



## OWCP wage-loss compensation benefits and CSRS/FERS retirement

**A** recent decision by the Merit Systems Protection Board (MSPB or Board) brought good news concerning CSRS and FERS retirement computations in the case of some compensably injured employees. The issue in that decision concerned how retirement benefits are computed in the case of a full-time employee who has an accepted on-the-job injury, is able to work limited duty but less than eight hours per day, and draws wage-loss compensation from OWCP for the remaining daily hours up to eight.

The general rule is based on the law, at 5 USC 8332(f). It provides that as long as an employee remains on the rolls of the employer (is not separated), time spent on Leave Without Pay (LWOP) drawing wage-loss compensation from OWCP counts towards retirement computations—both high-three and years-of-service. This is an exception to the normal rule that provides that LWOP in excess of six months in a calendar year does not earn retirement credit.

OPM's *CSRS and FERS Handbook*, published April 1988, clearly stated both rules. On page 48, the *Handbook* notes:

Generally, credit is allowed for periods in a nonpay status (for example, leave without pay,...) that do not exceed a total of 6 months in any calendar year....(T)here are special provisions governing credit for periods of leave without pay when the employee is... receiving workers' compensation....(I)f an employee is receiving benefits from the Office of Workers' Compensation Programs, credit is given for the entire period of compensation if he or she is carried on the rolls of the agency in a leave without pay (LWOP) status.

And at page 9:


An employee who is in a leave-without-pay (LWOP) status while in receipt of FECA benefits will receive full credit for the LWOP period in the computation of annuity and for high-3 average salary purposes. LWOP while in receipt of FECA benefits is not subject to the limitation of 6 months credit in each calendar year, as is other LWOP.

Despite this language, on October 2, 2002, OPM issued contrary instructions to its benefits specialists, in Retirement and Insurance Letter (RIL) 2002-21. OPM instructed its specialists to treat compensably injured employees who had

full-time appointments, but who were able to work less than eight hours per day (and drew workers' compensation benefits for the remaining hours) as if they were part-time employees for the purpose of retirement benefits calculations. This had the effect of reducing retirement benefits.

**One letter carrier who had retirement benefits reduced by OPM fought back.** He appealed OPM's decision to MSPB. The Postal Service, to its credit, testified at the MSPB hearing in support of the letter carrier and in opposition to OPM. On July 1, 2003, the MSPB administrative judge issued a thorough and well-reasoned opinion and order reversing OPM's decision. The administrative judge's language was forceful, including the following: "5 USC 8332(f) is clear and unambiguous. *'Credit shall be allowed for leaves of absence without pay granted an employee...while receiving benefits'*" from OWCP.

That didn't end the matter, however, because OPM petitioned for review of the opinion and order of the administrative judge, to the full Merit Systems Protection Board. On November 16, 2004, the Board issued its final decision. The Board found no merit in OPM's arguments. It noted that 5 USC 8332(f) supports the "position that an employee who returns to duty in his full-time position following a compensable injury is entitled to full credit for his service in that position, even if he is receiving OWCP benefits for the hours exceeding those he is able to work." The Board reversed OPM's decision and ordered it to re-compute the letter carrier's annuity, crediting all of his time while receiving OWCP wage-loss compensation benefits as full-time service.

**This decision by the Merit Systems Protection Board is good news for all letter carriers.** It is precedent-setting for similarly situated employees. If OPM had prevailed, full-time employees with compensable injuries who remained on the rolls of the USPS and were unable to work at all (or who were not provided limited duty) would have full retirement benefits, while full-time employees with compensable injuries who were able to work some hours (but less than full time) and did so would have reduced retirement benefits. Such a result could hardly have been the intent of the Congress when it drafted 5 USC 8332(f). 



## Form CA-7: Claim for Compensation

**T**he pain and trauma associated with on-the-job injuries are bad enough, without the added distress of financial problems due to unnecessary delays in payment of wage-loss compensation.

Such compensation is payable by OWCP to employees with accepted on-the-job injuries who are totally disabled (or partially disabled and the Postal Service does not provide suitable limited duty) and use LWOP rather than their own sick leave or annual leave.

Form CA-7 is the critical pay document that must be used to claim wage-loss compensation.<sup>1</sup> Injured workers must complete the front side of CA-7 and submit it to the Postal Service. USPS is then required to complete the back side and forward it to the Office of Workers' Compensation Programs (OWCP). The Postal Service is legally and contractually required to fill out its portion of the CA-7 and forward the completed form to OWCP as soon as possible but no more than five working days after receipt from the employee.

OWCP tracks and publishes statistics showing the timeliness of receipt of CA-7s by each federal agency. Those statistics show that, while the Postal Service has been improving, it still improperly delayed more than one out of every three CA-7s in FY 2004. Those delays in turn resulted in delays of compensation payments to the injured employees.

