Overpayments—Part 1

Any enterprise run by human beings comes with the inevitable human error. The Office of Workers' Compensation Programs (OWCP) is no different. Errors may be made in calculating pay rates or dates of eligibility for wage loss compensation. Or OWCP might forget to stop payment of benefits after a schedule award expires.

It's also possible that an overpayment could occur because of the injured worker's fault. For instance, the employee could fail to notify OWCP of their return to work—thus receiving continued wage loss compensation while also receiving wages from the Postal Service. An injured worker might also fail to notify OWCP of a change in the status of their dependents—thus causing them to receive wage loss compensation at the three-quarters rate instead of the two-thirds rate.

Even if the injured worker timely notifies OWCP of the above, it's still possible that benefits will continue to be paid incorrectly—just because of simple human error. As a result, and to the horror of the injured worker, they may end up on the receiving end of a notice that an overpayment of benefits has been made and that repayment is expected.

Recovery of overpayments is authorized by the Federal Employees' Compensation Act (FECA) under 5 U.S.C. 8129, which states:

> When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.

This article explains the collection process for overpayments—established by the Department of Labor under authority from FECA. Once OWCP discovers that an overpayment has been made, that agency will make a determination of whether the injured worker was with or without fault in the overpayment. This is an important stage in the process because OWCP will refuse to consider a waiver of repayment in cases where the employee is not without fault.

Determination of fault—To be considered without fault, the employee cannot have made an incorrect statement to OWCP, which they knew or should have known was incorrect. The same would be true of a failure to provide information to OWCP that the employee knew or should have known was material. But the most common situation is where the injured worker accepted payment of benefits that they either knew or should have known was incorrect—based on what a reasonable person would be expected to know.

Unless there is evidence that an injured worker had actual knowledge that an overpayment occurred, the following are some examples of situations that should always be considered without fault: 1) an OWCP error in calculating COLA increases; 2) calculation of the length of or the percentage of a schedule award; and 3) an under-deduction of premiums for health benefits or life insurance. An injured worker could also be considered without fault if they acted (or failed to act) based on some misinformation from either OWCP or the Postal Service. However, the employee must be able to prove this occurred with documentary evidence. Not only that, but there also can't be any evidence that, despite the misinformation, they actually knew the proper procedures.

Preliminary notice of overpayment—After OWCP determines whether the injured worker was without fault, it will send a preliminary notice of overpayment. If the injured worker is deemed without fault, OWCP will send a Form CA-2202 explaining the overpayment and informing them of the right to dispute the existence of an overpayment or its amount. It will also inform the injured worker of the right to request a waiver of repayment.

On the other hand, if OWCP finds that the injured worker was not without fault, it will send a Form CA-2201, which provides the added information of OWCP's explanation of why it considers the injured worker to be at fault. With a CA-2201, an injured worker may dispute OWCP's determination of "with fault," along with the fact of overpayment or its amount. They may also request a waiver of repayment as well.

Regardless of whether OWCP sends a CA-2201 or CA-2202, the notice will advise the injured worker that they have 30 days to submit written evidence or arguments in support of their position regarding the alleged overpayment. The notice also informs the employee of the right to request a pre-recoupment hearing. This will be discussed further in the next Compensation Department article.

Overpayments—Part 2

The January article from the Compensation Department discussed the early stages after OWCP discovers that it has overpaid compensation benefits. This article will explore what happens after the employee has received a CA-2201 or CA-2202 providing preliminary notification of the existence of the overpayment.

We saw in the last article that OWCP provides for a 30-day period in both the CA-2201 and CA-2202. Recoupment will not begin until either the end of that 30-day period or after the pre-recoupment hearing. Only then will OWCP issue a final decision regarding overpayment, and only then will collection action begin.

No hearing requested—If the injured worker does not request a pre-recoupment hearing in response to the CA-2201 or CA-2202, he or she may still submit new evidence or argument advancing his or her position with regard to the overpayment—whether it exists at all, its amount, or whether there was fault (if that is an issue). The injured worker may also submit his or her financial information for the purpose of requesting a waiver of recovery. A senior claims examiner will review the new information and make a final determination on the fault and waiver issues.

