her partially disabled condition.

If the medical evidence does not support total disability, OWCP is required by the Federal Employees' Compensation Act (FECA) to reduce the employee's compensation on the basis of a determination of the employee's capacity to earn wages.

A typical case would be a letter carrier who sustained a shoulder injury and is discharged from medical care with a permanent restriction of lifting over 20 pounds. In such an example, the letter carrier is most likely not able to perform the duties of the position held at the time of injury. If the USPS does not offer other suitable work at the same or greater salary earned at the time of injury, the letter carrier is entitled to claim further compensation on the basis of OWCP's determination of what the letter carrier can earn with the resulting impairment. Such a determination is termed an "earning capacity determination" and once established, compensation will be based on 66 2/3% of the difference between the employee's adjusted earning capacity established by OWCP and the employee's former earnings at the time of injury. If the worker has a spouse and/or dependents, the compensation is based on 75% of the difference.

**If the employee is working, his or her actual earnings will in all probability be used by OWCP if such earnings fairly and reasonably represent the current earning capacity. However, if they do not, or if the employee has no job - which is often the situation - then OWCP determines what type of work the disabled employee can best perform - taking into account the following factors:**

- ◆ Nature and degree of injury related disability (and any other disabilities that preceded the injury).
- ◆ Work limitations resulting from injury-related and preceding disabilities.
- ◆ Usual or former employment.

- ◆ Age and education of the employee.
- ◆ Qualifications for other employment (experience).
- ◆ Availability of suitable employment in the employee's commuting area.
- ◆ Any other factors or circumstances which may affect the employee's earning capacity.

It should also be noted that the selected job does not have to actually be available to the employee in the form of a vacancy, but must be a type of job that exists in the employee's commuting area.

**After a specific job is identified by the OWCP claims examiner and a description of the job and its physical requirements is prepared and placed in the employee's compensation case file, an OWCP district medical advisor must review the case and provide an opinion concerning whether the employee is physically able to perform the specific job selected.**

## **“Wage Earning Capacity: OWCP pays salary difference between new position and letter carrier salary.”**

The claims examiner then obtains the employee's pay rate at the time of injury, the current pay rate of the employee's former job and the wage paid in the area for the specific job selected. If the current pay rate for the employee's former job is the same or lower than the pay rate at the time of injury, then OWCP considers the employee's earning capacity to be simply the wages paid in the area for the specific job selected. The employee's loss of wage earning capacity is then the difference between the employee's pay rate at the time of injury and the wage paid in the area for the specific job selected.

However, if the current pay rate for the employee's former job is greater than the pay rate at the time of the injury and OWCP must make an "adjusted earning capacity" in accordance with a far more complicated formula.

This formula, known as the Shadrick Formula, was first applied as a result of a 1952 Employees' Compensation Appeals Board decision (Shadrick, 5 ECAB 376). The Shadrick Formula will be discussed in the next issue of *The Postal Record*. ☒



# Shadrick Formula

**T**he method for computing the compensation payable where an employee has actual earnings or an earning capacity is called the Shadrick formula, as it reflects the principles set forth in Albert C. Shadrick, 5 ECAB 376. In that decision the Employees' Compensation Appeals Board (ECAB) found that section 5 U.S.C. 8106a does not state that compensation is to be based on the difference between the employee's earnings at the time of injury and whatever variable dollar income the employee may have in the future. Rather, it is to be based upon the loss of capacity to earn wages. The ECAB stated that:

Although capacity to earn and not wages received is the proper test under the law, an employee's actual wages may constitute compelling evidence of his capacity to earn and in a proper case may be used as a yardstick in determining an injured employee's diminished earning capacity.

However, in applying this standard, the ECAB held that:

...wages received 2, 5, or 10 years after an employee has sustained an injury and during which period changes in business conditions have caused wages to double due to a business boom or to be cut in half due to a depression cannot be used as a conclusive factor in determining a claimant's diminished wage-earning capacity after he has been injured.

The ECAB concluded that, "Actual dollar earnings received several years after injury may be used to determine wage-earning capacity only after they have been converted

into terms of actual dollar earnings received at the time of injury."

