

Grieving management's OWCP mistakes

Not long ago, a letter carrier was lifting a tray of mail out of his LLV and hurt his back. He reported the injury to his supervisor but did not seek medical treatment and did not complete a CA-1 the day of the injury. A week later, however, he did seek medical care and he completed a CA-1 and submitted it to his supervisor.

Unfortunately, his supervisor did not sign and give the employee the CA-1 receipt, did not provide a copy of the CA-1 to the employee, and did not forward the CA-1 to OWCP. Later, when the medical problem continued, the supervisor told the letter carrier he had lost the CA-1 and asked him to submit another one. The carrier did submit another one, but mistakenly wrote the wrong date in item 10 of the CA-1. Ultimately, the carrier's claim of an on-the-job injury was denied, much to his detriment.

There is nothing unusual about a letter carrier suffering an on-the-job injury. Our job is physically demanding, often ergonomically injurious, and bristles with objective dangers. With about 230,000 letter carriers on the street every day, we

expect there will be on-the-job injuries. While we seek to minimize their occurrence, we recognize their inevitability.

And fortunately, there is a law designed to protect us from the adverse financial consequences of those injuries. The law is known as the Federal Employees' Compensation Act, or FECA. It is codified at 5 United States Code 81 and its implementing regulations are found at 20 Code of Federal Regulations 10.

The FECA is intended to help employees who are injured on the job

The FECA establishes the Office of Workers' Compensation Programs, or OWCP, and tasks that agency with deciding all matters relating to claims of on-the-job injuries by federal employees. OWCP decides, for example, whether an injury is job-related, whether compensation is payable and, if so, how much, and whether a limited duty job offer is medically suitable.

The FECA was intended to protect federal employees by providing compensation when they suffer job-

related injury or illness. The law places the burden on the injured worker to prove that the injury is job-related. The OWCP claims process is designed to operate efficiently and to result in fair, accurate decisions that fulfill the FECA's purposes.

Unhappily, many claims do not turn out that way. Letter carriers know that too many legitimate claims are controverted by management or become unnecessarily com-

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Management's mistakes

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plicated due to management mistakes in handling claims.

These management mistakes lead to some of the worst injustices to injured letter carriers who seek workers' compensation benefits. The FECA requires postal management to process claims in accordance with the regulations, but frequently supervisors do not.

Supervisors' mistakes often result in legitimate claims being delayed or even denied. These mistakes also violate the law, as well as Postal regulations and the National Agreement. And unfortunately, they are far too common.

A top-ten list of common, harmful management mistakes might look like the one at right.

Shop stewards can do something about these harmful mistakes

While there is nothing unusual about carriers suffering on-the-job injuries, there is something disturbing about supervisors violating the law and regulations when those injuries are reported.

Shop stewards should do something about it. They should hold postal managers accountable to comply with the law and regulations governing on-the-job injuries. If necessary, they should do so using the grievance procedure.

The remainder of this *NALC Activist* addresses the various management mistakes and what NALC shop stewards can do about them.

In doing so, shop stewards should be mindful of the distinction between helping an injured Letter Carrier with an OWCP claim, and

TOP TEN MANAGEMENT VIOLATIONS

1. **Failing to provide a CA-16 in the case of traumatic injuries**
2. **Providing a CA-2a instead of a CA-1 or CA-2**
3. **Failing to provide a receipt for a submitted CA-1 or CA-2**
4. **Delaying forwarding of CA-1 or CA-2 to OWCP**
5. **Failing to provide completed copy of CA-1 or CA-2.**
6. **Contacting a carrier's physician in person or by phone**
7. **Failing to provide copy of written contact with physician to carrier and OWCP**
8. **Failing to provide employee notice of controversion and challenge information**
9. **Failing to advise carrier of the right to select a physician of his or her choice**
10. **Delaying forwarding of CA-7 to OWCP**

dealing with management violations of contract and law. The distinction is important.

When it comes to helping injured letter carriers pursue on-the-job injury claims with OWCP, NALC representatives have no right to time on the clock. Nor do they have an obligation to assist non-members, even if they do assist members.