**Therefore, injured workers and their representatives should** become familiar with the requirements regarding CA-7s and take steps to ensure that the Postal Service complies with its legal obligation to timely complete and forward CA-7s. Employees may not submit CA-7s directly to OWCP; they must submit them to the Postal Service. There is good reason for this requirement. OWCP regulations require that, before any wage-loss compensation is paid, the employing agency must certify both 1) the pay rate that the employee was earning on the date of injury and date of first disability, and 2) the pay status of the employee on the dates being claimed (LWOP, AL or SL). That certification is made by completion of the management side of the CA-7.

It can be difficult for stewards to determine whether a particular form was transmitted to OWCP by USPS within the time limits. The solution is for injured workers to specifically request, in writing, a completed copy of each CA-7 at the time they submit the form to management. While there is no regulation that requires management to automatically give an employee a completed copy of Form CA-7, employees do have a right to a copy upon request.

Both the Privacy Act and Handbook AS-353 give employees a right generally to any information filed by the

Postal Service under their name or other identifying means. Handbook ASM-353 Section 3-4 states:

*...employees may request and obtain information regarding themselves that the Postal Service maintains in a system of records as described in this section.*

While there are a few limited exceptions to this right, none would normally apply to a request for a CA-7. Employees must make a written request to exercise this right.

Employees should consider sending the CA-7 via certified mail (in order to prove the date that USPS received it) with a cover letter that includes the following:

*Please find enclosed a CA-7 for wage-loss compensation for the period [insert beginning date of period] to [insert ending date of period] concerning my on-the-job injury, claim number [insert claim number].*

*Please provide me a completed copy of this CA-7 after the Postal Service completes its portion of the form. Please also advise me of the date that the Postal Service forwards this CA-7 to OWCP.*

Upon receipt of the CA-7, the employee can compare the date the completing manager signed the reverse of the form to the date the employee submitted it. If there is more than a five-day spread, the employee should request to see his or her steward for initiation of a grievance investigation. The employee should also carefully review any additional information provided by the Postal Service for accuracy. If there are any inaccuracies, the employee should contact his or her shop steward.

**If management does not provide a copy of the CA-7, as often** happens, the employee should request to see his or her steward regarding violation of Handbook ASM-353 and the Privacy Act. Handbook ASM-353 Section 3-4.1b(2) requires USPS to respond to requests within 10 working days. The steward's ensuing investigation should include a request for a copy of the CA-7.

It's a good idea generally for employees to submit one CA-7 corresponding to each two-week USPS pay period. If there is medical evidence supporting the absence into a definite date in the future, the CA-7s should be submitted in advance. Moreover, employees should submit CA-7s even if the claim has not yet been adjudicated by OWCP.

CA-7s are important. Employees are well-served by learning the regulations regarding them, complying with those regulations, and then requiring management to comply with them. ☒

<sup>1</sup> The only exception is long-term disability where OWCP has placed the injured employee on the periodic rolls.



## Branch injured worker specialists

**E**very NALC branch should consider having a steward or other official who specializes in on-the-job injury issues. There are good reasons for this recommendation. The work letter carriers do is physically demanding. It bristles with objective dangers. As a result, letter carriers suffer injuries on the job, both traumatic and cumulative. Fortunately, there is a law intended to protect federal workers who suffer on-the-job injuries. It's called the Federal Employees' Compensation Act (FECA).

However, the regulations that implement this law are complex and numerous. The law is found in the United States Code (5USC81) and the implementing regulations are found in the Code of Federal Regulations (20CFR10 and 5CFR353). Additional rules are found in the *Federal Procedure Manual*, Employees' Compensation Appeals Board (ECAB) decisions, FECA Bulletins, and other sources. Ultimately, those regulations place the burden on the injured employee to prove certain elements of a claimed injury.

In too many cases, carriers suffer on-the-job injuries but fail to follow the required procedures. They simply aren't aware of the requirements or they don't meet their burden of proof because they don't understand the regulations. In other cases, postal management fails to comply with important regulations—sometimes from lack of knowledge, sometimes intentionally. Many carrier supervisors are simply not trained in OWCP requirements or are insufficiently trained. They often violate procedures out of ignorance.

The Postal Service long ago decided to centralize management of on-the-job injuries through the establishment of Injury Compensation Control Offices (ICCO). Recently that centralization has continued with the establishment of Shared Service Centers in some areas. Some ICCO and Shared Service Center managers are more interested in reducing the cost to the Postal Service of on-the-job injuries than they are in complying with the law and its implementing regulations. Between the floor supervisors and the ICCO/Shared Service Centers, there are a lot of management mistakes, delays and failures. As a result, letter carriers have their claims denied or delayed or their compensation diminished. They fail to gain the protections intended by the FECA.