**The Shadrick formula is as follows:**

- (1) Pay rate when:
  - (A) injured
  - (B) disability began
  - (C) compensable disability recurred      \$\_\_\_\_\_
- (2) Current pay rate  
for job and step when injured      \$\_\_\_\_\_
- (3) (A) is capable of earning  
(B) has actual earnings of      \$\_\_\_\_\_
- (4) WEC (item (3) divided by item (2))      \$\_\_\_\_\_%
- (5) WEC (item (4) times item (1))      \$\_\_\_\_\_
- (6) Loss of WEC (item (1) minus item (5))      \$\_\_\_\_\_
- (7) Compensation (item (6) times 2/3 or 3/4)\$\_\_\_\_\_

This formula allows OWCP to calculate the actual rate of wage earning capacity based on the employee's ability to earn the wages that they would have, had it not been for an injury. It allows for an increase in the wages paid for the job held when injured or a reduction, if business trends take a downturn. ☒

## Overview

This article, as well as those printed in recent months—May: "OWCP/USPS Joint Rehabilitation Agreement"; June: "Rehabilitation"; and July: "Wage Earning Capacity"—are meant to give you a heads up on some possible attempts by the USPS to reduce compensation costs and streamline their limited duty and rehabilitation processes.

It is in every letter carrier's best interest to be aware of your rights and entitlements under the Federal Employees' Compensation Act. You must know what the process entails in order to ensure that you are receiving all the benefits that you are entitled to as an injured-on-duty postal employee.

There has been no word yet on whether there will be another agreement attempted with the US Department of Labor and the Postal Service. Some Districts have already contacted injured employees about their abilities to return to full duty and are in the process of taking the necessary steps toward removing these employees from the rolls of the Postal Service. Other Districts have taken no action. There has been no national policy issued in this matter as of this date.

As more specific information becomes available, the NALC will make every attempt to notify you as soon as practicable.



## New initiatives from OWCP

**A**s part of the Department of Labor's efforts to meet the performance goal of improving responsiveness to customer inquiries by 10%, established in the 1999-2004 Strategic Plan for the Federal Employees' Compensation Act, OWCP determined that there was a great need to improve telephone service equipment and software, use new automated tools to increase response to telephone calls, streamline and accelerate medical authorizations and make a broad effort to educate and inform all parties about benefits and services.

OWCP has been aware, for some time, that their customer service efforts needed to be improved. Customer surveys have continued to show that rising dissatisfaction with the level of communication between injured worker and claims examiner and injured worker and agency personnel are increasing factors in the adjudication process.

To this end, OWCP has announced that they have launched two new initiatives. The first is a toll-free national Call Center and the other is a toll-free automated Interactive Voice Response system.

The Call Center is intended for use mainly by injured employees who have general questions about their rights and responsibilities when filing a workers' compensation claim. Customer Service Representatives will provide answers to frequently asked questions about claims under the FECA, as well as referral information on the new Central Interactive Voice Response system, the program's web site (new address: [www.dol.gov/dol/esa/dfec.htm](http://www.dol.gov/dol/esa/dfec.htm)) and the district offices. Callers will also be able to request single copies of commonly used forms from the Call Center.

**The Call Center personnel will not be able to address any case specific questions, such as claims status, bill payments, lost wage claims or medical authorizations. They will refer the caller to their claims examiner at the district office for those types of detail.**

Information is available in both English and Spanish. The telephone numbers are 1-866-999-3322 (voice) and 1-877-889-5627 (TTY), and the lines are staffed from 8 am to 5 pm, Monday through Friday.

The Call Center is being made available in four phases by groups of states corresponding to district office jurisdictions. This method was chosen to allow for adjustments in service levels that may be required if the projected numbers of calls

is considerably greater or less than anticipated. The schedule, which will be accelerated if major adjustments are not needed, is as follows:

Boston, New York, Philadelphia, Chicago:	June 25
San Francisco:	August 20
Jacksonville, Seattle:	October 1
Cleveland, Kansas City, Denver, Dallas:	December 10

Callers from states where the Call Center is not yet available will hear a "blocking message." This message will refer them to the Central Interactive Voice Response system for the kinds of information that may be obtained there, and also refers them to the program's web site for detailed general information about claims processing. The caller is advised to call the district office for information that cannot be obtained from either of those sources. The Call Center does not have telephone lines connecting it to the district offices. For this reason, it cannot transfer or connect calls, and all calls to the district office will remain toll calls.