When it comes to grieving management violations relating to on-the-job injury claims, however, shop stewards do have a right to time on the clock. And, they have an obligation to fairly represent all letter carriers, not just NALC members.

Remember the carrier whose claim was denied after his supervisor lost his original CA-1? He never did get the claim accepted. That was a travesty, because he had a legitimate on-the-job injury. If his shop steward had known to grieve the supervisor's failure to sign and give the receipt, the failure to give the

carrier a copy of the completed CA-1 and the failure to forward the CA-1 to ensure it was sent to OWCP, the story probably would have ended differently.

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Top ten management violations

Here are ten of the most common mistakes that managers make in processing letter carriers' workers compensation claims. All of these errors may be grieved as violations of the National Agreement. For more information see "How to grieve" on page 14.

1. Failure to provide a CA-16

Form CA-16, *Authorization for Examination And/Or Treatment*, is the form used in traumatic injuries to: 1) authorize medical treatment, and 2) provide an initial medical report. It is extremely important to injured workers. Its front is completed by management and guarantees payment by OWCP to the medical provider. The reverse is completed by the treating physician, ensuring that OWCP immediately receives and reviews an initial medical report.

In far too many cases, postal management does not issue a CA-16 or fails to complete it properly. Thus, OWCP receives the initial medical report late or not at all. This results in delay of acceptance of claims, or even denial of claims.

The regulations governing the CA-16 are found at 20 CFR 10.211 (a), 10.300, & 10.331; ELM 544.11, 545.2, 545.44 & 545.45; EL 505 pages 24, 37, 40, 45, 47, 48 & 109; and EL 806 122.2.

The 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. Only in the very limited circumstances where the injured employee first seeks medical attention more than one week after the injury, or in cases where the injured employee accepts treatment from the post office contract physician and the injury is only a first aid injury, may management not issue a CA-16.

The definition of a job-related first aid injury is found in Management Instruction EL 540-91-1 and in item 44 of the instructions for Form 1769.

A first aid injury is a minor injury that requires no more than two medical visits, the second of which is to confirm full recovery. Any injury that involves work restrictions, disability and/or limited duty is not considered a first aid case.

Thus, even if an employee agreed to be treated by a postal service contract physician, if, at the initial visit, the physician placed a restriction (e.g., a weight limit of 30 lbs), management would have to then immediately issue a CA-16 for the follow-up visit.

Also, if an employee seeks medical attention from his or her own physician, even in a first aid case, CA-16 must be provided.

Federal regulations expressly prohibit management from using a substitute form or modifying the existing CA-16. 20 CFR 10.7.

Management normally must issue Form CA-16 within 4 hours of the claimed injury. If management gives oral authorization for the

medical care, then the CA-16 must be issued within 48 hours.

The completed CA-16 must be submitted directly to OWCP as soon as possible after medical treatment, either by the employee or the physician.

All too often, management does not issue or complete a CA-16, so OWCP never receives an initial medical report.

In the case of disability, it is normally in the employee's interest that management promptly receive a copy of the completed CA-16 to support payment of COP.

When a CA-16 is properly issued, completed, and sent directly to OWCP, the injured worker will have met his or her initial burden of proof, because the CA-16 includes a comprehensive initial medical report. When a CA-16 is not properly issued or completed, the necessary medical report needed to meet the

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burden of proof may or may not be sent to OWCP.

Nothing in 20 CFR 10 or relevant postal manuals 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 should specifically request it from the supervisor whenever they submit a CA-1 and seek medical attention.

Form CA-16 is critically important to injured workers. Management is required to provide it in almost every traumatic injury. However, management routinely fails to provide it. This often causes problems for injured workers. Their claims are delayed or even denied. Shop stewards should enforce the regulations regarding CA-16 and hold managers accountable for their failures.

2. Providing a CA-2a instead of a CA-1 or CA-2.

Form CA-1, *Federal Employee's Notice of Traumatic Injury*, is used to report injuries caused by work factors that occur during the course of one work shift or workday.