**There is a great need for expert assistance. Training opportunities are readily available.** The NALC Injury Compensation CD and *Injury Compensation Manual* together provide a comprehensive introductory guide to the workers' compensation field. Other NALC publications, including the Spring 2004 *Activist*, provide additional information. OWCP's well-designed website provides direct access to training material, the *Federal Procedure Manual*, OWCP pub-

lications, quarterly agency tracking data, and other information. ECAB's website provides access to ECAB decisions. OWCP provides internet access to claimants and their representatives regarding medical bill pay status. OWCP district offices often provide multiple-day training. Although this training is designed for agency injury compensation specialists, it is useful to union representatives as well. Branches interested in this training should contact their NBA's office, or the OWCP district office directly to determine if space is available for union representatives.

**It is not realistic, however, to expect every shop steward,** let alone every letter carrier, to seek out training and expend the resources and time necessary to become an expert in these matters. The regulations are too complex. A more realistic approach is needed. Many branches have adopted the injured worker specialist approach to great effect. They have allocated resources and provided specialized training to selected activists. These activists have become experts on injured worker issues. Individual NALC members in those branches are the beneficiaries. Their legitimate claims are quickly accepted by OWCP because the injured workers are guided through the process. As well, postal management scrupulously complies with OWCP regulations, or pays an immediate price.

The branches as a whole also benefit. The presence of a specialist can be a powerful organizing tool for the branch. The National Labor Relations Board has ruled that the NALC may lawfully restrict assistance with OWCP claims to union members. Such a policy lawfully encourages employees to become and remain members. Please note, however, that the restriction applies only to assistance with OWCP claims—the branch must continue to represent non-members in the grievance procedure, including grievances protesting management violation of OWCP regulations and related postal rules.

Branches that have injured worker specialists benefit in an additional way. Letter carriers who have suffered injuries often become more vulnerable. When it comes to on-the-job injuries, there is too much injustice, with lives and finances disrupted and families destroyed. There is too much management abuse of authority and arrogance. Branches can put a stop to that. The law is on our side. We must first learn it in order to enforce it. Doing so can be an energizing experience for a branch.

Many branches already have injured worker specialists. Those that don't might want to consider it. The need is great. Training opportunities are available. The rewards are potentially unlimited. ✉



## Health benefits premium refund

**E**mployees who suffer on-the-job injuries generally have a right to continue health insurance coverage in the Federal Employees Health Benefits Plan (FEHB). However, problems often occur, because the rules that govern FEHB enrollment and premium payment for compensably injured employees are complex. This article will discuss some relevant Postal Service obligations. One is the Health Benefits Refund Program. This program requires the Postal Service to refund to employees, in certain cases, a portion of the health benefits premiums withheld by OWCP.

The regulations for this program are found in the ELM at 525.132 and the EL 505 Section 13.20. The program is designed to reimburse injured employees for an overdeduction of health benefits premiums by OWCP. Postal employees pay a lower percentage of total health benefits premiums than other federal employees. During the first year of compensable disability, OWCP deducts a postal employee's share of health benefits premiums from the employee's compensation payments at the normal postal employee rate. However, after one year of compensation, OWCP begins deducting the employee's share of premiums at the higher federal rate. When this happens, the Postal Service is required to refund the difference—the amount of overdeduction—to the employee. The Postal Service must do this on a quarterly basis.

To be eligible for the refund, the following criteria must be met:

1. The employee must be on the rolls and in an LWOP-IOD status. Employees who are separated from the Postal Service are not eligible.
2. The employee must be receiving OWCP compensation payments with health benefits premiums deducted at the higher federal rate.
3. A period of at least one year must have elapsed since the employee began receiving OWCP compensation.

**When all of the above criteria are met, the Postal Service** must complete PS Form 202, "Health Benefits Refund Payment Authorization," on a quarterly basis. The Postal Service calculates the amount of the refund by subtracting the difference between the federal health benefits premium rate and the Postal Service rate of the health benefits plan chosen by the employee. PS Form 202 is then sent to the postal finance office and a check is issued to the employee. Copies of the PS 202 are filed in the employee's OPF and Injury Compensation file. A copy must also be sent to the employee.

Current ELM regulations require personnel in the Injury Compensation Office to initiate the refund process. The Postal Service is in the process of transferring that responsibility to Shared Services. No matter where the Postal Service assigns the responsibility, the bottom line is that postal management is required to initiate and process the refunds.

**Additional Postal Service obligations concern transfer of the** HBP enrollment to OWCP in certain circumstances, and back to USPS in others. When an employee is drawing OWCP wage-loss compensation long-term and not working, the FEHB enrollment is transferred to OWCP. However, the Postal Service must complete and forward the "Transfer of FEHB Enrollment to OWCP" form, found in the ELM at Exhibit 525.142, in order to effect the transfer. The employee's share of the health benefits plan premium is then deducted by OWCP from the compensation payment.

Sometimes, the Postal Service fails to process the transfer form. This may cause a problem when an employee reaches 365 days of LWOP. In most situations, the Postal Service can discontinue paying its portion of the health benefits premiums after one year of LWOP. However, there is an exception for employees drawing OWCP wage-loss compensation, who are otherwise eligible for FEHB coverage. When the Postal Service fails to properly process the "Transfer of FEHB Enrollment to OWCP" form, its database may fail to recognize the employee is on the OWCP rolls and generate a cancellation of FEHB enrollment.