**The Interactive Voice Response is a completely automated system that provides case-specific information about established claims. It is intended for use mainly by injured employees and medical providers. The information available includes case status, compensation payments, reimbursement of medical treatment and travel expenses, payment of medical bills and authorization of medical treatment such as physical therapy and diagnostic testing. The Central Interactive Voice Response system is available to all callers across the country. The telephone number is 1-866-OWCP-IVR. For the time being, callers may continue to call the district office IVR numbers if they wish to do so, but those are not toll-free calls.** ☒

### TOLL-FREE NUMBERS

#### Call Center

1-866-999-FECA (8am to 5pm, Monday - Friday)  
1-877-889-5627 (TTY)

#### Central Interactive Voice Response

1-866-OWCP-IVR (24 hrs./day)



## Filing a CA-1 for a traumatic injury

**T**he following article addresses the filing of a traumatic injury claim with the Office of Workers' Compensation Programs (OWCP). Other types of claims will be addressed in future articles.

According to the Federal Employees' Compensation Act (FECA) a traumatic injury is defined as:

*A wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to the time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift.*

The key to this definition is that an event must have occurred during one work day.

If you suffer an on-the-job traumatic injury, you should immediately notify your supervisor and request authorization for medical treatment. You should request a Form CA-16 and identify the physician that you have selected to provide medical treatment for the injury. The injured employee may, in non-emergency situations, be required to be examined by a Postal Medical Office (PMO) or contract equivalent, prior to obtaining initial medical treatment. This examination must in no way interfere with the employee's right to seek prompt examination/treatment from a physician of choice.

If possible, you should take the CA-16 with you when you first go to the doctor. The Postal Service should also provide you with a CA-17 (Duty Status Report) and a HCFA-1500 (Health Insurance Claim Form) for the physician to complete and return to the Postal Service.

**Now that you have obtained proper medical attention, you will want to complete a Form CA-1 (Federal Employees' Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation). This must be done within 30 days of the date of injury in order for you to be eligible for continuation of pay (Continuation of Pay will be discussed in a future article). Please retain your receipt and request a copy of the completed CA-1 from your supervisor.**

After OWCP receives the CA-1 from the Postal Service, they will send you a postcard that identifies your OWCP case file number. You should receive this number in approximately two weeks from the date that OWCP receives your claim. Use this number on all documents submitted to OWCP. Instruct your doctor and other medical providers to include this case file number on all bills or other correspondence sent to OWCP.

To establish the essential elements of a claim, you must provide evidence that shows:

- that you filed for benefits in a timely manner;
- that you are a civil employee;
- that the injury occurred as reported and in the performance of duty; and
- that your condition or disability is related to the injury.

In order for a claim to be considered timely filed, the CA-1 must be received by the Postal Service within 30 days of the date of injury; however, the claim will be accepted if submitted within three years. Being an employee of the United States Postal Service will qualify you as a civil employee under the definition of the Federal Employees' Compensation Act. The rest of an essential claim rests with your physician. You must ensure that your physician provides a clear diagnosis of your medical condition (please note that pain is not a diagnosis—it is a symptom), all the objective test results that support the diagnosis, and his or her rationalized medical opinion about the relationship between your condition and what you relay as having occurred that one day at work.

Some CA-1 claims are accepted by OWCP under the "Quick Close" provision. What this means is that OWCP will unconditionally approve a claim until lost wages and/or medical expenses exceed \$1,000. Once that monetary threshold is met, OWCP will evaluate the claim and place it into development for a review of the evidence. "Quick Close" claims generally do not receive an acceptance letter. If you think your claim has been accepted this way, you should contact your District Injury Compensation Specialist or National Business Agent's office for verification.

All other CA-1 claims will receive an approval letter in the mail from OWCP. This letter will spell out what condition has been accepted as being work related and will provide you with a list of your benefits and entitlements. This letter will explain filing for lost wage compensation, submitting medical bills for payment, and how to be reimbursed for medical expenses.