Form CA-2, *Federal Employee's Notice of Occupational Disease*, is used to report injuries caused by work factors that occur over the course of more than one work shift or workday.

Form CA-2a, *Notice of Recurrence*, is used to report recurrences of previously accepted injuries. However, the OWCP definition of recurrence is highly technical and commonly misunderstood.

Use of the correct form, whether CA-1, CA-2 or CA-2a, is important to injured letter carriers.

Supervisors frequently provide a Form CA-2a to injured letter carriers in circumstances that call for a

“Recurrence” has a technical meaning under the OWCP rules and is often misunderstood.

CA-1 or CA-2. Unsuspecting carriers then complete and submit the wrong form. This results, at best, in long delays in payment of compensation, medical benefits and so on.

In the context of on-the-job injuries, recurrence is defined at 20 CFR 10.5(x):

...an inability to work after an employee has returned to work, caused by a **spontaneous change in a medical condition** which had resulted from a previous injury or illness **without an intervening injury or new exposure to the work environment that caused the illness.**

20 CFR 10.104 adds:

...a notice of recurrence should not be filed when a new injury, new occupational disease or new event contributing to an already-existing occupational disease has occurred. In these instances, the employee should file Form CA-1 or CA-2.

The key to understanding when to use a CA-2a as opposed to a CA-2 or a CA-1 is the phrase “spontaneous change... without an intervening injury or new exposure to the work environment that caused the illness.”

Consider the following example. A letter carrier develops tendonitis in her right elbow as a result of casing mail. She files a CA-2 and her claim is accepted. Her doctor completes a CA-17 limiting her to no use of her right arm for two weeks. Management provides limited duty, answering phones, for the two weeks and then she returns to casing and delivering her route. A month later the tendonitis in her right elbow flares up and her doctor again limits her to no use of her right arm.

In this example, CA-2a is the wrong form because there was **new exposure to the work environment** that caused the illness. The correct form is CA-2 because the new month of casing caused tendonitis to flare up.

Very few supervisors are aware of the technical distinction between a recurrence and a new injury. Many assume that if a condition involves the same diagnosis and the same body part as a previous injury, it is a recurrence.

However, postal regulations define recurrence in accord with the definition at 20 CFR 10.5(x). Postal regulations also require supervisors to discuss the situation with an employee when he or she reports a recurrence, and determine if the situation involves a new injury.

ELM 541.2p restates the OWCP definition of recurrence. EL 505, page 124 also restates that definition.

EL 505, Exhibit 5.1 provides a 4-page explanation of how to distin-

guish between new injury and recurrence, and gives several examples.

EL 505, page 118 requires the supervisor to discuss the situation with the employee when he or she reports a recurrence. It also requires the supervisor to review Exhibit 5.1 and determine if a recurrence or new injury exists.

Typically, when an employee incorrectly submits a CA-2a when a CA-2 should be filed, long delays result. OWCP may process the CA-2a for three or four months before realizing that there was technically no recurrence. At that point, OWCP will probably deny the claimed recurrence and advise the employee to submit a CA-2. The longer the delay, the more difficult it becomes to prove the claim.

Submission of the appropriate form is important to injured workers. Management is required to discuss the situation with an employee and determine the correct form. However, management routinely fails to do so. This often causes problems for injured workers, whose claims are delayed or even denied. Shop stewards should enforce the regulations regarding recurrences and hold managers accountable for their failures.

3. Failing to provide a receipt for a submitted CA-1 or CA-2

Employees are required to submit Forms CA-1 and CA-2 to their supervisors when they suffer traumatic or occupational injuries. The employer then forwards the CA-1 or CA-2 to OWCP. Whenever a supervisor receives a CA-1 or CA-2, he or she is required to sign the receipt portion of the form, and give it to the employee. This receipt is impor-

tant to an injured worker because it proves beyond any doubt the date the claim was submitted.

