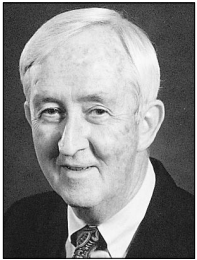




Injury compensation made simple



Bert Doyle

Note: This article updates and replaces an article in the July 1990 issue—the title is an oxymoron (a combination of contradictory terms).

Injury compensation is a very complex subject—note the following aspects of the Federal Employees' Compensation Act as administered by the Office of Workers' Compensation Programs:

■ **Burden of proof**—The claimant, and not OWCP, has the burden of proving entitlement to benefits.

■ **Eligibility criteria**—In determining entitlement OWCP must consider five basic issues:

Coverage: Whether the claimant is an employee within the meaning of the FECA.

Timely filing: Whether the claimant met all applicable time limitations.

Personal injury: Whether a personal injury actually occurred. The term injury includes all diseases proximately caused by the employment.

Performance of duty: Whether a personal injury occurred in the performance of duty.

Causal relationship: Whether the disability claimed is causally related to a personal injury sustained in the performance of duty—or to conditions of employment. The term "causal relationship" includes direct cause as well as aggravation, acceleration (hastening) and/or precipitation.

■ **Choice of physician**—The claimant has a right to initial free choice of treating physician, but must take steps to exercise that right. Restrictions apply—including limitations on the services of chiropractors.

■ **Choice of benefits**—The claimant must elect continuation-of-pay (COP) or sick/annual leave in traumatic injury cases; or compensation or leave in occupational disease cases. COP is payable for up to 45 calendar days with eligibility for compensation afterward.

■ **Waiting period**—There is a three-day waiting period (with-out pay) before compensation begins. The waiting period is waived if disability extends beyond 14 days.

■ **Medical evidence**—COP and/or compensation is payable only when supported by medical evidence that definitely shows that the disability is causally related to the injury or conditions of employment. Medical evidence must also contain

medical rationale (medical reasoning) in all but the most obvious situations.

■ **Types of disability**—Disability can be temporary total (no work at all); temporary partial (work is possible within medical limitations); permanent total; or permanent partial (the claimant has an earning capacity although unemployable in the job held at time of injury).

■ **Compensation for wage loss**—Usually payable at 66 percent of pay on date of injury. Increased to 75 percent if employee has one or more dependents.

■ **Schedule awards**—Payable when maximum healing is reached and the medical evidence shows permanent total or partial loss of use of specified anatomical members, organs, or functions of the body. Not payable concurrently with compensation for wage loss.

■ **Controversion**—The employing agency can controvert COP (and not pay in some instances) and/or submit factual and medical evidence to refute an employee's claim for compensation.

■ **Limited duty**—The employing agency can authorize fitness-for-duty examinations and can offer work to those not totally disabled. Failure to accept work suitable to medical restrictions can result in loss of COP or compensation.

■ **Earning capacity determinations**—Compensation can be reduced by OWCP on the basis of a partially disabled employee's ability to earn wages (usually when the employee does not return to the employing agency and after any schedule award is paid).

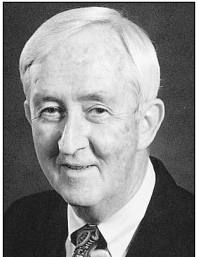
■ **Dual benefits**—Compensation is not payable concurrently with benefits from the Office of Personnel Management, except for a schedule award; or with certain Department of Veterans' Affairs benefits. Social Security benefits may also be affected.

■ **Appellate rights**—There are provisions for hearings, reconsideration, and appeals in disallowed cases—all with time limits, restrictions and special requirements.

■ **Miscellaneous**—Special provisions apply for recurrences; injuries caused by third parties; leave buy-back; vocational rehabilitation; overpayments; attendants allowances; relocation expenses; representation of claimants; penalties for false statements; death benefits; and more.

Information on these and other aspects of the FECA will continue to appear in NALC Compensation Department articles. ☒

New FECA regulations



Bert Doyle

The Office of Workers' Compensation Programs has published new regulations for the administration of the Federal Employees' Compensation Act that became effective January 4, 1999.¹

The new regulations, the first since a fairly thorough overhaul in 1987, are very extensive—with the style changing to that of more readable (and understandable) questions and answers.