Pre-recoupment hearing requested—If the injured worker requests a pre-recoupment hearing, it will not be conducted by OWCP's District Office. Rather, such hearings are the responsibility of the Branch of Hearings and Review in Washington. Regardless of whether a hearing is requested and takes place or not, the issues to be considered are still the same—whether an overpayment exists, its amount, fault and waiver.

Waiver of recovery—Even if an injured worker is able to establish that they are without fault in the overpayment, a waiver of recovery is anything but guaranteed. Establishing that they are without fault is only the first hurdle in receiving a waiver. The second hurdle the injured worker has is establishing a right to a waiver in accordance with the Federal Employees' Compensation Act (FECA) at 5 U.S.C. 8129(b):

> Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

It is the injured worker's burden to prove that recovery "would defeat the purpose" of FECA, which was established, in part, to provide sustenance following an on-the-job injury. The question here is whether the employee has enough income or financial resources to cover more than just ordinary or necessary living expenses.

To be "against equity and good conscience," an employee would have to prove that they would suffer severe financial hardship if forced to make repayments. Or the injured worker would have to show that they relinquished a valuable right or changed their position for the worse after unwittingly relying upon the overpayment of compensation.

An example of changing a position for the worse would be an employee who resigned his job and withdrew his CSRS retirement contributions based on an entitlement to OWCP wage loss benefits. Years later, OWCP discovers the payment of wage loss benefits was in error. But, by then, the employee was unable to get his old job back and was unable to get other work. OWCP has determined that this type of situation is one in which recovery of an overpayment would be "against equity and good conscience." Note that in such cases, this employee's ability to repay is never even considered because the relinquishment of his valuable right is itself grounds for a waiver.

However, OWCP provides another example that *does not* qualify for changing a position for the worse. A claimant used her entire schedule award as a down payment to buy a house. Later, OWCP determined that the claimant was not entitled to a schedule award after all and considered the entire award to be an overpayment. According to OWCP, in this example, the claimant has not relinquished a valuable right or changed her position for the worse. She did not suffer a loss. All she did was convert her schedule award into a down payment. She still retains that asset and did not lose it.

Finally, remember that arguments that collection of a debt to OWCP would be against the principles of equity and good conscience are only relevant if the employee has been found to be without fault. Such arguments are completely irrelevant if OWCP determines that the employee had some degree of fault in the matter.

Overpayments—Part 3

This is the final article on the subject of overpayments. The January Compensation article covered the notification process for overpayments. March's article addressed pre-recoupment hearings and requests for waiver of recovery. This article will cover the collection process and appeal rights.

Appeal rights for the overpayment issue—The prior articles established that collection will not occur until the expiration of the 30-day period provided for in the CA-2201/2202 or after the pre-recoupment hearing. Only then will OWCP issue a final decision, which is the beginning of the collection process. The appeal rights in OWCP's final decision regarding overpayments are unlike the appeal rights in other OWCP decisions. For final decisions regarding overpayments, the injured worker's only avenue of appeal is to the Employees' Compensation Appeals Board (ECAB). There is no opportunity to appeal to Hearings and Review or to request Reconsideration. It is also important to realize that the process for requiring repayment will not be delayed in any way while the ECAB appeal is taking place. Payment from the employee is required even though the appeal is still pending.

Appeal rights for entitlement issues—That is not to say that the injured worker would not be entitled to full appeal rights with some other final decision—even one that is somehow associated with the overpayment. For a clear understanding of this concept, here's an example: From 2000 to 2007, OWCP paid an injured worker wage loss compensation at a certain rate of pay. In 2007, OWCP determined that it had been paying at too high a rate for the past eight years. At the time that OWCP discovers the overpayment and issues the CA-2201 or CA-2202, it should also issue a formal decision regarding the injured worker's recalculated entitlement to benefits. Such a decision on entitlements would be accompanied with full appeal rights (Hearings and Review, Reconsideration, ECAB). However, the issue of the overpayment is a completely separate issue—even though it was the alleged miscalculation of the pay rate that caused the overpayment. Regardless of that, the overpayment issue still gets its own final decision—with appeal rights limited to ECAB.