In some cases, supervisors do not complete the receipt and give it to the employee, or they incorrectly complete the receipt and omit the injured employee's name. Employee claims can quickly become complicated when this happens. Disputes about when a claim was filed can be detrimental to a claim. If an employee tells OWCP she submitted

The signed CA-1 or CA-2 receipt serves as proof of the date the claim was filed.

the claim on a certain date, but USPS reports a different submission date to OWCP, OWCP will expect the employee to produce the receipt to settle the matter. If the employee cannot, OWCP probably will determine the employer is correct. The employee will then be perceived by OWCP as not being knowledgeable about his own claim, or worse.

20 CFR 10.110(a) requires the employer to complete the Receipt of Notice and give it to the employee. Instructions on Forms CA-1 and CA-2 require the supervisor to complete the receipt and give it to the employee **at the time the form is received.**

ELM 544.11c requires the supervisor to complete the receipt and

give it to the employee.

EL 505, Section 3.6 requires the supervisor to complete the receipt attached to the CA-1 and give it to the employee, **upon receipt of the CA-1 from the employee.**

EL 505, Section 3.7 requires the supervisor to complete the receipt attached to the CA-2 and give it to the employee, **upon receipt of the CA-2 from the employee.**

EL 505, Exhibit 3.13 (Injury Action Checklist) requires the supervisor, **upon submission by the employee**, to complete the receipt portion of the CA-1 and return the receipt to the employee.

The receipt requirement is clear and provides for no exceptions. It is difficult to imagine circumstances where failure to provide a receipt would be justified.

Since the receipt is important to injured carriers, stewards should educate supervisors regarding the requirement to properly complete and provide the receipt and then hold them accountable.

4. Delaying forwarding of CA-1 or CA-2 to OWCP

When OWCP does not timely receive a CA-1 or CA-2, acceptance of the claim and payment of benefits are delayed. Injured workers are best served when claims are timely submitted by management to OWCP.

Provisions in both the law and the contract require management to complete and transmit Form CA-1 and CA-2 to OWCP within 10 working days after receipt from the employee.

20 CFR 10.110(a) requires the employer to complete and transmit

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the form to OWCP no more than 10 working days after receipt from the employee, in almost all cases. The limited exceptions include situations where there is no medical charge against OWCP, no disability beyond the day of injury, no need for more than two appointments for medical examination and/or treatment, and so on.

20 CFR 10.110(c) specifically cautions the employer to not wait for submittal of supporting evidence before sending the form to OWCP.

ELM 544.12 states:

Control office and control point supervisors are responsible for reviewing all claims for accuracy and completeness and for forwarding claims and related documents to OWCP within prescribed FECA time frames.

ELM 544.212 states:

The control office or control point submits to the appropriate OWCP district office within 10 working days after it is received from the employee:

- a. Completed Form CA-1 or Form CA-2.

ELM 545.12 states:

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

ELM 545.75d states:

Submission of Form CA-1 to OWCP must not be delayed, under any circumstances...

EL 505, Section 4.4 states:

Under no circumstances may ICCO personnel...delay submis-

sion of the CA-1 to the OWCP within 10 working days from the date received by the supervisor.

EL 505, page 176 states:

Do not delay submitting the claim pending collection of data to support a controversion or challenge.

EL 505, page 218 states:

Do not delay submitting the CA-1, CA-2, CA-5 or CA-5b pending receipt of third party information.

Despite these mandatory rules, in Fiscal Year 2003 the Postal Service failed to timely submit Forms CA-1 and CA-2 to OWCP in 21 percent of all cases. While this is a good rate compared to other federal agencies it still shows failures in more than one of every five claims filed.

It can be difficult for stewards to determine whether a particular form was transmitted to OWCP within the time limits. This is because internal postal procedures require supervisors who receive a CA-1 or CA-2 to forward it to the Injury Compensation Control Office. Personnel in ICCO then forward it to OWCP.

The solution is to closely monitor the date the employee submits the form to his or her supervisor and the date the employee receives notification of a claim number from OWCP. OWCP has a system that automatically generates and mails a claim number as soon as a CA-1 or CA-2 is received.