Some of the more significant changes are:²

- **10.7 (a)** The employing agency is prohibited from modifying OWCP forms or using substitute forms.
- **10.110** The employing agency must give an employee a copy of both sides of Form CA-1 (notice of injury) or Form CA-2 (notice of occupational disease) in addition to the Receipt of Notice that accompanies these forms.
- **10.205 (a) (3)** The time frame for an employee to begin using COP (continuation of pay) following an injury, or using any remaining COP days after disability recurs following the employee's first return to work, has been reduced to 45 days (formerly 90 days).
- **10.207 (c)** The time frame for an employee's submission of medical evidence to the employing agency supporting disability for work has been reduced to 10 calendar days (formerly 10 work days).
- **10.210 (b)** The time frame for an employee's submission of medical evidence to the employing agency supporting disability for work has been reduced to 10 calendar days (formerly 10 work days).
- **10.300 (b)** The employing agency is not required to issue a Form CA-16 (authorization for medical care) more than one week after the occurrence of a claimed injury. Note: As in the former regulations, the new regulations also at 10.300 (b) require the employing agency to issue Form CA-16 within four hours of a claimed injury.
- **10.300 (d)** The employing agency must advise an injured employee of the right to his or her initial choice of physician. Note: As in the former regulations, the new regulations at 10.211 (b) require the employing agency to advise an employee of the right to elect COP.
- **10.500 (b)** In determining what constitutes "suitable work" (in the return to work following an injury) OWCP now specifically includes "whether the work is available within the employee's demonstrated commuting area."

- **10.506** The employing agency may contact an employee's physician in writing concerning the employee's work limitations and possible job assignments but is prohibited from contacting an attending physician "by telephone or through personal visit."
The employing agency may also contact the employee "at reasonable intervals to request periodic medical reports addressing his or her ability to return to work."
- **10.508** An employee terminated from the employing agency's employment rolls who has relocated will be notified that relocation expenses are payable if OWCP makes a finding that a job offer is suitable.
- **10.518** Registered nurses working under OWCP direction are included in the definition of vocational rehabilitation services; and OWCP may apply sanctions if an employee refuses to cooperate with an OWCP-assigned nurse—as described in the new regulations at 10.519.
- **10.615** OWCP hearing representatives may now conduct an oral hearing by telephone or teleconference.
- **10.622** Postponement of an oral hearing must be requested before the hearing is scheduled; otherwise, it may be requested only in instances of the employee's non-elective hospitalization or death of an immediate family member.
- **10.809** OWCP's medical fee schedule has been expanded to include pharmacy and inpatient hospital bills. As in the case of OWCP's fee schedule for physicians (established June 1986) a medical provider is prohibited from requesting reimbursement from the employee for additional amounts.
- **10.810**

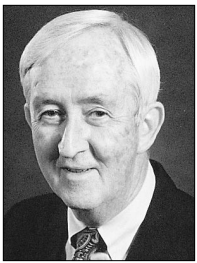
Please note that the above is a listing of the more significant changes—many other changes, too numerous to list, also became effective. Future Compensation Department articles will, of course, reflect these changes.

1. 20 CFR (Code of Federal Regulations) Parts 10 and 25; published in the *Federal Register*, November 25, 1998 (63 FR 65284).

OWCP published proposed revisions to the regulations in the December 23, 1997 *Federal Register*—for public comment. The NALC submitted 41 comments regarding the proposed revisions on February 10, 1998. These and other comments submitted to OWCP are discussed in the "Summary" portion of the November 25, 1998 final rule (pages 65284-65306).

2. The enumerated changes in this article should be cited, for example: 20 CFR 10.7 (a).

Time frames for authorizing medical care— and for submission of notices of injury, claim forms, and initial medical evidence



Bert Doyle

Note: This article updates and replaces articles in the November 1987 and April 1988 issues of *The Postal Record*.

The regulations of the Office of Workers' Compensation Programs contain a number of time frames, some applicable to injured employees and others applicable to employing agencies, regarding the authorization of medical care—and for submitting reports of injuries, claim forms, and initial medical evidence.

These time frames do not change the statutory time limitations within the Federal Employees' Compensation Act itself—the statutory time limitations essentially require an injured employee to give written notice of traumatic injury within 30 days in order to be eligible for COP (continuation of pay) and to file written claim for compensation within three years of the actual date of injury.¹

First, the employing agency must complete and issue Form CA-16 (authorization for medical care) to an injured employee's initial choice of physician *within four hours* of a claimed traumatic injury, or within 48 hours if the employing agency gives verbal authorization to the physician. Form CA-16 may not be used in occupational disease cases without prior OWCP permission. The employing agency is also not required to issue a Form CA-16 more than one week after the occurrence of a claimed traumatic injury.²

Second, the employing agency must complete and transmit the injured employee's Form CA-1 (notice of injury) or Form CA-2 (notice of occupational disease) to OWCP no more than

10 working days after receipt of the form from the employee. The employing agency shall also complete the Receipt of Notice that accompanies each of these forms and give it to the employee along with copies of both sides of the form.³

Third, an injured employee must provide or arrange to provide the employing agency with medical evidence supporting disability resulting from a claimed traumatic injury, including a statement as to when the employee can return to his or her date-of-injury job, *within 10 calendar days* after filing claim for COP on Form CA-1.⁴

COP may be terminated by the employing agency if it does not receive medical evidence which on its face supports disability due to a work-related injury within this time frame (unless the employing agency's own investigation shows disability to exist). Where the medical evidence is later provided, COP shall be reinstated to the date of termination.⁵

Fourth, the employing agency must complete and forward an injured employee's Form CA-7 (claim for compensation) to OWCP as soon as possible but no more than *five working days* after receipt of the form from the employee.⁶ A similar requirement of five working days exists for Form CA-8 (claim for continuing compensation).⁷

1. For a full discussion of the FECA time limitations in both traumatic injury and occupational disease cases, see the NALC Compensation Department article in the March 1998 issue of *The Postal Record*.