■ **Condolences.** Our prayers must now go out to all of our brothers and sisters, who as federal and postal employees are facing the greatest trauma of their lives. For those who have died, we offer support to their families, and for those who were injured, we wish a full and speedy recovery. ☒



## Occupational Disease and Illness (CA-2)

**A**n occupational disease is defined as a condition produced in the work environment over a period longer than one work day or shift. It may involve infection, repeated stress or strain, exposure to toxins, fumes or other continuing conditions of the work environment. Some of the more widely recognized occupational diseases/illnesses include carpal tunnel syndrome, arthritis, rotator cuff strains, tendonitis, back injuries, and heart conditions. These medical conditions are usually slow in developing and do not generally occur at a specific time and place.

Occupational disease claims are filed on a CA-2 form (Notice of Occupational Disease and Claim for Compensation). To establish a claim for compensation benefits for Occupational Disease or Illness, complete the front of the CA-2 and submit it to your supervisor as soon as possible, but not later than 30 days after you are aware of the connection between your disease or illness and your employment as a letter carrier, or 30 days after you were last exposed to the conditions of your employment implicated in your claim, whichever is later.

Submit the medical evidence necessary to support your claim. There are checklists available for specific medical conditions in order to serve as an aid (Forms CA-35a through g). This additional factual and medical evidence is essential to your Occupational Disease claim.

**As with all Workers' Compensation claims, details are extremely important.** This is more so for Occupational Disease claims. You must explain in detail the work that you do, as well as the type of injury you are claiming. You must urge your doctor to be as specific as possible in diagnosing your injury and showing how specific job functions have caused, aggravated or accelerated your condition. You will want to provide a very detailed description of what you do at work on a daily basis for your doctor. Keep in mind that your doctor might not get a clear picture of what you mean if you simply say "I case mail". Try to avoid postal related language and concentrate on the actual physical functions of your job. A sample employee narrative and physician's statement will be provided in future articles.

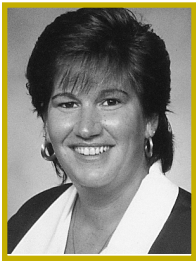
Once you have submitted the CA-2 and have provided supporting medical documentation, the Postal Service will

forward your claim to OWCP within 10 working days. Within two weeks you will receive a postcard in the mail that contains an OWCP case file number. Use this number on all documents, correspondence and billing information submitted to OWCP.

If you need medical care for an Occupational Disease claim, you should arrange for such treatment by choosing your own physician. If OWCP approves your claim, they will pay for medical treatment related to the accepted condition(s).

If you are unable to work because of an Occupational Disease, you may use sick or annual leave, leave without pay, and/or claim compensation for wage loss. Occupational Disease claims are different from Traumatic Injury claims (CA-1) in that there is no provision for Continuation of Pay (COP). Occupational claims generally take longer to adjudicate (generally it takes 3 to 6 months, depending upon the medical support).

**As with all injuries, you are expected to return to work as soon as possible.** If the Postal Service advises you that limited duty is available or is willing to provide work that is compatible with the work restrictions imposed by your doctor, you must let your doctor know. Generally the Postal Service is not willing to accommodate letter carriers with limited duty until the Occupational Disease claim has been approved by OWCP. If this is the case, we suggest that you get something in writing that states that you are available for limited duty, but that the Postal Service has refused to make a job offer until the final adjudication of the claim. This serves to support any claim for compensation that you may make for this period of time. If you are in a leave-without-pay status or expect to lose wages because you are unable to work, you may claim compensation by filing Form CA-7 (Claim for Compensation on Account of Traumatic Injury or Occupational Disease). If your disability continues beyond the period of time claimed on the CA-7, you should submit CA-7's each pay period where you have wage loss. OWCP will not process open-ended claims. (i.e., 1/1/01 through the present). ☒



## Anthrax and OWCP coverage

**B**y now, we are all aware of the threat letter carriers are facing in the wake of the Anthrax scare. Anthrax is being discussed in great length by the Director of Safety and Health, in his column and the NALC is providing as up to date information as possible through *The Postal Record* and the NALC website. The Postal Service is also providing information at the local and national levels. There have been stand-up safety talks and a video has been distributed to the field.