Generally, if an employee has not received a claim number from OWCP by the end of three weeks after submitting a CA-1 or CA-2, the steward should investigate. The investigation should start with an interview of the supervisor who received the form and then proceed to

an interview of ICCO personnel. Often such interviews result in quick transmittal of the delayed form to OWCP.

Timely submission of Forms CA-1 and CA-2 to OWCP is important to injured workers. Shop stewards should enforce the applicable regulations.

5. Failing to provide completed copy of CA-1 or CA-2

When an employee submits a CA-1 or CA-2, the employer is required to complete the agency portion and then give a complete copy of the form to the employee. However, in most cases the Postal Service does not provide the required copy.

The copy is important because it alerts an injured worker to any USPS objections to the claim. Sometimes the Postal Service challenges are baseless, but the employee does not learn about them until months later. By then it is far more difficult for the employee to counter the challenge.

Employer challenges may appear, for example, on the CA-1 or CA-2:

- CA-1 Item 28 asks the employer whether the employee was injured in performance of duty, and if not, for an explanation.
- CA-1 Item 35 asks the employer whether the supervisor's knowledge of the facts of the case agree with the statements of the employee or witnesses.
- CA-1 Item 36 asks the employer whether it controverts COP, and if so, to give the reason in detail.

- CA-2 instructions require the supervisor to review and comment on the accuracy of the employee's attached statement.

Early knowledge of all such employer objections can help the injured employee counter them effectively from the start.

20 CFR 10.110(a) requires the employer, when it receives a CA-1 or CA-2, to give the employee copies of both sides of the form.

ELM 544.12 states that the control office must provide the employee a copy of the completed CA-1 or CA-2.

The right to receive a copy of a completed CA-1 or CA-2 is important to injured carriers. Stewards should educate supervisors about this right and then hold them accountable if they violate it.

6. Contacting a carrier's physician in person or by phone

OWCP regulations allow an employer to contact an injured worker's physician, in writing, regarding work limitations and possible job assignments. The same regulations specifically prohibit the employer from contacting the physician by telephone or in person.

In too many cases, local supervisors ignore the prohibition against telephone or personal contact with the physician. This often results in problems for the injured worker. In some cases, the supervisor misreports the physician's words. In other cases, the physician becomes aggravated at management harassment and refuses to provide care in the future to federal employees with workplace injuries.

Injured workers benefit when their physicians provide written recommendations concerning work restrictions. Written limitations are less likely to be misunderstood by the employee or management. When management has legitimate questions about work restrictions, clarity is best served, again, when USPS questions and the physician's answers are committed to paper.



The employee needs a copy of the completed CA-1 or CA-2 to see if the Postal Service has objected to the claim.



20 CFR 10.506 states:

To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. However, the employer shall not contact the physician by telephone or through personal visit.

ELM 545.52 states:

To aid in returning an injured employee to suitable employment, the control office or control point may also contact the

employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. However, FECA prohibits contacting the physician by telephone or through a personal visit except for administrative purposes such as determining whether a fax has been received or ascertaining the date of a medical appointment.

The parties have agreed in two national-level settlements that phone contact initiated by the employer with the physician is prohibited.

Pearbitration settlement A94N-4A-C 97901738 (M-01428) states:

The Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the FECA effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician.

Step 4 settlement E94N-4E-C 98037067 (M-01385) states:

The first issue contained in this case is whether management violated the National Agreement when it telephonically contacted limited duty employees physicians to receive information and/or clarification on a carriers medical progress....

* * *

The Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the FECA effective January 4, 1999. The specific regulation that is germane to the instant case is 20

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Management violations of the FECA are grievable

Managers often argue that “OWCP issues” are not grievable. In most cases they are wrong.

While decisions made by OWCP are **not** grievable, **violations by the Postal Service** of OWCP regulations (as well as contractual requirements) **are** grievable.

The division between OWCP decisions and USPS violations is logical. All decisions made by OWCP are non-grievable because the FECA vests OWCP with the exclusive authority to administer the provisions of the law.

Not Grievable— Decisions by OWCP

For instance, OWCP has exclusive authority to decide—

- whether a claim is accepted as work-related,
- whether compensation for wage-loss is payable,
- the medical suitability of a limited duty job offer,

—and so on. These decisions are not grievable.