Another error sometimes occurs when an employee who has been on the OWCP rolls returns to limited duty for less than 8 hours per day. When an employee returns from OWCP to full time regular or limited duty, the Postal Service automatically begins deducting health benefits premiums from the employee's paycheck. However, when an employee returns to less-than-full-time duty, the Postal Service often fails to begin such deductions. Postal Service regulations, found in the ELM at 525.148, require it to resume FEHB deductions whenever a compensably injured employee returns to duty. Branch representatives should monitor the Postal Service for compliance with these requirements. Injured workers should carefully track their own situations. Failure by management to process and pay the refund when the criteria are met and other errors should be investigated and grieved if necessary. ☒



# Limited duty revisited

**T**his article should be read in conjunction with the August/September 2004 Postal Record column, which discussed basic legal and contractual provisions pertaining to limited duty. Those provisions place obligations on both injured workers and employers. Employees with on-the-job injuries who have work restrictions but are able to do some limited duty are required to seek and accept suitable work. Employers are required to make every effort to provide limited duty.

Employees should take the obligation to seek and accept limited duty work very seriously, because OWCP regulations provide for permanent sanctions for refusal to accept suitable work. There are several important specific steps employees can take to meet this obligation.

Use of Form CA-17 Duty Status Report is one. This form is first partially completed by postal management, and then finally completed by the injured worker's physician. Management completes the left-hand side, providing information regarding the physical requirements of the employee's normal job. The employee then takes it to the treating physician, who completes the right-hand side, furnishing information about whether the employee is medically able to return to regular work or limited duty and, if so, what medical restrictions are necessary. The employee returns the completed CA-17 to management. Postal management then knows what medical restrictions are present, so available work can be offered to the employee.

**Injured employees, shop stewards, and branch injured worker specialists** should enforce management's obligation to accurately complete its portion of Form CA-17 and provide it to employees in advance of known medical appointments. There are many contractual citations supporting this obligation. See, for instance, ELM 544.12 and EL 505 pages 24, 25, and 49. Nor should they allow management to use substitute forms instead of a CA-17. OWCP regulations require employers to maintain an adequate supply of CA forms including CA-17 and prohibit employers from using substitute forms. See 20 CFR 10.7.

Another step entails employees advising the treating physician that limited duty may be available. OWCP regulations provide that if an employer advises an injured employee that it is willing to accommodate the work limitations, the employee shall so advise the attending physician and


ask him or her to specify the medical limitations. See 20 CFR 10.515(d). The Postal Service has agreed, in a binding national level settlement, that it may only use a standard form letter to advise an employee or physician that limited duty is available. See M-1116.

If the employer advises an employee in writing that a specific alternate position exists, OWCP regulations require the employee to provide the description and physical requirement of the alternate position to the attending physician and ask whether and when he or she will be able to perform such duties. See 20 CFR 10.515(c).

**Employees should also require management to take its obligation to provide limited duty work seriously.** The obligation requires management to make every effort to assign limited duty. That phrase appears in both the law and the contractual provision. See 5 CFR 353 and ELM 546.14. Failure to provide limited duty may be challenged through the grievance procedure. The obligation to make every effort necessarily includes the possibility of fewer than eight hours work per day. This could be due to medical restrictions or work-availability constraints. Employees should be aware that OPM continues to reduce retirement benefits for such employees. Please see Director of Retired Members Don Southern's column on page 33 for an update on this issue.

Limited duty job offers must be in writing. See 20 CFR 10.507 and M-01119. Once limited duty is provided, employees should remain alert for ongoing problems. Pressure by supervisors to perform work beyond the medical restrictions is one common problem. Such pressure must be met with a forceful response by the union. The Postal Service has agreed that employees should only perform work within their medical restrictions. See M-00487.

OWCP regulations allow employers to contact a physician concerning an employee's work limitations. However, the contact with the physician may not be in person or by phone—it may be in writing only—and a copy must be sent to both the employee and OWCP. See 20 CFR 10.506.

Shop stewards, branch injured worker specialists, and injured workers themselves should be aware of the requirements regarding limited duty, and ensure that they are met. 



## OWCP's bill processing internet portal

**T**he Office of Workers' Compensation Programs has good news for injured letter carriers and their representatives who may be faced with unpaid medical bills or other problems regarding bill payment. OWCP has developed and implemented a powerful online tool that provides data regarding medical bills and has made it easily accessible to injured workers and their representatives. In order to gain entry to bill information for a particular claim, three items of information are needed: claim number, date of injury, and date of birth.

This is a great improvement over the past because it speeds up the resolution process. In order to help resolve a problem with a medical bill, such as non-payment, letter carriers and their representatives must first determine the reason for the problem. It may be that OWCP never received the bill because the medical provider did not send it to the correct address, or left out the employee's claim number. The provider may have omitted one or more necessary elements of information on the bill, such as a CPT code or an ICD code. Or the provider may have listed an incorrect CPT or ICD code. There are many reasons that may cause a bill payment problem.