2. 20 CFR 10.300 (a) and (b).

3. 20 CFR 10.110 (a) and (b). The form is not submitted but is retained by the employing agency if there is no disability beyond the day or shift of injury and there is no medical charge against OWCP.

4. 20 CFR 10.210 (b).

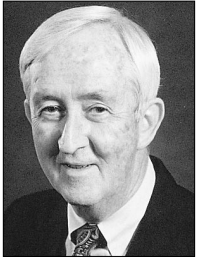
5. 20 CFR 10.222 (a) (1).

6. 20 CFR 10.111 (c).

7. 20 CFR 10.112.

Important note: The FECA has a 30-day time limitation for giving notice of injury in order for an injured employee to be eligible for COP (see third paragraph of above article); however, an injured employee should make every effort to give notice of injury, or have someone give notice on his or her behalf, *on the day of injury or within two days of the injury*.

Providing initial medical evidence following on-the-job injuries



Bert Doyle

Note: This article updates and replaces an article in the April 1988 issue of *The Postal Record*.

Contrary to what an employee may hear from a Postal Service supervisor, an employee injured in the performance of duty has the right to initial choice of a treating physician (following any necessary emergency treatment), generally within 25 miles of the employee's home or place of employment.

With this right goes the obligation to obtain and furnish the employing agency and the Office of Workers' Compensation Programs with medical evidence from the chosen physician to support the employee's claim (the employee has the burden of proof to show that he or she was injured in the performance of duty and that any disability for work is due to the injury—a basic requirement of all workers' compensation claims).

For a traumatic injury—the employee must provide or arrange to provide the employing agency with medical evidence supporting disability resulting from the claimed injury, including a statement as to when the employee can return to his or her date-of-injury job, within 10 calendar days after filing claim for continuation of pay (COP) on Form CA-1.¹

Failure to meet this time limitation will result in termination of COP unless the employing agency's own investigation shows disability to exist. Where the medical evidence is subsequently provided, COP will be reinstated to the date of termination.² Note also that this ten-day time limitation does not exist for occupational disease or illness claims filed on Form CA-2 (COP is only applicable to traumatic injury cases)—but medical evidence must still be provided to the employing agency and OWCP.

OWCP Form CA-16 or Form CA-20 may be used to supply this initial medical evidence; however, use of such medical report forms is not required—the medical evidence may be furnished in narrative form on the physician's letterhead stationery bearing the physician's signature or signature stamp.³

In all cases reported to OWCP, the initial medical report should include:

- (a) Dates of examination and treatment;
- (b) History given by the employee;
- (c) Physical findings;
- (d) Results of diagnostic tests;
- (e) Diagnosis;
- (f) Course of treatment;
- (g) A description of any other conditions found but not due to the claimed injury;
- (h) The treatment given or recommended for the claimed injury;
- (i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment.
- (j) The extent of disability affecting the employee's ability to work due to the injury;
- (k) The prognosis for recovery; and
- (l) All other material findings.⁴

It should also be noted that OWCP's regulations require an injured employee to ensure that his or her treating physician specifies work limitations and provides them to the employing agency and/or OWCP. Also, the employee must provide the treating physician with a description of any alternative position offered to the employee by the employing agency; and must ensure that the treating physician responds promptly to the employing agency and/or OWCP with an opinion as to whether and how the employee could perform the alternative position or any other specific position.⁵

In summary, an injured employee must understand that he or she has specific responsibilities to furnish medical evidence and inform his or her attending physician of the availability of alternative work and other forms of limited duty as described above—under penalty of loss of COP and perhaps other benefits of the Federal Employees' Compensation Act as well. ☒

1. 20 CFR 10.210 (b).
 2. 20 CFR 10.222 (a) (1).
 3. 20 CFR 10.331 (a).
 4. 20 CFR 10.330.
 5. 20 CFR 10.210 (d) and (e).

Important note: The right to initial choice of a treating physician is a statutory right contained in the Federal Employees' Compensation Act at 5 USC 8103 (a). The employee must choose carefully because once a physician is selected, the employee cannot change physicians without OWCP's specific approval.

A physician who can treat the majority of traumatic injuries is probably best (occupational disease or illness cases require specialists who treat the specific disease/illness); and the physician should be one that the employee can relate to, has confidence in, and does not mind the paper work involved.

Obtaining initial medical treatment



Bert Doyle

Note: This article updates and replaces articles in the July and August 1994 issues of *The Postal Record*; and should be read in conjunction with an article on providing initial medical evidence in the May 1999 issue.