The FECA also provides for an internal appeals system including:

- appeals to Hearings and Review,
- reconsideration requests to the District Office, and
- appeals to the Employees’ Compensation Appeals Board.

Decisions flowing from this appeals system are also non-grievable.

Grievable— Mistakes made by USPS management in handling OWCP claims

On the other hand, postal management is obligated by the National Agreement, its own regulations and the FECA to follow certain procedures when employees report on-the-job injuries. Management violations of those procedures are grievable.

Postal supervisors typically do not understand the distinction between OWCP decisions and Postal Service violations related to OWCP matters. They are often coached to argue that such violations are not grievable and not arbitrable. They may tell union representatives that OWCP is the only agency that can provide a remedy for such violations.

Stewards should be ready for management’s non-arbitrability arguments and be prepared to argue that violations of the law are grievable. Stewards can argue the following:

1. Handbook and manual violations are grievable. First, many of the FECA’s implementing regulations found in 20 CFR 10 are echoed in Postal Service handbooks and manuals. This is because Article 21.4 requires the Postal Service to promulgate regulations which comply with OWCP regulations. The USPS regulations sometimes restate

the CFR’s provisions word-for-word; in other cases they paraphrase them or contain implementing language for use within the Postal Service.

- When management violates provisions found in USPS handbooks or manuals relating to on-the-job injuries, cite Article 19 of the National Agreement. It requires management to comply with its own handbooks and manuals.
- Also cite Article 15.1’s definition of a grievance, as noted at JCAM page 15-1. It says disputes that may be handled within the grievance procedure may include alleged violations of postal handbooks or manuals.

2. The law and regulations may be grieved directly. Second, even when there is no echoing USPS handbook or manual language, management violations of the FECA, 20 CFR 10 and other OWCP regulations are grievable.

- In such cases, start by arguing Articles 3, 5 and 21 of the National Agreement. Article 3 limits management’s exclusive rights by requiring consistency with applicable laws and regulations. Article 5 prohibits management from actions that are inconsistent with its obligations under law. The FECA (at 5 USC 81) and its implementing regulations (at 20 CFR 10) are applicable law and regulations. Article 21.4 specifically re-

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CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician.

Stewards should note that the EL-505 was last revised in 1995. So EL-505 language at Section 6.3, which suggests that ICCO personnel should telephone physicians, is obsolete because it predates the 20 CFR 10.506 and contract language above.

7. Failing to provide copies of written contacts with physician

When the employer does contact a physician in writing, it must send a copy of the correspondence to the injured worker and to OWCP. In addition, if the physician responds the employer must send copies of the response to the injured worker and OWCP.

In many cases the Postal Service

does not provide the required copies to OWCP and the employee. Disputes about limited duty and work restrictions are more difficult to resolve when an employee is in the dark about USPS communications to and from his or her doctor.

In addition, employees need to know promptly if the Postal Service directs inappropriate questions to a physician. Employers are limited to questions about work limitations and possible job assignments. It would be inappropriate, for instance, for the Postal Service to write to a physician demanding medical justification for recommended surgery. Again, the injured employee who learns promptly about such errors will be in the best position to correct them.

20 CFR 10.506 states:

When [written] contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received.

ELM 544.12 states:

The control office must provide the employee a copy of ...

all correspondence between the Postal Service and the treating physician.

ELM 545.52 states:

A copy of all written correspondence to the employee's physician and any response received must be sent to the OWCP and the employee.

EL 505 Section 6.3 states:

Send copies of such correspondence to the employee and to the OWCP district office, and forward copies of the physician's response to both, *once it is received*.

Stewards should educate supervisors about these requirements and grieve when they ignore them.

8. Failing to give notice of controversion and challenge information

OWCP regulations specifically authorize the employer to controvert COP. The regulations also allow the employer to contest any of the facts as stated by the injured worker in the report of injury.