In the past, when faced with a bill problem, letter carriers or their representatives had to call or write to the OWCP district office to determine the reason for the problem. That often involved a long delay. Those delays are over. OWCP's bill processing portal is internet-based, and thus available virtually around the clock. (Regular weekly maintenance is currently scheduled from 11 p.m. to 2 a.m. ET on Wednesdays and from 5 p.m. to 8 p.m. ET on Sundays.)

### Here is how to access a claim through the portal:

1. Type the following internet address in your browser: <http://owcp.dol.acs-inc.com/portal/main.do>
2. Click on the *FECA Claimant* icon.
3. Click *Accept*.
4. Enter claimant's *OWCP case number, date of injury and date of birth*.
5. Click *Submit*.

You will now be in the *Bill Status Inquiry* screen. You will see at the upper left-hand side of the screen that there are three available inquiries: *Eligibility, Bill Status* and *Medical Authorization*. Remain in the *Bill Status Inquiry* screen.

6. Click *View Option: Resolved Bills* and enter date range of desired view of bills. To view all bills, leave the date range fields blank.

Each bill is then listed (25 to a page) with multiple data elements, including date of service being billed; whether the bill was paid or denied; billed amount; paid amount; billed diagnosis; provider type and TCN. Click on the TCN to provide additional information about a specific bill, including, in the case of denied bills, the reason for denial. Generally, click on any underlined data entry to view additional detailed information.


If you follow the above procedure and do not find a bill that is causing a problem, the provider should be advised to submit the bill to OWCP, ensuring that the correct claim number is on it. If you find the problematic bill, and it has been denied, determine the reason for denial. In many cases, the reason is easily corrected and you can so advise the provider.

If there is an issue regarding a medical procedure authorization request (e.g., surgery or therapy), follow this additional procedure:

7. Click the *Return to Bill Inquiry* button at the bottom of the list of bills, thereby returning to the *Bill Status Inquiry* screen.
8. Click *Medical Authorization* at the top left under *Inquiries*.
9. Enter *Dates of Service* range (or leave blank for all authorizations).
10. Click *Submit*.

Each authorization request is then listed with multiple data elements, including the procedure being requested; whether the procedure has been approved; the date range of the procedure; and so on. Generally, click on any underlined data entry to view additional detailed information.

**The bill processing portal is well-designed, easily learned,** and provides a wealth of useful information about claims. The entry screen (at the web address listed in point 1 above) includes a *Help* icon at the upper right. Click the *Help* icon to access a user manual designed to provide a concise and helpful guide to locating information about the portal's functions and features.

OWCP's bill processing portal is welcome news for injured letter carriers and their representatives. Branch injured worker specialists should make a concerted effort to become familiar with it. 



# Schedule awards

**L**etter carriers who suffer on-the-job injury or illness have a right to certain benefits under the Federal Employees' Compensation Act (FECA). Such employees are entitled to necessary medical care, reimbursement for transportation needed to secure that care, wage-loss compensation when the injury results in disability from work, and, in certain circumstances, other benefits.

One such benefit is known as a schedule award. It is payable if an injured employee has suffered a permanent impairment to a part or function of the body that is listed in the schedule of body functions and members found in the FECA at 5 USC 8107. In this context, "impairment" is a medical concept, as opposed to "disability," which is an economic concept reflecting an inability to earn wages. Permanent impairment is defined as the loss, or loss of use of, a part of the body.

The degree of impairment (and ultimately the amount of the schedule award) is determined by medical evaluation—a physician takes certain measurements, such as range of motion, sensory deficit, joint interval, etc., and/or makes certain estimates, e.g., regarding the results of a joint replacement (whether the result was good, fair or poor), and then applies those measurements and/or estimates to applicable charts and tables found in the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* (usually referred to as the *AMA Guides*). The relevant charts and tables provide an impairment percent rating that corresponds to each measurement and/or estimation.

The Office of Workers' Compensation Programs, the agency created by the FECA to administer the law protecting injured federal workers, has regulations that require medical evaluations based *solely* on the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* in order to qualify for a schedule award. Not all physicians perform impairment ratings. Of those that do, many do not exclusively use the *AMA Guides*.

Injured workers interested in pursuing a schedule award should follow certain procedures:

- Ask your physician if he or she does evaluations of permanent impairment using the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*. It has to be the *Fifth Edition*. If your physician uses anything else, the medical report will not be sufficient to qualify for a schedule award.
- If your physician does such evaluations, ask him or her to schedule an exam to do the evaluation after you have

reached maximum medical improvement (MMI). If your physician does not do such evaluations, ask him or her to refer you to a physician who does.

The resulting medical report must 1) state the date you reached maximum medical improvement, 2) describe the impairment, and 3) give a percentage evaluation of the impairment in terms of the affected member, not the body as a whole. The percentage evaluation must be based on charts and tables found in the *AMA Guides*, and the medical report must include references to the applicable charts and tables. In other words, your physician must explain in the report how he or she determined the percentage impairment by specific reference to the charts and tables in the *AMA Guides* that were used to make the determination.