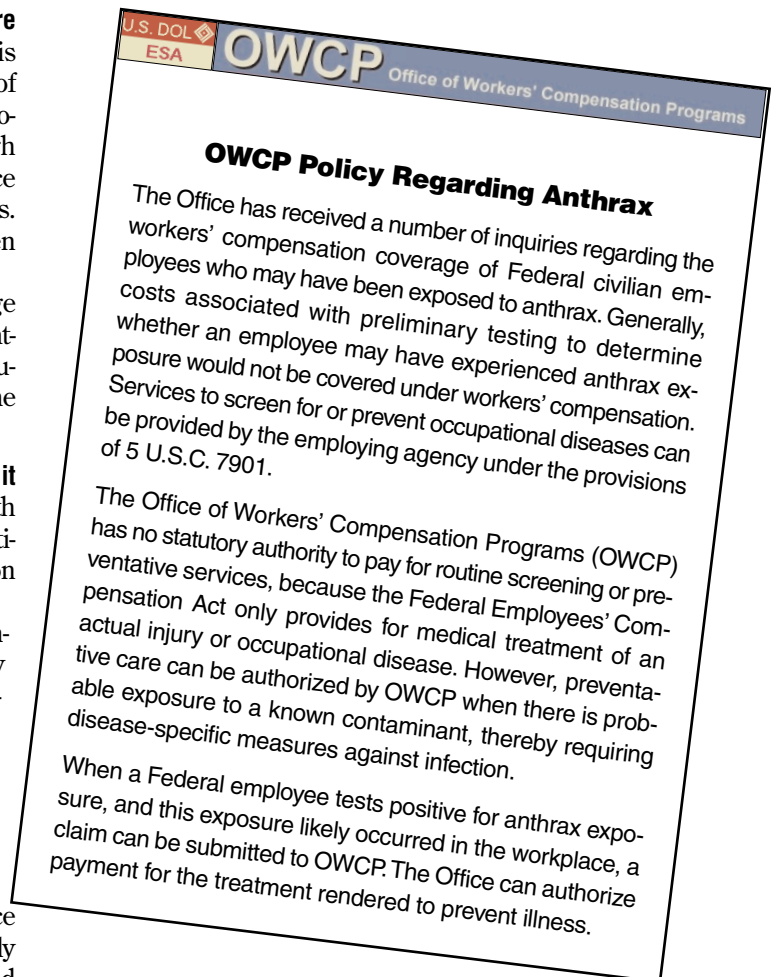
To respond to the rising questions about OWCP coverage in the event that letter carriers contract the disease, I am printing the OWCP policy regarding Anthrax instead of continuing the series of articles that appeared in the past months. The series will continue next month.

**This policy may sound a bit confusing, but in essence what it is saying is that unless and until you have been diagnosed with Anthrax or possible Anthrax exposure, you will not be entitled to benefits under the Federal Employees' Compensation Act as administered by OWCP.**

Currently the United States Postal Service and the Centers for Disease Control (CDC) are providing the necessary medical testing and time on-the-clock to receive this screening in offices that are suspected of infection under regulations set forth in 5 U.S.C. 7901. This section of the United States Code states that the head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees within his jurisdiction. A health service program may be established by contract or otherwise, but only after consultation with the Secretary of Health, Education and Welfare and consideration of its recommendations; and in localities where there are sufficient number of employees to warrant providing the service. This health service program is limited to treatment of on-the-job illness and dental conditions requiring emergency attention; preemployment and other examinations; referral of employees to private physicians and dentists; and preventative programs relating to health.

**If you are not an employee in any of the offices under investigation, any testing or time off of work that you incur getting tested will be at your own expense and on your own time. Bills should be submitted to your health insurance carrier and time off should be charged to annual or sick leave. Please note that a positive test today will only support that you were not recently exposed. Regular testing would be required to support a clean bill of health.**

Antibiotics are being given to all employees, at no cost, who have the potential for exposure as a preventative measure.



Once the test results are returned and positive findings are established, the letter carrier will be eligible to file a CA-1 for a Traumatic Injury or CA-2 for Occupational Disease and have all lost work time and medical treatment covered by the Office of Workers' Compensation Programs.

Federal employees with no known anthrax exposure illness, but who have experienced illness as a result of the prophylactic treatment, would generally be covered under FECA. The employee will have the burden to submit medical evidence of an injury attributable to this treatment. These employees would be given a CA-2 (unless the treatment was confined to one day).

**At this time of national sorrow and fear, we must step back and count the joys in our lives. My wish for you and your family is a happy holiday season and new year filled with promise and joy.** ☐