Collection process—If OWCP's final decision is to deny a waiver of recovery, it will undertake the collection process in the following order of priority. First, it will seek to recover the entire amount of overpayment from any accrued or accumulated unpaid OWCP benefits. If that is not possible, it will seek a voluntary prompt repayment from the injured worker in a lump sum. The next choice will be to allow the employee to make installment payments through deductions from periodic OWCP payments.

The fourth choice is to allow voluntary installment payments to be made from retirement benefits. If that does not happen, OWCP will try to obtain an involuntary offset of retirement benefits or retirement contributions. Failing all of these, OWCP will accept voluntary installment payments made directly by the injured worker. There are further avenues that OWCP could pursue—referral to the Department of the Treasury for collection or referral to the Department of Justice for possible litigation, in both cases only if the debt meets certain criteria.

Of course, OWCP would prefer to be repaid the entire amount of the overpayment as quickly as possible. However, it is often impossible for the injured worker to repay a large debt that came from an overpayment that occurred over a long period of time. Where repayment in a large lump sum is not feasible for these reasons, OWCP will examine an individual's income and assets for their ordinary and necessary living expenses. If the debt is to be repaid through installments, OWCP will expect the highest reasonable rate of repayment that will repay the debt as quickly as possible while minimizing the hardship on the claimant. That is not to say it would eliminate the hardship on the claimant—just that it would minimize it.

The source of overpayments could be anything from a schedule award paid at the incorrect amount or continuing after it expires. There may be a failure on OWCP's part to deduct the correct amount for premiums for life insurance or health benefits. It may even happen that OWCP continues paying an employee wage loss compensation long after they return to work—even when the employee has timely notified OWCP about his or her work status. Human error is always a possibility with the processing of OWCP benefits. Injured workers should understand what is entailed with overpayments so that they will be able to navigate their way through the notification and appeal processes if it ever happens to them. ✉

Consequential and intervening injuries

A renewed inability to work, after initially returning to employment following an on-the-job injury, is not automatically compensable. OWCP will not assume that any subsequent incapacity is the result of the original injury. To be compensable, the injured worker must establish that there is a "recurrence of disability"—as opposed to some other intervening cause for the work stoppage.

Recurrence of disability—The OWCP Form CA-2a, Notice of Recurrence, allows for three different causes of a work stoppage. The first is a spontaneous return of the symptoms of the previous injury or occupational illness without an intervening cause. A second is management's withdrawal of limited duty (for reasons other than misconduct or non-performance of job duties). Both of these cases are compensable.

Consequential injury—The third basis for a compensable recurrence of disability is a consequential injury, a weakness or impairment that was caused by the work-related injury. An employee who ends up overusing (and injuring) his or her left shoulder following an accepted claim for a right shoulder injury is certainly one example of a consequential injury. But consequential injuries are not limited to simply over-reliance or overuse of other parts of the body following an on-the-job injury. A consequential injury may originate in many ways:

- **An employee suffers new injuries because of an accident** while traveling to a doctor's office for treatment for the original compensable injury (assuming the specific treatment was authorized by OWCP).
- **The medical treatment provided to the employee for the** original compensable injury causes a new injury or illness. For example, the employee may suffer ill effects from antibiotics, anesthesia or exploratory surgery.
- **An injured worker prescribed physical therapy or a** strengthening program as a result of his or her on-the-job injury suffers a new injury or illness while undergoing that authorized therapy.
- **The part of the body that was originally injured may have** been weakened, causing the injured worker to fall again at a later date. Compensability does not depend upon the same body part being re-injured. An injured worker with a weak knee may injure his or her back in the second fall and this would still be compensable.

These situations are compensable despite the fact that they have occurred "off the job" in the traditional sense. There is a basic rule that a subsequent injury is compensable if it is the direct result of the original compensable injury. When that original injury has been shown to have arisen from the course of employment, every natural consequence that flows from that injury is also deemed to have arisen out of the course of employment.

