RON WATSON

Four deadly mistakes

There are four deadly mistakes that employees commonly make in connection with on-the-job injuries.

1. Failure to recognize that the employee has the burden of proof to establish that a medical condition exists and that it is work-related.
2. Lack of knowledge of basic OWCP rules and procedures.
3. Uncritical reliance on advice from a postal supervisor (or injury compensation specialist or shared services employee) regarding the claim.
4. Failure to recognize that medical evidence must be rationalized in all but the most obvious cases (initially and whenever required by OWCP).

The law places the burden on the injured employee to prove the necessary elements of a claim. 20 CFR 10.115 clearly states that the employee bears the burden of proof to establish certain elements, including, among others: 1) fact of injury (diagnosis); 2) that the injury occurred while in the performance of duty; and 3) causal relationship between the identified work factors and the diagnosed condition. The same regulation clearly states that the employee is responsible for submitting or arranging for the submission of the necessary medical reports from the attending physician. There are often additional elements in a claim that the employee may have the burden to prove, depending on the particular circumstances. In too many cases, injured employees do not understand that they bear this burden of proof. They think that the supervisor, the injury compensation specialist, the physician or someone else is responsible.

"There are four deadly mistakes that employees commonly make in connection with on-the-job injuries."

OWCP has regulations, rules and procedures that define the specific forms of evidence that it requires in order for an employee to meet his or her burden of proof. For instance, 20 CFR 10.330 requires that medical reports contain specific elements, including: 1) dates of examination and treatment; 2) history given by the employee; 3) physical findings; 4) results of diagnostic tests; 5) diagnosis; and a host of additional elements. OWCP's regulations also define the rights and obligations of employees. OWCP regulations are complex and profuse. In too many cases, employees are simply unaware of those regulations.

NALC members should consult a knowledgeable NALC branch officer or their National Business Agent as soon as possible following a work-related injury or illness. *Do not rely on a Postal Service supervisor or injury compensation specialist for advice regarding a claim.* OWCP bills the Postal Service for all payments that it makes in connection with accepted on-the-job injuries. The Postal Service comprehensive statement for 2004 showed payments of $897.4 million to OWCP. This is a significant cost that the Postal Service attempts to reduce in a number of ways, including contesting claims. Postal supervisors, injury compensation specialists, and shared services employees have built-in incentives to get claims denied. NALC members should not uncritically rely on them for advice regarding their claims.

OWCP regulations require that medical opinion evidence generally must be rationalized. This means that the attending physician must explain why he or she holds the opinion. For example, a physician may diagnose a rotator cuff tear and hold the opinion that the tear was caused by repetitive above-the-shoulder arm motions while casing mail over a multi-year period. In a case such as this, OWCP will require the physician to rationalize his or her opinion—to explain why he or she believes the casing caused the tear. 20 CFR 10.330(i) specifically requires: "The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment."

There can be additional circumstances involving physician opinion where OWCP may require rationalization, such as the extent of disability affecting the employee's ability to return to regular work or limited duty. In too many cases, employees and their doctors do not understand that OWCP may require rationalization.

There are many other mistakes that employees can make— such as failure to submit the correct CA form, failure to promptly respond to OWCP information requests, or failure to timely and appropriately appeal when benefits are denied. OWCP regulations are complex, and the potential for error is great. At times, the complexity can seem overwhelming. An understanding of the four deadly mistakes can help tame that complexity.

CA-7 delays: don't tolerate them!

Form CA-7, Claim for Compensation, is a critical pay document for letter carriers with on-the-job injuries who are unable to work their regular jobs and are not provided limited duty. Injured workers are required to submit Form CA-7 to the Postal Service. Legal and contractual provisions place strict time-limit requirements on the Postal Service to process and forward CA-7s to the Office of Workers' Compensation Programs. CA-7 delays by the Postal Service necessarily delay receipt of compensation by the injured workers. Therefore, branch stewards and representatives should not tolerate such delays.

The legal requirement is clear. Implementing regulations of the Federal Employees' Compensation Act (FECA) at 20 CFR 10.111(c):

> Upon receipt of Form CA-7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA-7 and any accompanying medical report to OWCP.

Postal Service regulations are similarly unambiguous. For example, *ELM* 545.82(d):

> The control office or control point forwards the completed Form CA-7 and any other accompanying medical reports to OWCP within 5 working days upon receipt from the employee.

ELM 545.812:

> If the disability is a result of an occupational disease or illness, a Form CA-7 is completed and submitted to OWCP not more than 5 working days after receipt from the employee.