There is an important fundamental right in the Federal Employees' Compensation Act—an employee injured in the performance of duty has the right to initial choice of a treating physician when an on-the-job injury is sustained.¹ Any qualified physician may be selected by the injured employee, generally within 25 miles of the employee's home or place of employment—subject to the following:

- The term “physician” as defined in the FECA includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.

...the important thing to remember is that the *employee* has the right to choose...

Chiropractors are included *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.²

- A “qualified” physician means any of the above licensed as such under state law who has not been excluded by the Office of Workers' Compensation Programs for certain criminal or other specified wrongdoing.³

An injured employee can also select a qualified hospital—the important thing to remember is that the *employee* has the right to choose the physician or hospital to provide initial treatment.⁴

An employee must also keep in mind that once a physician is selected, the employee cannot change physicians without OWCP's specific approval; and that if the employee requests or agrees to accept *treatment* (other than emergency treatment—see below) by a Postal Service medical or health unit,

then the employee has probably made his or her initial choice of physician.

In this respect, OWCP's regulations provide that an employee needing emergency treatment can receive such treatment by any duly qualified physician or hospital; and following such treatment the employee may exercise his or her right to choose a physician for any necessary follow-up medical care (i.e., the physician or hospital providing emergency treatment is not considered the employee's initial choice of physician).

While the Postal Service has an obligation to inform an injured employee of the right to initial choice of physicians, the *employee* must take positive action to exercise the right.

This is normally done by simply stating, “I wish to receive treatment by _____” and requesting that the Postal Service authorize the treatment on OWCP's Form CA-16, “Authorization for Examination and/or Treatment.” If there is any disagreement, or if the Form CA-16 is not issued *within four hours* of a claimed traumatic injury as required by OWCP's regulations, then the employee should cite the FECA and OWCP's regulations.

Important: It should also be noted that the Postal Service has authority, not subject to the statutory provisions of the FECA or OWCP's regulations, to require an injured employee in *non-emergency situations* to be *examined* by a postal medical officer or contract equivalent *prior to obtaining initial medical treatment*—subject to the following restrictions.

- The examination must be performed promptly following the employee's report of injury.
- The examination must not interfere with the issuance of Form CA-16; the employee's right to seek prompt examination and treatment from a physician of his or her choice; or with the examination and treatment provided by the employee's chosen physician.⁵

Problems in obtaining medical care within the above-cited provisions and restrictions of law, OWCP regulations, and Postal Service instructions should be *immediately* brought to the attention of a knowledgeable NALC branch officer or the appropriate NALC national business agent. ☒

1. 5 USC 8103 (a). See also OWCP regulations at 20 CFR 10.300.

2. 5 USC 8101 (2). See article in November 1994 issue for further information regarding limitations on chiropractic treatment/opinions.

3. 20 CFR 10.5 (v). See also 20 CFR 10.815.

4. A hospital is subject to the same licensing and exclusion provisions as a physician.

5. USPS Employee and Labor Relations Manual (ELM 13), Subchapter 540 (see 543.11).

COP—traumatic on-the-job injuries Part 1



Bert Doyle

Note: This article and an article to be published in the next issue update and replace articles in the May and June 1988 and April 1991 issues of *The Postal Record*.

The COP (continuation of pay) provisions of the Federal Employees' Compensation Act are unique insofar as workers' compensation systems in the United States are concerned—and are so simple that

COP is very often not fully understood.

COP is applicable to traumatic injuries only and was created by an amendment to the Act effective September 7, 1974 because of long delays between the time an employee was injured and the necessary paperwork was completed and forwarded to the Office of Workers' Compensation Programs.

In essence, COP is a substitute for compensation benefits during the first 45 days of an employee's wage loss caused by a traumatic on-the-job injury. Occupational illnesses or diseases are specifically excluded and the provisions are applicable only if a covered employee reports the injury on OWCP's Form CA-1, Federal Employee's Notice of Injury and Claim for Continuation of Pay/Compensation, within 30 days of the injury. The disability resulting from the injury must also begin within 45 days from the date of injury.¹

OWCP defines a traumatic injury as: "a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected."²

The injury must also occur on the employing agency's premises or during official "off-premises" duties; and must not be caused by the employee's willful misconduct, intention to

bring about the injury or death of the employee or another, or by the employee's intoxication.

COP cannot exceed 45 days. The 45 days are calendar days—not work days—and therefore include holidays, weekends, vacation days, etc. The 45-day period commences on the first full day or first full shift after the day or shift on which the injury occurred. Excluding the date of injury, a portion of a day lost (e.g., two hours) will count as one full day of the 45-day period.

Annual or sick leave used during a period when COP is otherwise payable is counted toward the 45-day COP maximum as if the employee has been in COP status.

Once COP begins, the 45 calendar days need not be successive.