When you receive the medical report, send it to OWCP with a cover letter requesting a schedule award. Also complete a CA-7, check "schedule award," and submit it to the Postal Service. Request a completed copy of the CA-7 from the Postal Service.

**When OWCP receives the medical report and request, the claims examiner will have the district medical adviser (a physician who works for OWCP) review the report to ensure it was done in compliance with the *AMA Guides*. If so, OWCP will then compute a schedule award by multiplying the percent of impairment by the number of weeks provided in the schedule of body parts (and functions) in the FECA and then further multiplying by your weekly compensation rate.**

For example: the FECA provides 288 weeks of compensation for total loss of a leg. If your impairment was 50 percent of one leg, your pay rate as a letter carrier was \$20/hour, and you had one or more dependents, your schedule award would be about \$86,000—\$20/hour x 40 hours = \$800/week wages; \$800/week x .75 (compensation rate for injured worker with dependent) = \$600/week; 288 weeks x 50 percent impairment = 144 weeks; 144 weeks x \$600/week = \$86,400.

Schedule awards are generally not payable concurrent with OWCP wage-loss compensation benefits. However, they are payable concurrent with retirement benefits and they are payable concurrent with wages.

Letter carriers who have suffered on-the-job injury or illness that has resulted in permanent impairment to a scheduled body part or function should carefully review the above procedures to ensure their right to a schedule award. ✉



## Reimbursement of transportation expenses

**Letter carriers who have accepted claims for on-the-job injury or illness have a right to certain benefits under the Federal Employees' Compensation Act (FECA). Those benefits include reimbursement for transportation needed to secure necessary medical care.**

20 CFR 10.315 provides entitlement *"to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies."*

A distance of 25 miles from the claimant's home or work site is usually considered a reasonable distance to travel. In unusual circumstances, when a claimant must travel more than 25 miles, pre-approval from the Office of Workers' Compensation Programs (OWCP) should be requested. OWCP will determine the reasonableness of a travel distance by considering the availability of services, the employee's condition, and the means of transportation. If a claimant uses a private automobile, reimbursement is paid at the standard mileage rate for government travel. Effective February 4, 2005, the federal mileage rate was 40.5 cents/mile.

Otherwise, the claimant should travel by the shortest route and use public transportation, unless a taxicab or specially equipped vehicle is needed because of the medical condition. In these cases, actual, reasonable, receipted expenses may be reimbursed.

In the past, OWCP advised claimants to use Standard Form 1012 or PS Form 1012 for travel reimbursement. Now, however, OWCP has developed its own form—the OWCP-957, *Medical Travel Refund Request*. This form is well-designed, easily understood, and straightforward. It is readily available on the Internet at the following address: [www.dol.gov/esa/regs/compliance/owcp/forms.htm](http://www.dol.gov/esa/regs/compliance/owcp/forms.htm). Employees who do not have Internet access should secure Form OWCP-957 from their local branch or, if necessary, from their National Business Agent's office.

**Claimants seeking reimbursement for transportation expenses should complete Form OWCP-957 and submit it directly to OWCP. Claimants should not submit the completed form to the Postal Service. It should be mailed to:**

Central Mailroom  
PO Box 8300  
London, KY 40742

Employees who have Internet access and a printer can fill in the required information online using their computer


keyboard and tab key (or mouse) to navigate between fields, print the completed form, and then authorize it with a hand-written signature.

Sometimes, expenses other than mileage are incurred, such as taxi fares, bus or train tickets, toll charges, or parking fees. In these cases, original receipts should be attached to the OWCP-957. In addition, the claimant's full name and Social Security number should appear on each receipt.

In very rare cases, overnight travel might be required to attend a necessary medical appointment or an appointment required by OWCP. In these cases, lodging and meal expenses may be reimbursable. OWCP does not make per diem payments. Instead, OWCP reimburses actual reasonable expenses. Any overnight travel should be arranged in advance with OWCP.

Each Form OWCP-957 contains entries for up to three separate round-trip travel occurrences. While regulations do not stipulate a required frequency for submission of requests for travel expense reimbursement, claimants should be guided by a rule of reason. For example, if a claimant is scheduled for follow-up treatment once every two months, it might be reasonable to submit one completed OWCP-957 each six-month period. If a claimant is scheduled for physical therapy three times a week for four weeks, it might be reasonable to submit a request for reimbursement at the end of the four-week period (which would require completion and submission of four separate Forms OWCP-957, since each form contains spaces for a maximum of three round trips).