ELM 545.12:

> Control point personnel must not, under any circumstances or for any reason, delay timely submission of reports or claim forms to the control office.

The above regulatory language is stark in its clarity. The Postal Service has five working days after receipt of a CA-7 to complete and forward it to OWCP. There is no ambiguity.

OWCP tracks the CA-7 timeliness performance of all federal agencies and publishes the results on the Internet. On the whole, the Postal Service has achieved marked improvements in recent years. The latest published OWCP quarterly data indicates a Postal Service CA-7 timely submission rate of 71.3 percent. This compares favorably with the 49 percent in 2003 and 62 percent in 2004.

The improvement almost certainly flows from a Postal Service Headquarters initiative, explained at an OWCP interagency meeting in 2005. The Postal Service program includes: 1) a tracking system to record when a CA-1, CA-2 or CA-7 is received by a supervisor, received at USPS injury compensation offices (ICCOs) and received by OWCP; 2) national timeliness goals set by the chief operating officer: CA-1 and CA-2, 85 percent minimum, and CA-7, 70 percent minimum; 3) required written reports by the responsible manager explaining the failure whenever a timeliness failure occurs; 4) incorporation of the timeliness measurements into the management pay-for-performance criteria; 5) use of OWCP time-lag reports on the Internet to measure success/failure.

The Postal Service program is welcome and commendable. Linking timely submission of CA-7s to managers' bonuses almost guarantees overall improvements.

Unfortunately, some local managers are attempting to meet the Postal Service timeliness goals using methods that violate the regulations quoted earlier. The NALC has received reports that some ICCOs are returning submitted CA-7s to injured workers. In some cases, the CA-7s are returned with instructions to resubmit a new CA-7 with a new signature line date because the original CA-7 signature line date preceded receipt by the ICCO by a number of days not to their liking. In other cases, the CA-7s are returned with instructions to attach TACS reports and resubmit a new CA-7 with a new signature line date.

Postal managers benefit from these actions at the expense of the injured workers. They reap increased pay-for-performance because OWCP will not know about the original CA-7 and will thus record receipt of the CA-7 as timely when in fact it was not timely. Injured workers, on the other hand, suffer delayed OWCP compensation payments.

Local branches should challenge management when it returns CA-7s to employees instead of forwarding them to OWCP within five working days—through the grievance procedure if necessary.

Nothing in the FECA or its implementing regulations permits the Postal Service to fail to forward a CA-7 to OWCP by returning it to the employee and insisting on a new submission with a new date. The Postal Service has no such agreement with OWCP.

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

This column should be read in conjunction with the March 2005 column available online at www.nalc.org/depart/owcp/NALCinfo.html#columns.

RON WATSON

OWCP Form CA-16

OWCP Form CA-16, "Authorization for Examination And/Or Treatment," is extremely important to workers who have suffered traumatic injuries. It serves two important functions: it authorizes medical treatment and it provides an initial medical report. Its front is completed and signed by postal management and guarantees payment by the Office of Workers' Compensation Programs (OWCP) to the attending physician for treatment up to 60 days. The reverse is completed by the treating physician and helps ensure that OWCP immediately receives an initial medical report.

Form CA-16 is used for traumatic injuries only. It is not used for occupational disease or injury. It must be issued by management in most cases where a CA-1 is submitted and the employee seeks medical attention.

If management does not issue a CA-16, or fails to properly complete the front portion, OWCP may receive the initial medical report late or not at all. This may result in delays or even denials of claims.

The Postal Service is bound by legal requirements regarding Form CA-16. Those requirements are found in the implementing regulations of the Federal Employees' Compensation Act (FECA) at 20 CFR 10. For instance:

> 20 CFR 10.300(a): When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the employer shall authorize such examination and/or treatment by issuing a Form CA-16....
>
> 20 CFR 10.300(b): The employer shall issue Form CA-16 within four hours of the claimed injury. If the employer gives verbal authorization for such care, he or she should issue a Form CA-16 within 48 hours. The employer is not required to issue a Form CA-16 more than one week after the occurrence of the claimed injury....
>
> 20 CFR 10.300(c): Form CA-16 must contain the full name and address of the qualified physician or qualified medical facility authorized to provide service. The authorizing official must sign and date the form and must state his or her title....