For example, an employee who receives COP for 18 days is entitled to 27 more days of COP in the event there is a recurrence of the disability. However, the employee may resume COP only during the 45-day period beginning from the date the employee first returned to work following the first period of disability. If a recurrence begins after this 45-day period, the employing agency cannot pay COP, even if some of the 45 days remain unused.

Since COP is simply the continuation of an employee's regular pay (i.e., it is not considered compensation) the normal deductions—federal and state income taxes, health insurance and life insurance—are withheld.

An employing agency can only controvert (i.e., deny) COP under specified circumstances; and once initiated, COP can only be terminated by the employing agency under other specified circumstances. The circumstances for controversion and termination of COP will be discussed in the next issue of *The Postal Record*. ☒

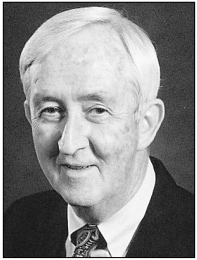
1. 20 CFR 10.205—if Form CA-1 is not available, using another OWCP-approved claim form would not alone preclude receipt.

2. 20 CFR 10.5 (ee).

Important note: While certainly not advisable to do so, an employee suffering a traumatic injury may when completing Form CA-1 elect to use accumulated sick or annual leave, or leave advanced by the agency instead of electing COP. The employee can change the election between leave and COP for prospective periods at any point while eligibility for COP remains. The employee may also change the election for past periods and request COP in lieu of leave already taken for the same period. In either situation, the request must be made to the employer within one year of the date the leave was used or the date of the written approval of the claim by OWCP (if written approval is issued), whichever is later.



COP—traumatic on-the-job injuries, part 2



Bert Doyle

Note: This article should be read in conjunction with an article in the July 1999 issue of *The Postal Record*.

Controversion of COP—OWCP regulations for the administration of the COP provisions of the FECA make it quite clear that an employing agency must grant COP *except in the following circumstances:*

- (1) The disability was not caused by a traumatic injury.
- (2) The employee is not a citizen of the United States or Canada.
- (3) No written claim was filed within 30 days from the date of injury.
- (4) The injury was not reported until after employment has been terminated.
- (5) The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties.
- (6) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or
- (7) Work did not stop until more than 45 days following the injury.¹

When an employing agency does not grant COP for one of the above reasons, the employing agency must controvert the claim for COP on Form CA-1, explaining in detail the basis for the refusal. The final determination on entitlement to COP, however, rests with OWCP.

Termination of COP—Once COP has been initiated, the employing agency is authorized to terminate COP *only* when at least one of the following circumstances is present:

- (1) Medical evidence which on its face supports disability due to a work-related injury is not received within 10 calendar days after the claim is submitted (unless the employer's own investigation shows disability to exist). Where the


medical evidence is later provided, however, COP shall be reinstated retroactive to the date of termination.

- (2) The medical evidence from the treating physician shows that the employee is not disabled from his or her regular position.
- (3) Medical evidence from the treating physician shows that the employee is not totally disabled and the employee refuses a written offer of a suitable alternative position which is approved by the attending physician. If OWCP later determines that the position was not suitable, OWCP will direct the employer to grant the employee COP retroactive to the termination date.
- (4) The employee returns to work with no loss of pay.
- (5) The employee's period of employment expires or employment is otherwise terminated (as established prior to the date of injury).
- (6) OWCP directs the employer to stop COP and/or
- (7) COP has been paid for 45 calendar days.²

Where an employing agency stops COP for one or more of the above reasons, the employing agency must file a controversion with OWCP setting forth the basis on which it terminated COP no later than the effective date of the termination.

OWCP will also require the employing agency to suspend COP when it determines that an employee or his or her representative has refused to submit to or obstructs a medical examination required by OWCP. The suspension will continue until OWCP determines that the refusal or obstruction stops.

If OWCP finds that an employee is not entitled to COP after it has been paid, then the COP is subject to (at the employee's option) a charge against the employee's annual or sick leave or considered an overpayment of pay.

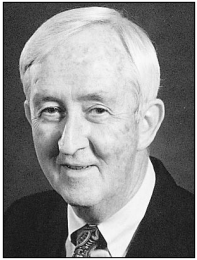
If OWCP determines that the employing agency has incorrectly controverted and not paid COP, or has incorrectly terminated the COP or selected an incorrect date of termination, OWCP will instruct the employing agency to take appropriate corrective action. 

1. 20 CFR 10.220.
2. 20 CFR 10.222.

Improper Controversion/Termination of COP—An employing agency must grant COP when requested and cannot terminate COP except as described above. COP cannot be withheld or delayed "pending receipt of medical evidence" or because the medical evidence is not immediately available (as noted above, an injured employee has up to 10 *calendar days* to furnish medical evidence).

Members who are subjected to improper withholding, delay, controversion or termination of COP should contact a local NALC branch officer—who in turn should contact his or her respective national business agent for advice and/or assistance.