**Claimants should not unduly delay submission of travel expense reimbursement requests. They should be guided by OWCP's regulation stipulating the time limit for submission of medical bills. That regulation is explained in OWCP's guidelines in its Publication CA-810, Section 6.6D, "Time limit on payment of bills":** *"No bill will be paid unless it is submitted to OWCP on or before December 31 of the year following the calendar year in which the expenses was incurred or the claim (or specific condition, as appropriate) was first accepted as compensable by OWCP, whichever is later."*

Reimbursement to compensably injured employees for transportation needed to secure necessary medical care is a significant benefit that is sometimes overlooked. Employees should become familiar with the pertinent regulations, including Form OWCP-957, and exercise their right to this benefit. 



# Beware of penalties

**T**he Federal Employees' Compensation Act (FECA) provides for the payment of benefits to letter carriers who suffer illness or injury on the job. The Office of Workers' Compensation Programs (OWCP) administers and enforces the FECA. Injured employees must cooperate with the directives of OWCP, and are subject to suspension of benefits, or even permanent penalties, for failure to do so.

The implementing regulations of the FECA are found at 20 CFR 10 (and 5 CFR 353). Those regulations give OWCP authority to require injured workers to do certain things, and to apply sanctions if they fail to do so. For instance, OWCP may require an injured worker to be examined by a physician designated by OWCP. If an employee refuses to attend, or obstructs the examination, OWCP can suspend compensation benefits until the refusal or obstruction ceases.

**20 CFR 10.323.** What are the penalties for failing to report for or obstructing a second opinion or referee examination? If an employee refuses to submit to or in any way obstructs an examination required by OWCP, his or her right to compensation under the FECA is suspended until such refusal or obstruction stops.

**20 CFR 10.223.** When OWCP finds that an employee or his or her representative refuses or obstructs a medical examination required by OWCP, the right to COP is suspended until the refusal or obstruction ceases.

**20 CFR 10.501(b).** OWCP may require any kind of non-invasive testing to determine the employee's functional capacity. Failure to undergo such testing will result in a suspension of benefits.

**OWCP may also require an injured worker to undergo vocational rehabilitation services.** This may include guidance and counseling, vocational testing, training, and placement efforts with a new employer. If an employee fails to cooperate with rehabilitation services, OWCP can reduce compensation benefits until the employee acts in good faith to comply with OWCP's directions.

**20 CFR 10.519.** What action will OWCP take if an employee refuses to undergo vocational rehabilitation? If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will... reduce the employee's future monetary compensation.... This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

OWCP periodically requires employees who are receiving compensation benefits to complete an affidavit as to


any work, or other activities indicating an ability to work, which the employee has performed. If an employee fails to file such a report, wage-loss compensation benefits may be suspended.

**20 CFR 10.528.** What action will OWCP take if the employee fails to file a report of activity indicating ability to work? OWCP periodically require each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss... is suspended until OWCP receives the requested report.

**All of the above sanctions are potentially only temporary, ending when the employee comes into compliance.** There is one FECA provision, however, that provides for a permanent penalty. That provision involves the obligation of injured workers to seek and accept suitable limited duty. When OWCP advises an employee that it has found a specific job offer to be suitable, it gives the employee 30 days to accept and begin the job, or present any reasons for refusing it. If the employee presents such reasons, and OWCP determines the reasons are unacceptable, it will notify the employee that he or she has 15 days to begin the job without penalty. If the employee still refuses to begin the job, OWCP will terminate payment of wage-loss compensation and the right to schedule award compensation. This is a permanent penalty.

**20 CFR 10.517.** What are the penalties for refusing to accept a suitable job offer? 5 USC 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation.

Compensably injured letter carriers sometimes pursue and elect disability retirement instead of wage-loss compensation from OWCP. They should be aware that OWCP does not consider retirement as acceptable grounds for refusing or abandoning a suitable limited duty job. Therefore, even after OPM has approved disability retirement, if the Postal Service offers a limited duty job that OWCP finds medically suitable, the employee may forfeit the right to a schedule award by refusing (or abandoning) the job.

Letter carriers should fully cooperate with OWCP directives and be aware that failure to do so can result in adverse consequences. 



## Outplacement developments

**T**here have been two significant developments in the Postal Service's so-called Outplacement initiative. The first occurred on May 27 when the Postal Service notified the NALC that it had completed its Outplacement Pilot in the New York Metro Area and was beginning the process of nationwide implementation of the initiative by district. The letter stated it would begin implementation in the San Diego and Pittsburgh districts. The NALC is monitoring this development. Initial reports from the field indicate the Postal Service is moving slowly. All branch presidents should remain alert and immediately report to their National Business Agents whenever they learn of any attempts by management to withdraw limited duty from letter carriers.

The May 27 letter described the initiative as a "re-evaluation and reassessment of rehabilitation and limited duty assignments." This description is a departure from the Postal Service's original explanation of the pilot. In March 2004, the Postal Service announced the pilot as "intended to develop work opportunities outside the Postal Service for employees who have sustained job-related illness or injury." The May 27 description more accurately portrays the initiative.