The Postal Service is also bound by its own regulations regarding Form CA-16. Those regulations are found primarily in the *ELM*. For example:

> *ELM* 545.21, "Traumatic Injury": When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the control office or control point must authorize such examination and/or treatment by issuing a Form CA-16. Form CA-16 is used for all traumatic injuries requiring medical attention....The control office or control point must promptly authorize medical treatment by issuing the employee a properly executed Form CA-16 within 4 hours of the claimed injury. If the control office or control point gives verbal authorization for care, Form CA-16 should be issued within 48 hours. The control office or control point is not required to issue a Form CA-16 more than one week after the occurrence of the claimed injury.
>
> Exception: Issuance of Form CA-16 is not required for job-related first aid injuries where initial medical care is provided by either a postal physician or a contract physician and the employee voluntarily accepts this care (see 545.43).
>
> *ELM* 545.44b: Form CA-16, "Authorization for Examination and/or Treatment," must be issued to the employee's physician of choice promptly following the report of injury, as specified in 545.2.

The legal and contractual language is not ambiguous. When an employee submits a CA-1 and seeks medical examination or treatment within a week of the injury, management must issue a properly signed and completed CA-16. Management may not use a substitute form:

> 20 CFR 10.7(a): Notice of injury, claims and certain specified reports shall be made on forms prescribed by OWCP. Employers shall not modify these forms or use substitute forms.

The exception to the requirement to issue Form CA-16 found in *ELM* 545.21 applies only when the employee accepts treatment from a postal contract physician and only a first aid injury is involved. The definition of a job-related first aid injury is found in Management Instruction EL 540-91-1. Any injury that results in work restrictions, disability and/or limited duty is *not* considered a first aid case.

Form CA-16 is important. Employees who suffer traumatic injury and submit Form CA-1 should immediately seek medical attention from their own physician. They should advise management of the name and address of that physician. They should ask for a Form CA-16 to take to their physician.[1] They should ask their physician to complete side two and then ensure that the original CA-16 is sent directly to OWCP as soon as possible after medical treatment, either by the employee or the physician. In the case of disability, it is normally in the employee's interest to also ensure that management promptly receives a copy of the completed CA-16 to support payment of COP.

NALC branch injured worker specialists and contract enforcers should ensure that local managers comply with the legal and contractual CA-16 requirements. ✉

[1] Nothing in 20 CFR 10 or relevant postal regulations requires an employee to request a CA-16 from the supervisor. The language requiring issuance of CA-16 is couched in mandatory terms. Nevertheless, employees are advised to specifically request it from the supervisor whenever they submit a CA-1 and seek medical attention.

Rehabilitation job offers

Note: this article should be read in conjunction with the June 2005 and the August/September 2004 Postal Record columns, which discussed limited duty

Postal Service regulations differentiate between limited duty job offers and rehabilitation job offers. However, from the perspective of employee rights, it is a distinction with little meaning.

When modified work is offered to a compensably injured employee whose work restrictions are temporary, USPS refers to that work as a limited duty assignment or job offer. When modified work is offered to a compensably injured employee whose work restrictions are permanent, USPS refers to that work as a rehabilitation assignment or job offer. ELM 546.141 clearly states this distinction.

The Postal Service has a contractual and legal obligation to make every effort to find modified work for all compensably injured employees. The contractual obligation is found primarily at ELM 546.142. The legal obligation is found primarily at 5 CFR 353. When assigning modified work, the Postal Service has a contractual obligation to minimize the adverse impact of such work on the injured employee, by following the "pecking order" found at ELM 546.142a.

The "pecking order" requires management to first attempt to assign available work within an employee's medical tolerances in the employee's regular craft, work facility and hours. Only if no such work exists may management assign work further down the pecking order: in the employee's regular work facility and regular hours, but outside the regular craft; in the employee's regular work facility and regular craft, but outside the regular hours; in the employee's regular work facility but outside the regular hours and craft; outside the regular facility, but within the regular craft and hours; etc. The very last element of the pecking order includes work outside the regular facility, regular hours and regular craft.

There is a common misconception in the field that the obligation to follow the pecking order only applies to limited duty and not to rehabilitation assignments. That is plain wrong. The obligation to minimize the adverse impact on an employee by following the pecking order applies equally to limited duty assignments and rehabilitation assignments. ELM 546.14 emphasizes this fact by stating it both in the introductory paragraph and in a note at the end. ELM 546.141:

> The procedures for current employees cover both limited duty and rehabilitation assignments.

ELM 546.142 closes with the following:

> Note: Placement priority for rehabilitation assignment is the same as for limited duty.

The EL 505 Chapter 11 contains Postal Service regulations regarding rehabilitation assignments. Exhibit 11.7b mirrors the ELM language and states:

> Whenever possible, assign qualified employees to rehabilitation job assignments [sic] duty in their regular craft, during regular tour of duty, and in their regular work facility.