Problems with local Postal Service processing of OWCP claims



Bert Doyle

Note: This article updates and replaces an article on the same subject in the August 1990 issue of *The Postal Record*.

There are important fundamental employee rights in the Federal Employees' Compensation Act, the regulations of the Office of Workers' Compensation Programs, and the Postal Service's Employee and Labor Relations Manual (ELM) which are regrettably often violated by local Postal Service management.

Included are:

- Failing to inform an injured employee of the right to his or her initial choice of physician—see OWCP's regulations at 20 CFR 10.300(d).
- Delaying furnishing of OWCP Form CA-16, Authorization of Examination and/or Treatment—OWCP's regulations at 20 CFR 10.300(b) require the employing agency to issue a fully completed Form CA-16 within four hours of a claimed injury.
- Delaying the initial examination and/or treatment by the employee's chosen physician by requiring the employee to be examined first by a Postal Service physician (note, however, that the ELM at 543.11 permits the Postal Service to obtain a *pre-treatment medical examination* by a Postal Service physician in non-emergency situations provided the examination is performed promptly, does not delay the furnishing of Form CA-16, and does not interfere with the employee's right to seek prompt examination/treatment from a physician of his or her choice).
- Accompanying the injured employee to a medical facility or physician's office in non-emergency situations—this is prohibited by the ELM at 543.223.
- Contacting an injured employee's treating physician concerning the employee's work limitations and possible job assignments *other than in writing*—OWCP's regulations at 20 CFR 10.506 specifically prohibit contacting the physician "by telephone or through personal visit" (when written contact is made, the employer must send a copy to OWCP and the employee, as well as a copy of the physician's response when received).

- Failing to allow an employee to choose COP (continuation of pay) when disability occurs as a result of a traumatic injury—see OWCP's regulations at 20 CFR 10.211(b).

- Denying COP in a traumatic injury case because an employee failed to file OWCP Form CA-1, Notice of Traumatic Injury and Claim for COP/Compensation, "immediately" or "on the date of injury"—OWCP's regulations at 20 CFR 10.210(a) specify that an employee must file as soon as possible and within 30 days to be eligible for COP.

- Denying COP or interrupting COP within part of the COP period because medical evidence is not provided "promptly" by the employee showing that a traumatic injury occurred—OWCP's regulations at 20 CFR 10.210(b) require that an employee ensure that medical evidence supporting disability resulting from the claimed traumatic injury is provided to the employer within 10 calendar days after filing claim for COP.

- Failing to forward a completed Form CA-1 to OWCP within 10 working days after it is received from the employee—see OWCP's regulations at 20 CFR 10.211(d).

- Failing to give an employee a copy of both sides of Form CA-1 or Form CA-2, Notice of Occupational Disease and Claim for Compensation, in addition to the Receipt of Notice that accompanies these forms—see OWCP's regulations at 20 CFR 10.110(a).

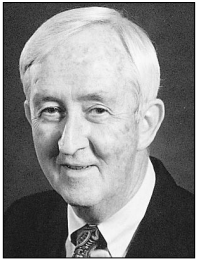
Members who are subjected to these or other violations of OWCP's regulations and/or the ELM should contact a local NALC branch officer—who in turn should contact his or her respective national business agent for advice and/or assistance. ☒

Erratum: The word "not" is omitted from item (1) following the second paragraph of the Compensation Department's article on page 43 of the August issue of *The Postal Record*. The item should read:

(1) The disability was not caused by a traumatic injury.

We regret the error.

Communicating with OWCP, part 1



Bert Doyle

Note: This article and an article to be published in the next issue update and replace articles in the November and December 1992 issues of *The Postal Record*.

In order to communicate effectively with OWCP, it is necessary to understand certain fundamental OWCP procedures:

- OWCP establishes a separate case folder for each report of injury or occupational disease/illness on Form CA-1 or 2 (except in instances where more than one injury occurs to the same employee during a given work day or shift). Each of these case files is numbered consecutively—the name of the employee does not appear on the file jacket. When separate injuries occur to the same part of the body, such as the back, OWCP may continue the case files under one “active” number.

- Each OWCP district office has a separate geographical jurisdiction and is responsible for jacketing reports of injury or occupational disease/illness as they are received. Certain key information on the forms is entered into an automated alphabetical index—which serves as a general data base and a file number/location finder. All subsequent correspondence, forms, etc. are placed in the appropriate case file, with some exceptions. Correspondence received without a file number is “run” across the automated index and the number written in by hand.

- If the employee moves from within a district office’s jurisdiction, the case file will be transferred to the OWCP district office appropriate for the employee’s new address. The file number will, however, not change.

OWCP study project to improve the outcome of upper extremity disorders

OWCP, working jointly with Georgetown University in Washington, DC, has obtained a grant from the Robert Wood Johnson Foundation for a three-year study project involving the analysis of upper extremity injuries with the objective of identifying strategies to maximize successful recovery and return to work.