That more accurate description is also inconsistent with the name the Postal Service has given to the initiative. The use of the word "outplacement" by the Postal Service probably originated in the Transformation Plan in 2002. That plan envisioned a reduction in costs associated with on-the-job injuries through placement of injured workers into jobs outside the Postal Service. However, the Postal Service has no authority to outplace any employee. Only OWCP has such authority. OWCP plays no role in the Postal Service identification or selection of employees for the USPS Outplacement initiative. OWCP applies its own criteria for selection of employees for its vocational rehabilitation services, which may or may not lead to placement in jobs outside the Postal Service.

**The second development occurred on August 19 when the Postal Service wrote to the NALC.** The letter followed a national level interpretive step dispute initiated by the NALC. In order to best understand this development, the following background is provided.

When the Postal Service began its Outplacement Pilot in New York, it withdrew some existing limited duty jobs from letter carriers. Branches reacted by filing grievances. In one specific case, the injured carrier's medical restrictions allowed casing mail. In fact, the carrier's limited duty job offer included casing mail. The Postal Service argued in the grievance, in effect, that the *ELM* 546.142 requirement to "make every effort toward assigning the employee to limited duty" did not require it to continue the existing limited duty job for three reasons: the carrier could not deliver mail, there were fewer than eight hours per day of available limited duty, and the employee's treating physician indicated the employee was unlikely to fully recover. After reviewing these management arguments, the NALC began interpretive step discussions at the headquarters level. The Postal Service responded on August 19.

In that letter, the Postal Service agreed that it would comply with *ELM* 546. (That *ELM* provision includes the obligation to make every effort toward assigning limited duty.) The Postal Service disavowed each of the arguments made by local management. In doing so, it agreed that its obligation to make every effort to provide limited duty continues even when a letter carrier's medical restrictions prohibit carrying mail, even though less than eight hours per day of limited duty work is available, and even if a carrier never fully recovers medically. The August 19 letter has been placed in the MRS, at M-01550.

**The Postal Service has a right to re-evaluate and reassess** limited duty jobs. However, it also has an obligation to make every effort to provide (and continue providing) limited duty to employees who have compensable injuries. That obligation is in no way diminished by the Postal Service's Outplacement initiative. The Postal Service may identify a letter carrier for outplacement and withdraw a limited duty assignment. OWCP may, or may not, then provide vocational rehabilitation services, including outplacement. The local union should investigate the withdrawal of limited duty by the Postal Service and grieve if a violation of *ELM* 546 is found. This is true irrespective of whether OWCP decides to provide outplacement services. ☒



## Hatch case comes full circle

**T**he first Compensation Department article of this year discussed an important Merit Systems Protection Board (MSPB) decision. That November 16, 2004 decision confirmed the full retirement rights of a compensably injured full-time employee who worked limited duty, but fewer than eight hours per day, and drew OWCP wage-loss compensation for the remaining daily hours.

The Office of Personnel Management (OPM) had determined that such employees' retirement benefits should be reduced as if they were part-time employees for the period of time they worked fewer than eight hours of limited duty per day. Letter carrier David Hatch, who had worked limited duty, but fewer than eight hours per day, had received a decision on his retirement from OPM that based his annuity as if he had been a part-time employee. He appealed that OPM decision to MSPB. On November 16, 2004, MSPB rejected OPM's decision.

The January 2005 Compensation Department column addressed that MSPB decision. However, after the January 2005 column was drafted, OPM requested reconsideration, and a stay of enforcement, of the November 16 MSPB decision.

On September 28, 2005, MSPB dismissed OPM's request for reconsideration and stay of enforcement, upheld its prior decision that overruled OPM's reduced annuity determination, and again rejected OPM's arguments. MSPB ordered OPM to recompute the retirement annuity, crediting the period at issue as full-time service. See the Retirement Department column in the November 2005 *Postal Record* for a discussion of this September 28 MSPB decision.

The NALC has learned that OPM has decided not to further appeal MSPB's *Hatch* decision.

Retirees who believe that their annuities were improperly calculated by OPM on the basis of service that included limited duty work of fewer than eight hours per day, should write to OPM requesting a recalculation of their annuities based on the *Hatch* decision. Retired NALC members may contact the NALC Retirement Department (1-800-424-5186) for advice regarding the content of such a letter.

The earlier Compensation Department column con-

cerning the *Hatch* case is available on the NALC website in the Compensation Department section. In addition, all 2005 columns, as well as columns from previous years, are readily accessible. The website address is [www.nalc.org](http://www.nalc.org).

**Subsequent columns in 2005 attempted to address various** issues that are often little-understood or misunderstood by injured workers and their representatives. The April column advocated the idea of branches appointing, training and supporting injured worker specialists. OWCP regulations are complex and there is a great need for expert assistance when letter carriers suffer on-the-job injuries. Branches that develop such expertise benefit in multiple ways. The presence of a specialist can be a powerful organizing tool. Injustices regarding on-the-job injuries can be minimized. Management abuse of authority can be stopped. Many branches find these benefits energizing.

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*The  
Compensation  
Department wishes  
each and every one  
of you a happy,  
healthy, and  
peaceful holiday  
season.*