Intervening injury—An injury that occurs outside the performance of duty to the same part of the body that was originally injured is called an intervening injury. If an injured worker files a claim after the second injury occurs, OWCP must determine whether inability to work is due to the second injury alone, or whether the effects of the first injury still contribute to the disability. Unless the second injury breaks the chain of causation between the original injury and the disability claimed, the disability will be considered related to the original incident.

Burden of proof—The employee's mere assertion to OWCP that the second injury is consequential instead of intervening does not make it so. To establish burden of proof, the employee should fill out Part A of OWCP Form CA-2a and also attach a separate statement that fully explains the details of the second injury and the reasons it is related to the original compensable injury.

Of course, medical evidence is also a requirement. The employee should submit a medical report for the second injury that includes a medical opinion on the causal relationship between the two injuries. The importance of medical rationalization regarding causal relationship in such a report cannot be overstated. It is not enough for a physician to merely state that there is a causal relationship; OWCP will require the physician's reasoning.

In some cases, the reasoning may be obvious—such as a disabling vehicle accident while traveling to an OWCP-authorized medical appointment. In other cases, the connection may be less obvious, such as a claim for the overuse of a left arm after a compensable injury to the right arm. Here, excellent medical rationalization will be vital for meeting the employee's burden of proof. ✉

The right to use paid leave

In December 2006, the Federal Employees' Compensation Act (FECA) was amended with regard to the three-day waiting period. Since that time, injured workers or their representatives may have been frustrated in their efforts to obtain copies of the amended law or its implementing regulations because of the infrequency in which the U.S. Code or the Code of Federal Regulations are updated or published.

So, for the past two years, injured postal workers and their representatives have had great difficulty in obtaining written confirmation of the right to take annual leave or sick leave (as opposed to LWOP) prior to eligibility for wage loss compensation. In March 2007, OWCP verbally informed NALC that injured postal workers, to be eligible for compensation, were no longer limited to using LWOP.[1] However, there was nothing "in writing" that NALC Headquarters could supply to the field that firmly established that—until now. In April 2008, the deputy director of the OWCP Division of Federal Employees Compensation wrote to NALC, stating:

> Based on this amendment to the FECA, a U.S.P.S employee may use annual leave, sick leave, or leave without pay during the statutory three-day waiting period prior to accruing the right to compensation for temporary disability lasting less than fourteen days. (M-1681)

The remainder of this article will explain the significance of OWCP's letter by looking at how the three-day wait has been applied in the past versus the present.

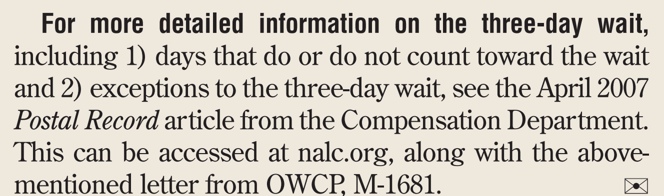
As it stands now, before an injured postal employee is entitled to either continuation of pay (COP) or OWCP wage loss compensation, they must serve a three-day waiting period[2]. A three-day waiting period for wage loss compensation has existed ever since Congress first enacted the FECA in 1916. The same cannot be said for the three-day wait prior to COP eligibility, which is a recent change, effective December 2006.

Although FECA has been amended several times since 1916, one thing has been constant from the beginning. That's the fact that federal employees had no choice in the type of leave they could take during the three-day period prior to eligibility for wage loss compensation. They were required to take *unpaid leave*—leave without pay (LWOP).

Then, in 1974, Congress made major changes to FECA. At that time, there was a backlog in the processing of OWCP claims, causing delays before injured workers actually started receiving compensation benefits. To resolve that problem, Congress amended FECA to provide for 45 days of COP following a traumatic on-the-job injury. The intent was to give OWCP time to process a claim without having the employee suffer a loss of pay. This amendment also effectively moved the three-day wait to the end of the COP period for traumatic injuries because it only applied to wage loss compensation, not to COP.[3]

For the next three decades, the three-day wait was effectively unchanged—until Congress amended it on December 20, 2006, through the Postal Accountability and Enhancement Act (PAEA). This act provided that postal employees, under FECA, would be treated differently than other federal employees. Congress decided, for postal employees only, to put the three-day wait "on the move" again—this time to the *front* of the COP period.

