



## Restoration rights after a compensable injury

**A** letter carrier who recovers from a compensable injury has restoration rights under 5 CFR 353 and has additional contractual rights under the provisions of *ELM* 546, which include the limited duty pecking order. The exact nature of the restoration rights under 5 CFR 353 is dependent on the time it takes the carrier to recover and the extent of recovery.

To be entitled to restoration rights, the carrier must have been separated or not provided work because of a compensable injury. To exercise restoration rights, an application for restoration should be made in writing to the postmaster to protect applicable time limits.

The restoration rights found in 5 CFR 353 are divided into four categories: 1) full recovery within one year; 2) full recovery after one year; 3) physically disqualified; and 4) partially recovered.

**Full recovery within one year**—A federal employee who fully recovers from a compensable injury within one year from the start of eligibility for compensation (or from the time a compensable disability recurred after full-time federal employment was resumed) must be “immediately and unconditionally” restored by the agency to his/her former position or to “an equivalent one.” These restoration rights are agency-wide. A fully recovered employee is expected to return to work immediately upon the termination of compensation.<sup>1</sup>

**Fully recovered after one year**—A federal employee who fully recovers from a compensable injury more than one year from the start of eligibility for compensation (or from the time a compensable disability recurred after full-time federal employment was resumed) is entitled to agency-wide priority consideration for his/her former position or equivalent, with preference for the former local commuting area. To be eligible for these rights, the employee must apply for reappointment within 30 days after the termination of compensation.<sup>2</sup>

**Physically disqualified**—Employees who are physically disqualified from their former positions or equivalents are entitled to appointment to positions for which they are qualified that will provide them “with the same status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case.” This right is agency-wide and applies for one year after the start of compensation eli-

gibility. After one year, employees are entitled to the rights of those who fully or partially recover, as applicable.<sup>3</sup>

**Partially recovered**—When employees partially recover and are able to return to limited duty, agencies must make every effort to restore them to duty in the local commuting area. At a minimum, this means they must be treated substantially the same as other individuals with disabilities under the Rehabilitation Act. Partially recovered employees are expected to seek re-employment as soon as they are able.<sup>4</sup>

The Merit Systems Protection Board recently ruled that an agency must make reasonable accommodation of an employee’s disability through means such as modifying or adjusting the duties of the position at issue, or reassigning the employee to a vacant position for which they are qualified. If the employee does not qualify for any vacant positions, the agency still is obliged to attempt to modify or adjust the duties of a position where accommodation is reasonable.<sup>5</sup>

**Appeal rights**—Federal employees covered by these regulations may appeal to the MSPB any agency’s “failure to restore, improper restoration, or failure to return an employee following a leave of absence.” A partially recovered employee may appeal to the MSPB “for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration.” Once re-employed, a partially recovered employee may appeal “the agency’s failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.”<sup>6</sup> An injured worker may want to consult with an attorney when making an appeal to MSPB. The NALC does not provide representation before the MSPB.

Violations of the contractual provisions found in *ELM* 546 should be grieved when management fails to make every effort toward assigning limited duty.<sup>7</sup> ✉

1. 5 CFR 353.301(a), *ELM* 546.121

2. 5 CFR 353.301(b), *ELM* 546.13

3. 5 CFR 353.301(c)

4. 5 CFR 353.301(d), *ELM* 546.14

5. *Taylor v. Dept. of Homeland Security*, 107MSPR306

6. 5 CFR 353.304

7. Part 2—*NALC Guide to NRP*