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quires the Postal Service to comply with applicable regulations of OWCP. Thus, the National Agreement clearly requires the Postal Service to comply with OWCP law and regulations.

- Again, cite the broad grievance definition in Article 15.1 (JCAM page 15-10), where the parties agreed that disputes that may be handled within the grievance procedure may include alleged violations of law.
- Cite national level Pre-Arb

F94N-4F-C 96032816 (M-01316), where the parties agreed that pursuant to Article 3, grievances are properly brought when management's actions are inconsistent with applicable laws and regulations.

- Cite JCAM page 5-1 for quotation of Arbitrator Bernstein's national level award in H1N-5G-C 14964 (C-06858). Bernstein held that Articles 3 and 5 "incorporate all of the Service's obligations under law" into the Agreement, so as to give the Service's legal obliga-

tions the additional status of contractual obligations as well."

- Cite Step 4 B04N-4B-C 97024116 (M-01372) for the proposition that Bernstein's award is binding on regional arbitrators.

The Postal Service has legal, as well as contractual, obligations to follow certain procedures for dealing with on-the-job injuries. When the Postal Service fails to follow those procedures, its violations are grievable.

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When the employer does controvert a claim, OWCP requires it to advise the employee of the challenge and its basis. Postal regulations also require written notification to the employee in all controversions and challenges.

Despite the regulations, supervisors and managers often fail to notify employees of controversions and challenges. As discussed, lack of notice usually works to the injured employee's disadvantage.

20 CFR 10.211(c) requires management to:

Inform the employee of any decision to controvert COP and/or terminate pay, and the basis for doing so.



An employee cannot counter a controversion when he or she has not received notice of it.



ELM 544.12 states:

The control office or control point must advise the employee whether COP will be controverted and whether pay will be interrupted.

ELM 545.731 states:

Controversion means to dispute, challenge, or deny the va-

lidity of a claim. The Postal Service may controvert a claim by completing the indicated portion of Form CA-1 and submitting detailed information in support of the controversion to OWCP (see 545.75).

ELM 545.75 states:

Proper identification of controverted claims is essential to permit the OWCP to give these claims priority in processing and to avoid the possibility of substantial, erroneous payments of regular pay. If a written explanation of the controversion is not submitted, OWCP may accept as factual the employee's report of injury.

When a claim is controverted, the control office or control point must ensure that the following actions are taken:

* * *

e. The employee, employee beneficiary, or representative must be furnished with a written explanation for the basis of the controversion.

EL-505 Section 8.15 states:

Notify the employee, in writing, that his or her claim is being controverted or challenged (See Exhibit 8.5, Sample Letter: Employee's Notice of Controverted or Challenged Claim).

EL-505 Appendix C defines challenge and controversion:

Challenge: The formal administrative procedure through which USPS management presents evidence to OWCP to dispute any element of an employee's claim for benefits that appears questionable.

Controversion: The formal administrative procedure through which USPS management presents evidence to OWCP to dis-

pute an employee's claim for COP.

Since timely knowledge of challenges and controversions is important to injured carriers, stewards should educate supervisors regarding the requirement to properly notify employees whenever a challenge or controversion is made and then hold them accountable.

9. Failing to advise carrier of the right to choose a physician

The law gives injured letter carriers the right to free choice in their initial selection of physician. It also requires the employer to advise an injured employee of that right. Postal regulations reinforce those requirements.

Despite the very clear language of the law and contract, supervisors often fail to advise employees of their right to choose a physician. In some cases, supervisors actually coerce employees into treatment from Postal Service contract physicians.

The regulations do permit the Postal Service to require an injured employee to be examined by a contract physician — but only so long as the examination does not interfere with or delay the employee's appointment with his or her chosen physician. Arbitrator Mittenthal issued a national level arbitration award on this issue, numbered H1C-NA-C 121-122 (C-06462).

Moreover, the employer can only require the employee to be **examined** by a postal physician. The employee has the exclusive right to choose the physician who will provide **treatment**.

20 CFR 10.300(d) states:

NALC injury compensation CD

The NALC Injury Compensation CD has been developed to assist letter carriers navigate the bureaucratic process and to provide a reference guide to assist with the processing of claims.