In addition, for postal employees only, Congress provided that the injured worker may use annual leave, sick leave or leave without pay during the three-day period. No longer would a postal employee be required to suffer a loss of pay while waiting to qualify for wage loss compensation. While the three-day wait for all other federal employees continues to be delayed until the end of the COP period, these same non-postal employees continue to be limited to LWOP only. Postal employees have no such restriction and are free to choose paid sick or annual leave, if they so desire.



For more detailed information on the three-day wait, including 1) days that do or do not count toward the wait and 2) exceptions to the three-day wait, see the April 2007 *Postal Record* article from the Compensation Department. This can be accessed at nalc.org, along with the above-mentioned letter from OWCP, M-1681.

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1. See April 2007 *Postal Record* article from the Compensation Department.
2. The reader should not confuse COP with OWCP compensation benefits. COP is the continuation of regular salary, subject to federal and state taxes, paid by the Postal Service. Wage loss compensation is paid by OWCP from the Employees' Compensation Fund.
3. Occupational injuries are excluded from COP. Thus, the three-day wait that applied to occupational injuries did not "move" anywhere.

Finding a physician

As if being injured on the job were not bad enough on its own, along comes another challenge—finding a health care provider who is willing to provide treatment to patients under the federal workers' compensation system. An injured employee may face the problem immediately after the injury, once they discover that the family physician refuses to handle OWCP cases. But it can also occur long after the initial injury. Some health care providers make the decision, for whatever reason, to suddenly stop providing treatment under OWCP—even though they've been working with federal comp cases for years.

Until recently, injured workers often felt that they were left on their own to solve the problem of finding a health care provider. Some would turn to the phone book and begin dialing up physicians' offices. Others would ask their branch representatives if anyone was aware of physicians who took OWCP cases. Either way, there was no guarantee that it would be an easy task to find a health care provider for an on-the-job injury.

I say "until recently" because there's now a new feature called "Provider Search" on the website for OWCP's medical authorizations and bill processing. By using the "Provider Search" feature, an injured worker can easily obtain a list of health care providers who take OWCP cases. The list provides the name, address and phone number of the health care provider. It also identifies the health care provider's specialty, if applicable. Here are instructions on how to find this website:

1. Go to nalc.org
2. Under "Departments," choose "Compensation."
3. On the left-hand side, click on "Bill-Pay Portal."
4. On the bottom-left, click on "Provider Search."
5. After clicking "Accept" for the disclaimer, choose "FECA" (under "Select a Program")

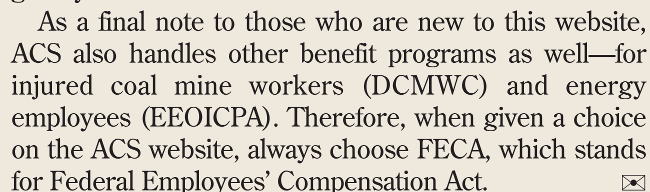
Once on the "Provider Search" page, the injured worker will have the ability to select the criteria for the search. For instance, the employee can look for all physicians who take OWCP cases in a certain city. Or the search can be done by zip code, by state, by physician specialty—or by any combination of the above.

This new feature should make at least one part of the injured worker's life less burdensome. It is important to realize one thing, however. Just because a health care provider's name or practice is not on this list, one cannot automatically assume that they refuse OWCP cases. The "Provider Search" page merely lists the names of health care providers who have enrolled with ACS in London, Kentucky (OWCP's agent for the processing of medical bills). OWCP will only process bills for those health care providers who have enrolled with ACS.

Thus, a health care provider who is not listed in the "Provider Search" is not necessarily refusing to take OWCP cases. Rather, it may be that the health care provider has simply never had occasion to enroll with ACS up to this point. Physicians who are currently non-enrolled and who want to begin providing treatment under OWCP can easily enroll online on this same ACS website.

In any case, the fact that injured workers now have a resource for finding health care providers who *have* enrolled with ACS is a positive thing. Also, ACS updates the physician listings on a weekly basis. So, employees should be assured of receiving the latest information.