The Postal Service will have no involvement in the study—except via cooperation with OWCP in the return to work of individual postal employees.

The study will involve 250 federal and postal employees (about half will be postal employees) and will be limited to OWCP district offices in Boston, Philadelphia, Washington, DC, Chicago, Dallas, Seattle and San Francisco.

Participation in the study is voluntary—note, however, that participation in OWCP’s usual case management activities (e.g., early nurse intervention and vocational rehabilitation activities) is mandatory.

Within the above over-simplified description of OWCP’s procedures are dozens of twists and turns—and a prudent employee should do his or her utmost to utilize proper techniques of communication in order to avoid problems.

First, an employee should make an effort to obtain and keep a copy of everything sent to OWCP. These copies should be maintained in a personal file in chronological order (most recent documents on top) for convenient reference and for duplication should the original copies be lost. This includes:

- Obtaining the receipt attached to Form CA-1 or CA-2 when the form is given to the employing agency; and requesting from the employing agency a photocopy of the notice itself after the official superior’s portion is completed.¹

- Requesting the attending physician, if the employee has exercised his or her right of free choice of initial physician (this right should always be exercised) to provide a photocopy of any medical report the physician sends to the employing agency or OWCP. This also applies to medical reports from all other physicians whose services were obtained by the employee and is particularly important in instances where narrative medical reports are involved.²

- Retaining a copy of all letters and other documents sent to OWCP by the employee or on behalf of the employee. All letters sent to OWCP (or anywhere else for that matter) should be dated and show a return address on the letters themselves.

Second, it is essential that the OWCP file number (if known) be shown in the upper right-hand corner on each and every piece of correspondence or other document sent to OWCP. Attending physicians and others should be requested to do the same.

This is basic common sense but, unfortunately, as much as 50 percent or more of the mail received by OWCP must be “run” across their automated index to find the case file number. Delay will always occur, even in the best-run OWCP district offices, when the case file number is not supplied.

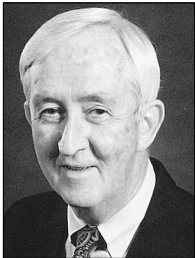
Third, the employee should respond to each OWCP request within whatever time limit is stated. An employee should not make assumptions that others have responded on his or her behalf—or that a response is for some reason unnecessary. Failure to promptly respond to OWCP can lead to very serious problems, and in some instances outright rejection of a claim.

Additional information and suggestions on communicating with OWCP will be covered in next month’s issue of *The Postal Record*. ☐

1. OWCP’s regulations at 20 CFR 10.110 (a) require that the employer shall complete and give the receipt to the employee along with copies of both sides of Form CA-1 or CA-2.

2. OWCP’s regulations at 20 CFR 10.300 (d) require that the employer advise the employee of the right to his or her initial choice of physician.

Communicating with OWCP, part 2



Bert Doyle

Note: This article should be read in conjunction with an article in the October 1999 issue of *The Postal Record*.

Fourth, and although some of the OWCP district offices' automated answering systems can be frustrating at times, an employee should use the telephone to communicate with OWCP on problems where possible—or make a personal visit. Many OWCP district offices are very well equipped and motivated to handle telephone calls; while others, particularly those with large backlogs of pending work, have difficulty handling calls because of problems created by the pending work.

The case file number should be given (if known) when telephoning OWCP, but an employee should expect to be told in many instances that OWCP will have to call back. It takes time to locate a case file and most problems cannot be handled without it. If visiting the district office, an employee should call before and ask for an appointment—so that the file will be available.

Also, because all new reports of injury or occupational disease/illness on Form CA-1 or CA-2 (and all claims for compensation on Form CA-7) are routed through the employing agency, an employee should make sure that the employing agency has forwarded the form(s) to OWCP before contacting OWCP.

Fifth, an employee should not write to OWCP on more than one subject in a single letter. Because OWCP staff members frequently handle different items, it is best not to—for example—write about an error in a compensation payment, ask about entitlement to rehabilitation, and notify OWCP of a change of address in one letter.

In such an example, the change of address is the most important (so that a payment in process is not sent to the old address); however, the letter may possibly be assigned to and then backlogged by a claims examiner handling reports of compensation payment errors.

This does not mean that an employee cannot write to OWCP regarding more than one problem at the same time—but it should be kept in mind that compensation payments, medical bills, medical care, rehabilitation, changes of address, requests for copies of forms, and general information questions are quite often handled by different OWCP staff members and best require separate letters.

Sixth, an employee should avoid laying down a barrage of correspondence to OWCP. Too many letters serve to slow the processing of a case file—pulling it back and forth like a yo-

yo goes up and down. An employee should start by writing a letter (or telephoning) when there is a problem. If a prompt response (30 days for a letter) is not received, the employee should contact an NALC branch officer or national business agent for assistance in obtaining a response.