It is also important to remember that the Postal Service obligation to find work higher in the pecking order does not end with acceptance of a rehabilitation job offer. It is possible that a rehabilitation assignment involving work lower in the pecking order could be properly offered given current work restrictions and available work. However, work restrictions, even permanent ones, can change over time. Available work may also change over time. The Postal Service obligation to find work higher in the pecking order is continuing and never ends.

National Arbitrator Bernstein addressed this issue in C-07233. He wrote:

> The Service is contending that there should be a point in time at which it has the right to "wash its hands" of a particular injured employee and move him out of his craft and into another one for the remainder of his career. Perhaps it would be sound policy to have such a provision in the section, but there is no language to that effect in that section at this time. Section 546.14 must be read to impose a continuing duty on the Service to always try and find limited duty work for injured employees in their respective crafts, facilities and working hours. The fact that such duty might not be available at any point in time does not mean that it will never become available, because there are many changes that can take place. Therefore, the Service must be prepared to modify a limited duty assignment outside of the employee's craft, facility or hours, when work within those conditions becomes available.

Injured workers and their representatives should be aware that while the Postal Service uses different names for limited duty, depending on the temporary/permanent nature of the pertinent work restrictions, it is a distinction without substance in the context of employee rights.

Information resources

Letter carriers who suffer on-the-job injuries must fol- low the procedures and regulations of the Federal Employees' Compensation Act (FECA) in order to gain the protections of the Act. Those procedures and regulations are complicated and numerous. That can be a problem for injured workers and their representatives, who sometimes feel overwhelmed. Fortunately, information resources are readily available to anyone with access to a computer and to the Internet.

The complexity and volume of regulations is undeniable. The FECA itself is found at 5 USC 8100. The FECA provides that the Secretary of the Department of Labor (DOL) may prescribe the rules and regulations necessary for its administration and enforcement. But the FECA has an exception—it requires the Office of Personnel Management (OPM) to issue regulations concerning restoration rights (to full or limited duty) of injured employees. In addition, the FECA provides for creation of the Employees' Compensation Appeals Board (ECAB), with authority to make final decisions on appeals by claimants, and to interpret the FECA, its implementing regulations, and OWCP procedures.

The Department of Labor has written implementing regulations, found at 20 CFR 10. Those regulations provide that the Secretary of Labor has delegated the authority and responsibility for administering the FECA to the Office of Workers' Compensation Programs (OWCP).

The Office of Personnel Management has written implementing regulations regarding restoration rights, found at 5 CFR 353. Those regulations provide that employees may appeal decisions by OPM regarding restoration to the Merit Systems Protection Board (MSPB).

Thus, 5 USC 8100, and its implementing regulations at 20 CFR 10 and 5 CFR 353, form the framework of the regulations and procedures that pertain to claims of on-the-job injuries. But there is a lot more.

DOL has issued the *Federal Procedure Manual (FPM)*, which establishes policies, guidelines and procedures for adjudicating and managing claims under the FECA. OWCP has issued guidance in the form of publications, such as the *CA-550* and *CA-810*. The MSPB has issued decisions that interpret the restoration rights and responsibilities of compensably injured workers and their employers, found at 5 CFR 353. The ECAB has issued decisions that are binding on OWCP and that establish precedent regarding interpretations of the FECA, its implementing regulations, and OWCP procedures in the administration and processing of federal workers' compensation claims.

That is a lot of information. Not that long ago, an injured worker or representative would need to go to a major law library to access it. Today, all of it is available to anyone with a computer.

A good starting point is the *NALC Injury Compensation Manual* and CD. The manual provides a comprehensive review of the basics of OWCP. The CD includes the manual, as well as the FECA, its implementing regulations, OWCP publications, OWCP forms, and relevant USPS manuals and other contract materials. The CD may be purchased from the NALC Supply Department.

For those with Internet access, the information on the CD can be directly downloaded. Go to www.nalc.org. Click on Departments, scroll down to Compensation, and click. Find the icon of the NALC Injury Compensation CD at the bottom left of the page and click. Once successfully downloaded, the downloader's computer will have an indexed, searchable collection of the FECA, its implementing regulations, and many other resources.

The NALC Compensation Department website contains additional resources, including *Postal Record* columns and links to useful OWCP, ECAB and other websites. The main OWCP website can be directly accessed at: www.dol.gov/esa/regs/compliance/owcp/fecacont.htm. This site includes links that provide most of the information discussed above. It lets the reviewer access the FECA, its implementing regulations, OWCP guidance publications, OWCP forms, the *Federal Procedure Manual*, and much more. ECAB decisions can be directly accessed at: www.dol.gov/ecab/decisions.htm. While there is no subject-matter index, review of any ECAB decision can be instructive.