For injured workers who have never been to the ACS web-site, there are also other features worth exploring while there. Once arriving at the ACS home page, an injured worker can find the status of their requests for medical authorizations. An employee can find out the specific reason that a certain medical bill was not paid. The ACS home page provides access to forms for claimants' medical reimbursement or medical travel refund requests. It also provides blank forms for requesting medical authorization for medical/surgical procedures, physical therapy, or durable medical equipment. An injured worker can verify the specific medical condition(s) for which there is eligibility for OWCP benefits.



As a final note to those who are new to this website, ACS also handles other benefit programs as well—for injured coal mine workers (DCMWC) and energy employees (EEOICPA). Therefore, when given a choice on the ACS website, always choose FECA, which stands for Federal Employees' Compensation Act.

Burden of proof

Many NALC representatives have heard variations of the following words from injured letter carriers with OWCP denial letters in hand: "*My doctor sent them all the paperwork he has. Three times! I don't understand what OWCP wants.*" It's an all-too-common refrain that demonstrates a lack of understanding of a fundamental principle of OWCP.

That principle provides that the burden is on the injured worker to prove all elements of a claim. 20 CFR 10.115 appears under the heading "Evidence and Burden of Proof." This regulation explicitly provides that every injured employee who files a claim with OWCP has the burden to prove the necessary elements of the claim. Those elements include 1) fact of injury, 2) the injury occurred while the employee was in the performance of duty, and 3) the medical condition is causally related to the claimed injury, as well as other elements.

Proof of fact of injury necessarily includes a diagnosis. Only a physician* is competent to make a diagnosis. Proof that the diagnosed condition is causally related to the workplace injury necessitates a written opinion of the causal relationship, with supporting rationale. Only a physician is competent to author such a written opinion.

While it may be a rare occurrence when a physician fails to make a diagnosis, the unkind reality is that, too often, physicians don't know about OWCP requirements for a written, rationalized opinion on causation, or don't want to be bothered with it.

Those same physicians might generate reams of reports regarding a specific injury, in accordance with their own office procedures, state regulations, insurance company requirements, etc. However, the volume of medical reports in a particular claim is of no significance to OWCP's decision to accept or deny that claim. Instead, the quality and responsiveness of the medical reports to OWCP requirements determine the outcome.

An injured letter carrier who does not understand that they bear the burden of proof will sometimes have the attending physician resend the same medical reports to OWCP when OWCP requests additional information or makes an adverse decision. But that is a losing proposition, because repeatedly sending the same insufficient medical reports will never convince OWCP to accept a claim.

A solution to this recurring problem requires an understanding of where the burden of proof lies, in the first instance. But it also requires a detailed knowledge of OWCP requirements, an ability to read and analyze existing medical reports to determine if they meet those requirements and, finally, communication skills sufficient to inform and motivate the physician—inform them of any defects in the medical reports and motivate them to write an additional report that addresses OWCP's requirements.

"The unkind reality is that, too often, physicians don't know about OWCP requirements."

It is not realistic to expect every injured NALC member to have the knowledge and skills described above. That's why it's a good idea for branches to designate and train at least one specialist to assist injured branch members.

To summarize: Some of the elements that are necessary to establish a claim with OWCP can only be met with medical evidence, signed by a physician. However, that fact does not shift the burden of proof to the physician. The injured worker bears the burden to prove all elements of a claim, including the required medical reports. This is a fundamental OWCP principle that is often not understood by injured workers, and that too often results in denied claims. One solution is for branches to develop OWCP expertise through specialization. ✉

* For purposes of OWCP claims, "physician" is defined at 5 USC 8101.2: "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within 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….

The contract intersects OWCP

OWCP decisions cannot be grieved by NALC shop stewards. This is a generally known legal principle that is free from doubt or dispute. There are good reasons for it. First, the law provides that OWCP has the exclusive authority to administer the Federal Employees' Compensation Act (FECA).* Labor arbitrators are thus excluded by law from rendering awards that attempt to overrule OWCP decisions. Second, our contract is an agreement by and between NALC and USPS. We have grievance-arbitration rights only regarding issues that arise between the two parties to that contract. Third, OWCP has its own appeals system that provides due process rights to challenge OWCP decisions that employees believe are in error. That appeals system includes appeals to Reconsideration, Branch of Hearings and Review, and the Employees' Compensation Appeals Board.