An employee also has the right to ask a member of Congress or a senator for assistance—but no more than one such elected official should be enlisted to help at one time.

In this respect, a congressional “buck slip” which is sent to OWCP (with the employee's letter to the congressman or senator attached) is nowhere near as effective as the congressman's or senator's own narrative letter to OWCP—showing his or her personal interest in the case. Also, it should be kept in mind that virtually all letters to the President of the United States or to the Secretary of Labor are routed routinely to OWCP for reply. In effect an employee should be selective—and should avoid flooding OWCP with dozens of letters from various sources. Quality of communication is much more important than quantity.

Seventh, and a personal note: I believe that most of the OWCP staff are dedicated to helping injured employees. I say this from years of experience within and outside OWCP. There are unhappily some cranky OWCP employees and indications of indifference on the part of some, even hostility in a few situations. Most, however, try to do a good job on behalf of the thousands of individual injured employees (there were 166,626 injuries and fatalities reported to OWCP in calendar year 1998—36,200 reported by letter carriers); and I suggest that those who are especially deserving be sent a note of thanks at appropriate times. ✉

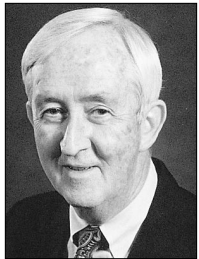
Reminder: Contact branch officers first

As requested previously, members are asked to refrain from contacting NALC's Compensation Department. This is necessary because the department cannot respond on a daily basis to 315,000 members—or even the officers of NALC's 2,840 branches—and still work on major union projects for the benefit of the entire membership.

All questions and problems should be brought to the attention of branch officers, who in turn can bring questions and problems to their national business agents. Only the national business agents should contact the NALC's Compensation Department—except in the case of an emergency.

President Vincent R. Sombrotto

Workers' compensation is not retirement; total vs. partial disability



Bert Doyle

Note: This article updates and replaces an article on the same subject that appeared in the June 1994 issue of *The Postal Record*.

A common mistake following a serious employment-related injury or illness is believing that Federal Employees' Compensation Act benefits are akin to retirement benefits.

This is not so—the FECA was enacted to establish a workers' compensation program and not a retirement program; and employees do not “retire on compensation,” even though there is evidence of employment-related permanent disability.

Assuming that the disability in a given case is permanent, the Office of Workers' Compensation Programs must determine if the disability is total or partial; and if total, OWCP will periodically review the case to ensure that the determination continues to be applicable (i.e., to ensure that the employee has not fully recovered or that the disability has not changed from total to partial).

OWCP will also periodically review a finding of partial disability to ensure that the employee has not fully recovered or that the partial disability has lessened.

A finding of total disability is made by OWCP in only those cases where the employment-related disability, combined with age and other factors, is so severe as to permanently disqualify the employee from all work—and not just the work being performed at the time the employment-related disability began. Being disabled for all work means just that—the disability is so severe that the employee cannot perform any type of remunerative employment.

The great majority of employment injuries and illnesses do not prevent an employee from returning to some kind of work. The FECA recognizes this and provides for reduced compensation benefits when the medical evidence shows that an employee is no longer totally disabled—but has a permanent partial disability. The FECA also provides the method of determining a partially disabled employee's earning capacity—essentially involving OWCP's selection of a job that best represents the employee's earning capacity in his or her partially disabled condition. Reduced benefits are then paid on the basis of this OWCP-determined earning capacity.

If the partially disabled employee has returned to work at his or her employing agency in a limited-duty capacity and is

working fewer hours than at the time disability began (or is otherwise being paid less by the employing agency), OWCP will in almost all cases determine that the earnings obtained from the employing agency represent the employee's earning capacity.

If the employee is working somewhere other than at the employing agency or is not working at all, OWCP must look at all aspects believed to be relevant to the employee's earning capacity and make a formal earning capacity determination.

An earning capacity determination is a complicated procedure wherein OWCP takes into consideration the employee's employment-related disability; any existing disability that preceded the employment injury or illness; the employee's cur-

“ The great majority of employment injuries and illnesses do not prevent an employee from returning to some kind of work. ”

rent earnings (if any); and such other factors as the employee's age, education, experience and geographical location.

- **OWCP monitoring:** OWCP continually monitors payments in both total and partial disability cases—verifying an injured employee's earnings and dependents via periodic questionnaires. Periodic checks are also made with the Social Security Administration and other sources regarding earnings; and cross checks are made with the Office of Personnel Management to ensure that prohibited dual payments are not being received.

- **Medical evidence:** Periodic medical reports are also required by OWCP from either the employee's attending physician or (at OWCP's option) a physician designated by OWCP. The employee must cooperate in this—under penalty of loss of compensation benefits.

The bottom line is that compensation benefits are not retirement benefits—they are paid only on the basis of continuing documentation of an employee's earnings/employment status and medical proof of employment-related disability. ☒