The FECA is designed to protect federal and postal-workers who suffer on-the-job injuries. But its regulations, policies and procedures are complicated and not easily mastered. However, information resources are readily available. Injured letter carriers and their representatives should consider using these resources. The stakes are high. The protections of the FECA are only provided to claimants who follow its regulations and procedures. ✉

Burden of Proof

"I **don't know what OWCP wants. My doctor has** written to them four times!" That was the lament from an injured letter carrier who recently called seeking help with his denied on-the-job injury claim. Those words demonstrate a dangerous misunderstanding of a fundamental OWCP principle: the injured worker bears the burden to prove the essential elements of his or her claim.

The essential elements that the claimant must prove include that 1) the claim was filed in a timely manner; 2) the claimant was federally employed; 3) there was in fact a diagnosed injury or condition; 4) the injury or condition was sustained in the performance of duty; and 5) the injury or condition was causally connected to work factors. These elements, and placement of the burden of proof on the claimant, are found in the implementing regulations of the Federal Employees' Compensation Act (FECA) at 20 CFR 10.115. See also OWCP guidance in publication CA-550 Section C-1 and postal regulations at *ELM* 542.21.

Diagnosis and causal connection can only be established by report of a physician, as that term is defined in the FECA at 5 USC 8101(2)[1]. In other words, regarding diagnosis and causal connection, the injured worker must provide a written report by an attending physician in order to meet his or her burden of proof. The opinion of the injured worker, or the supervisor, or an injury compensation specialist, or any other non-physician, is of little or no significance when it comes to diagnosis and causal connection.

Moreover, OWCP procedures require more than a bare opinion regarding causal connection. OWCP may require that the physician explain in detail why he or she holds that opinion. In OWCP parlance, the opinion must be rationalized. In addition, OWCP may require that the physician demonstrate an accurate knowledge of the medical and factual history of the injury.

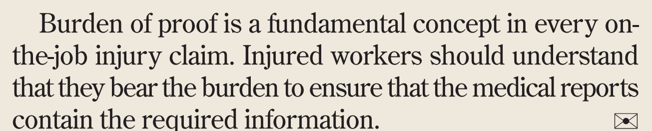
Thus, in order for a claim to be accepted as work-related by OWCP, there must be a medical report by a physician that provides a diagnosis and that offers an opinion, with rationale, that the diagnosed injury or condition was causally connected to work factors. However, the fact that there must be a report by a physician does not shift the burden of proof to the physician. The injured worker retains the burden of proof. The injured worker has the burden to ensure that the attending physician submits the necessary report.

The claimant's burden is not met by measurement of the quantity of reports submitted by the attending physician. The physician could write and submit 104 reports, but if those reports did not include the necessary rationalized opinion regarding causal connection, OWCP would deny the claim.

The injured letter carrier who called saying he didn't know what OWCP wanted after four letters from his doctor, didn't understand that he himself had the burden of proof to demonstrate with a sufficiently rationalized medical report, signed by a physician, that there was a diagnosed condition caused by work factors.

When OWCP finds that a first medical report (or second or any number of later reports) is insufficient to meet the injured worker's burden of proof, the injured worker has the responsibility to review and analyze those medical reports, in light of any correspondence from OWCP, to determine the deficiency, and then communicate the deficiency to the physician. In this respect, whenever OWCP formally denies a claim, or some element of a claim, it is required by its own procedures to explain the basis of the denial. OWCP's procedure manual provides:

> It is very important to provide a correct description of the basis for denial so that the parties of interest will have a clear understanding of the precise defect of the claim and the kind of evidence which would tend to overcome it.



Burden of proof is a fundamental concept in every on-the-job injury claim. Injured workers should understand that they bear the burden to ensure that the medical reports contain the required information. ✉

[1]"physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners with the scope of their practice as defined by state law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist....

Communicating with OWCP

Injured workers and/or their branch representatives often must communicate with the Office of Workers' Compensation Programs (OWCP). This may be necessary during the initial adjudication of a claim, as well as when later issues arise. The injured worker may be asked by OWCP to respond in writing to specific questions, or the worker may need to bring some fact to the attention of OWCP, or seek advice from the Claims Examiner. Whenever a claimant or representative writes to OWCP, certain basic practices should be followed.