While shop stewards may not grieve OWCP decisions, there is a point where OWCP regulations intersect with our National Agreement, and grievances should be filed. OWCP regulations require federal employers (including USPS) to take certain actions, refrain from others, and meet certain time limits, whenever an employee files an OWCP claim. When the Postal Service fails to comply with OWCP regulations in a letter carrier's OWCP claim, NALC shop stewards have a right (indeed, a responsibility) to grieve the USPS' failure.

There are scores of OWCP provisions that regulate employers. The Postal Service restates many (but not all) of those provisions in the *ELM* at Section 540 and in the *EL* 505. Thus, for instance, an implementing regulation of the FECA (20 CFR 10.7) requires employers to "maintain an adequate supply of basic OWCP forms for the reporting of injuries." The USPS mirrors this requirement in its own manual, the *ELM*, at Section 541.3, which requires each installation head to "maintain an adequate supply of basic OWCP forms which are needed for reporting injuries."

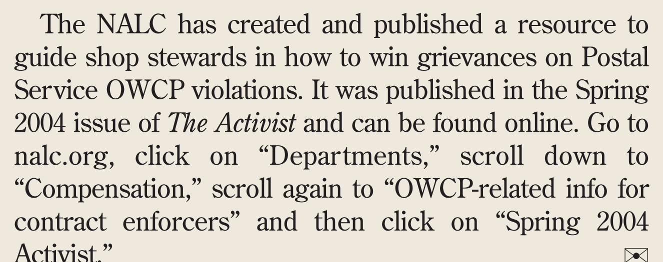
The Postal Service does not dispute the right of shop stewards to grieve when management violates OWCP regulations. *The Joint Contract Administration Manual* (*JCAM*) at Section 15.1, third bullet point, defines grievances broadly, including disputes concerning compliance with the provisions of *ELM* Section 540 and other regulations concerning OWCP claims.

Shop stewards should monitor local management regarding OWCP obligations and vigorously enforce compliance through the grievance procedure. Doing so is important because too many letter carriers have serious problems with OWCP claims that can be traced directly to Postal Service failures to comply with OWCP requirements. Those problems include, for instance, delays in payment of wage-loss compensation, non-payment of medical bills and even claim denials.

For instance, there was a case where local management failed to maintain any supply of Form CA 16 (a basic OWCP form listed in both 20 CFR 10.7 and *ELM* 541.3). A letter carrier was involved in a vehicle accident on his route and was taken directly from the accident to an emergency room. Management never issued a Form CA-16. OWCP denied the ensuing claim on the basis of no diagnosis, ruling that the ER doctor found there was no injury. If a CA-16 had been issued, OWCP would have been required to pay the ER bill even though the claim was denied. As a result of the failure of the local post office to provide a Form CA-16, this letter carrier was still receiving bills for the ER visit more than a year later.

There is literally no limit to the number of problems that can be created for injured workers when the Postal Service does not comply with its own OWCP requirements.

Readers of last month's Compensation Department article will recall that it discussed the burden of proof that each injured worker bears in proving all elements of a claim. That same concept of burden of proof is relevant to this article because the worker bears the same burden, whether the Postal Service makes errors or not. Moreover, proof that the Postal Service violated some OWCP regulation will not generally help the worker meet the burden to prove the necessary elements of their claim. That's why it is imperative that shop stewards put a stop to management OWCP violations, through the grievance procedure as necessary.



The NALC has created and published a resource to guide shop stewards in how to win grievances on Postal Service OWCP violations. It was published in the Spring 2004 issue of *The Activist* and can be found online. Go to nalc.org, click on "Departments," scroll down to "Compensation," scroll again to "OWCP-related info for contract enforcers" and then click on "Spring 2004 Activist."

* See 20 CFR 10.1.