First, always place the OWCP file number (if known) in the upper right-hand corner of every page of the correspondence. If documents are included with the letter, place the claim number on each page of them as well. If the injured worker has multiple claims, but the correspondence concerns only one of them, be sure to specify the appropriate claim number to the issue being addressed. If the issue concerns multiple claims, place each claim number on every page. The attending physician should be requested to follow the same practice. Moreover, the injured worker should request copies from the physician of everything that he/she sends to OWCP. The copies should be carefully checked to ensure the appropriate claim number or numbers are clearly indicated.

Placing the correct claim number on every page of correspondence makes it easier for OWCP to route the communication to the correct compensation file, which makes it more likely that the worker will get the intended result.

Second, make correspondence concise, professional and polite. OWCP Claims Examiners have heavy workloads and goals for issuing decisions within certain timeframes. When correspondence is clear and concise, a Claims Examiner is more likely to make a timely, affirmative decision. Conversely, if correspondence is rambling and unclear, decisions will more likely be delayed and denied.

Correspondence should also be polite. Injured workers gain nothing by venting their frustration with the OWCP process in correspondence. The vast majority of Claims Examiners are committed to fairness to injured workers—they simply apply the known facts of a case to the regulations and procedures established by OWCP.

Third, limit each correspondence to a single subject. OWCP personnel are sometimes assigned to handle specific types of issues. When correspondence addresses multiple issues, it might be routed to an employee who handles one of the issues and then filed as resolved, without the other issues being addressed. For example, OWCP might write to an employee requesting information about a claimed recurrence of disability. At the same time, the employee might have an issue regarding non-payment of travel reimbursement. It would be better for the employee to write one letter responding to OWCP's questions and a second letter requesting assistance with the reimbursement.

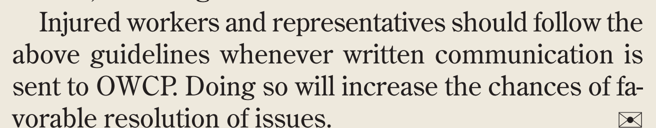
Fourth, make copies prior to sending anything to OWCP and keep them readily available. Documents are sometimes lost in the mail or misplaced by OWCP. Keeping copies offers protection against those eventualities.

Fifth, follow up at reasonable intervals, but do not bombard OWCP with repeated frequent letters. Generally, give OWCP 30 days to respond to a request. If no response is received within 30 days, send a second letter referencing the previous letter. If no response is received to a second letter, contact the NBA for assistance in obtaining a response. The quality of written correspondence, not quantity, will determine whether a claim is accepted or an issue favorably resolved.

Sixth, when responding to a request for information from OWCP, carefully comply with the time limits set by OWCP, and also carefully respond to each question posed. OWCP typically places a 30-day limit for a response to a request for information. Whatever period is given, the beginning is the date on OWCP's letter, not the date received by the employee. The ending is the date OWCP receives the response, not the date the employee authors or mails the response.

Responses to OWCP requests for information must be complete. When OWCP requests answers to multiple questions, to ensure completeness, repeat the questions. Type out the entire first question (indented and italicized), then type the response, followed by the second question, then the second response, and so on until all questions are addressed.

A failure to respond to a request from OWCP, completely and within the stated time limits, can have adverse results, including denial of a claim.



Injured workers and representatives should follow the above guidelines whenever written communication is sent to OWCP. Doing so will increase the chances of favorable resolution of issues.

RON WATSON

Free choice of physician

Employees who suffer and claim on-the-job injuries have the initial right to freely choose their treating physicians. This right is codified in the Federal Employees' Compensation Act (FECA)[1] as well as being echoed in postal regulations.[2] Significantly, it is also found directly in the National Agreement.[3] Thus, employees have a legal and contractual right to this choice. It is a right that is couched in clear language that leaves little room for ambiguity—letter carriers get to choose their treating physicians, not the Postal Service.

Nevertheless, in far too many cases, on-the-job injured carriers end up being treated by physicians chosen by, and often under contract with, the Postal Service. NALC activists may understand the right to free choice of physician, but many carriers, especially under the pressure and anxiety of having just suffered a traumatic injury, do not. While there may be multiple reasons that explain this reality, this column focuses on two of them specifically.

The first involves repeated failures by postal supervisors and managers to inform carriers of their right to choose a physician and should be corrected using the grievance procedure. Many supervisors, upon report of injury, do not advise traumatically injured carriers of their right to free choice of physician. Instead, they simply direct them to report to a contract doctor, or other Postal Service physician, without any mention of the right to choose their own doctor.

Whenever this happens, a grievance investigation should be initiated. The Postal Service has an affirmative obligation to advise injured letter carriers of their right to freely choose a physician. This obligation is found in the implementing regulations of the FECA[4] and in postal regulations.[5] Failures to comply with this obligation should be addressed in the grievance procedure.

Investigating stewards should note that the ELM language cited in footnote 5 requires both the immediate supervisor and the control office/control point to advise the employee.

The second problem is that many letter carriers don't understand the limits of the Postal Service's authority to require them to be seen by a postal contract physician.

One limit is the requirement that the examination be performed promptly following the report of injury. Another limit is that a CA-16 must be issued to the employee's physician of choice. Also, the postal-ordered examination may not interfere with (delay) examination and treatment from the physician of choice. All of the above requirements are found in postal regulations.[6]

The Postal Service authority is also limited in that it may require that an injured carrier submit to examination by a postal-selected physician, but it may *not* require an employee to accept treatment from that physician.

There is a great difference between medical examination and medical treatment. Examination means inspection or investigation, especially as a means of diagnosing disease or disorder. Treatment means the management and care of a patient for the purpose of combating disease or disorder.

For example, visual inspection and x-ray of a sprained ankle constitute examination; prescription of anti-inflammatory medicine and placement of a walking cast on a sprained ankle constitute treatment. Grievances should be initiated in cases where a postal supervisor or manager or contract physician requires that an employee submit to treatment, as opposed to examination.

Branches that enforce—and also educate their members about—the Postal Service's affirmative obligation regarding treating physicians may help breathe life into an important employee right that is guaranteed by the National Agreement, the FECA, and postal regulations.

[1] 5 USC 8103 (a)(3):…the employee may initially select a physician to provide medical services…

[2] ELM 543.3: FECA guarantees the employee the right to an initial choice of physician.

[3] Article 14.3C: The employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs, including employee choice of health services.

[4] 20 CFR 10.300d: The employer should advise the employee of the right to his or her initial choice of physician.

[5] ELM 544.112: In case of a traumatic injury, the supervisor must advise the employee of the following: a. The right to select a physician of choice. **and** ELM 545.21: The control office or control point must advise the employee of the right to an initial choice of physician (see 543.3).

[6] ELM 545.44

National Reassessment pilot

NALC has received reports that the Postal Service may be intending to expand its National Reassessment initiative. Therefore, branch officers and injured letter carriers should consider the history of that initiative and its major contractual and legal constraints.

The roots of the initiative are in the 2002 Postal Service Transformation Plan. That Plan included a goal of reducing the costs of on-the-job injuries. One sub-strategy of that goal called for "private sector outplacement of injured Postal Service employees."

In early March 2004, the Postal Service advised NALC of its then-named Outplacement Pilot beginning in the New York Metro Area. NALC questioned the appropriateness of the name of the program, as the Postal Service has no authority to "outplace" any injured employees, or to otherwise develop work opportunities outside USPS; instead, OWCP retains that authority.

Some letter carriers in New York had their existing limited duty positions withdrawn and grievances were filed. (As those grievances were pending, OWCP provided some of the employees vocational rehabilitation services resulting in employment outside the USPS.) The NALC appealed a representative grievance to the national level, based on assertions that the USPS had made in the grievance files regarding its obligation to make every effort to provide limited duty. Other grievances were held pending that decision.

In mid-2005, the Postal Service expanded the pilot to San Diego and renamed it the National Reassessment initiative. The Postal Service explained the name change was intended to clarify that it is OWCP that determines whether an individual is provided vocational rehabilitation services that could result in employment placement outside USPS.

The national level grievance from New York was settled in November 2005. The settlement is available in the MRS at M-01550. The New York grievances that had been held were then remanded to the local parties to apply the national settlement, and many of the carriers were returned to their previous limited duty jobs with appropriate back pay.

In early 2006, the Postal Service expanded the pilot to Western New York district. In San Diego and Western New York, the Postal Service moved much slower than it had in Metro New York district. Nevertheless, it did eventually withdraw limited duty positions. Grievances have been filed and are pending. In addition, MSPB appeals have been filed by some of the affected carriers. OWCP has begun vocational rehabilitation services in some cases.

The Postal Service may now be intending to expand the program. Affected branch officers and injured workers should review the NALC information previously provided. Compensation Department columns in *The Postal Record* dated August/September, October, November and December 2004, June and November 2005, and May 2006 should be reviewed. (Old columns are available online at www.nalc.org.) In addition, the *NALC Grievance Guide to the Withdrawal of Limited Duty*, and a more recent *Supplement*, should be reviewed. Copies of the *Guide* and *Supplement* are available from the National Business Agents. Finally, keep the following points in mind:

- Postal regulations, primarily at ELM 546.14, require USPS to make every effort to provide limited duty to carriers with compensable injuries.
- 5 CFR 353 requires USPS to make every effort to restore partially recovered compensably injured carriers to limited duty.
- Every violation of the requirements to make every effort to provide limited duty may be grieved.
- Nothing in the National Reassessment Program, the Transformation Plan, or any other postal initiative, in any way diminishes or overrides the Postal Service obligation to make every effort to provide limited duty.
- OWCP has exclusive authority to decide whether to attempt outplacement efforts with an individual. OWCP only does so when the employing agency claims limited duty is not available.
- Nothing that OWCP does, including providing vocational rehabilitation and outplacement efforts, diminishes or overrides the Postal Service contractual and legal obligation to make every effort to provide limited duty.
- The Postal Service obligation to make every effort to provide limited duty does not end when and if OWCP successfully outplaces a carrier.
- The Postal Service has agreed in M-01550 that it must make every effort to provide limited duty even if an individual cannot perform all of the duties of a letter carrier, even if the available work is less than eight hours per day or 40 hours per week, and even if the work restrictions are permanent.
- All compensably injured carriers (veterans or not) may appeal a failure to restore to limited duty to the Merit Systems Protection Board. If so, they should consider seeking the assistance of a knowledgeable attorney.

Retrospective

This constitutes my last opportunity to communicate directly with the members of the NALC about OWCP, as I retire at the end of the year. I thought at great length about what I wanted to discuss in this final column. I decided to depart from the normal course—technical subject review—and provide a more philosophical perspective.

It's true that the federal workers' compensation system is complex and not easily mastered. However, that complexity is vastly outweighed by the potential benefits that flow from such mastery. Many NALC branches and individual activists recognize the potential benefits and devote the necessary resources in time, money and energy to develop expertise. Others may reason that the law (the Federal Employees' Compensation Act) provides certain benefits to injured workers, and question why they should have to devote resources to ensure that legally entitled benefits are granted.

I believe there is a compelling answer to that concern. The answer necessitates an examination of a fundamental difference in perspective between the USPS and NALC. That fundamental difference manifests throughout the entire range of issues that confront the parties, including compensably injured worker issues.

Here's the difference: USPS seeks to minimize the dollar costs to the agency of on-the-job injuries; NALC seeks to minimize the human costs to the injured workers. USPS looks no further than its ledgers and spreadsheets. As long as those numbers trend towards its goals, USPS will decline to examine the methods it employs to achieve its results. Lamentably, those methods appear to include measures that intimidate letter carriers into not filing OWCP claims.

Consider recent activity: In some jurisdictions, literally every absent injured carrier is surreptitiously videotaped; improper coercion by OIG agents to withdraw claims is applied; long-term limited duty jobs are withdrawn, including where the job consists of casing and delivering mail; injured workers are escorted off the workroom floor, as if they were guilty of wrongdoing; and unreasonable disciplinary charges of misrepresentation of medical condition are leveled against employees. Unfortunately, these activities may intimidate many employees from filing future OWCP claims. From a USPS perspective, a reduction in the number of claimed on-the-job injuries is as good as a reduction in the number of on-the-job injuries: both equally affect its dollar-cost bottom line.

The NALC also seeks to reduce the costs of on-the-job injuries, but its perspective is broader and recognizes the injustice of simply transferring those costs away from the USPS and onto the injured workers, their families and their health insurance carriers.

Focus on that difference in perspective and the answer to the question of why branches and activists should develop OWCP expertise becomes clear. If we don't, injured NALC members and their families will suffer and benefits guaranteed by the FECA will go unrealized. But that won't be the end of it. If USPS succeeds in evading its legal and contractual obligations to compensably injured carriers, others cannot be far behind. Handicapped employees protected by the Rehabilitation Act? Veterans with disabilities? Older carriers? Light duty employees? Employees protected by FMLA or SLDC provisions? Where does it end?

Branches and activists should devote the resources necessary to develop OWCP expertise. They should take every opportunity to hold managers accountable through the grievance procedure, and require them to comply with USPS legal and contractual obligations regarding on-the-job injuries. There should be zero tolerance for USPS violations that cause claim denials or other claim problems. Branches should consider appointing or electing branch injured worker specialists. Activists should develop expertise in the OWCP system.

I leave this job honored and humbled by the opportunity to have served the membership in such a significant position, proud to have been a letter carrier and NALC activist, and confident about the strength and direction of the NALC. In my opinion, President Young has selected exactly the right person as his next assistant for compensation. I have worked closely with Linda Temple for the last year and have seen firsthand that she brings the requisite knowledge, strengths and skills to this job. ✉