The CD manual consists of easy-to-understand information about making a claim, receiving all benefits, the return to work process and other topics relating to your OWCP claim.

It also contains an extensive collection of OWCP-related resources for NALC representatives who assist members with their claims:

The law – The FECA statute, 5 United States Code 81, and its implementing regulations, 20 Code of Federal Regulations 10.

USPS and OWCP Publications: – *Employee and Labor Relations Manual* Section 540 (dealing with

workers' compensation; EL-505, *Injury Compensation*; CA-810, *Injury Compensation for Federal Employees*; CA-550, *FECA Questions and Answers*.

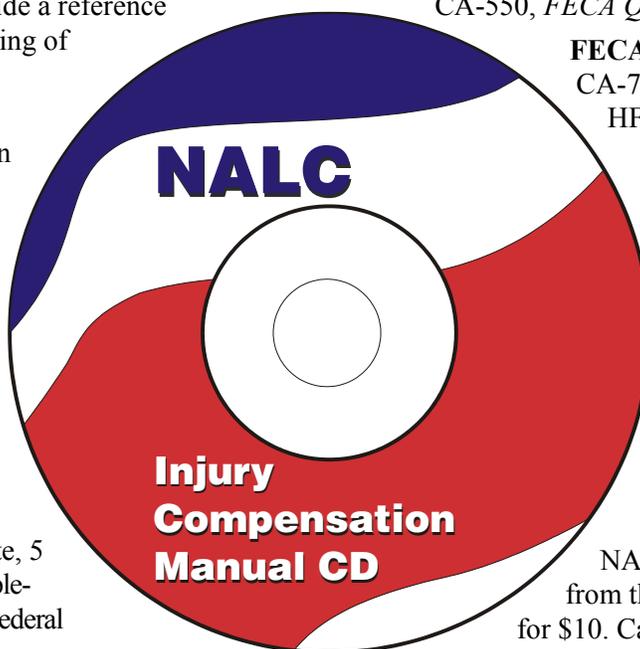
FECA Forms – CA-1, CA-2, CA-2A, CA-7, CA-17, CA-20, CA-915, HFCA-1500, UB-92.

The CD also contains OWCP-related contractual materials such as relevant national-level settlements and both regional and national arbitration decisions.

The CD is completely searchable and contains many links to additional resources on the web.

Members may purchase the NALC Injury Compensation CD from the NALC Supply Department for \$10. Call 202-662-2873 or write to:

Supply Department, National Association of Letter Carriers, AFL-CIO, 100 Indiana Avenue, NW, Washington, DC 20001-2144.



Top ten violations

(Continued from page 10)

The employer should advise the employee of the right to his or her initial choice of physician. The employer shall allow the employee to select a qualified physician.

ELM 543.3 states:

FECA guarantees the employee the right to an initial choice of physician.

ELM 544.112 states:

In case of a traumatic injury, the supervisor must advise the employee of the following:

a. The right to select a physician of choice.

ELM 545.21 states:

The control office or control point must advise the employee of the right to an initial choice of physician (see 543.3).

EL-505 Section 3.2 states:

Immediately ensure that appropriate medical care is provided:

— Advise the employee of his or her right to treatment by a USPS contract medical provider or by a private physician or hospital of his or her choice.

EL-505 Section 3.3 states:

FECA guarantees the employee the right to a free choice of physician.

EL-505 Section 3.9 states:

Obligation: Ensuring Right to a Free Choice of Physician

Initial medical examination and treatment must be authorized in accordance with FECA provisions and applicable OWCP regulations and policies governing medical care. FECA guarantees the employee the right to a free choice of physician.

EL-505 Section 3.10 states:

Supervisor or ICCO Obliga-

Top ten violations

(Continued from page 11)

tion: Authorizing Medical Examination and/or Treatment

Initial medical examination and/or treatment must be authorized in accordance with the FECA provisions and applicable OWCP regulations and policies governing medical care. FECA guarantees the employee the right to a free choice of physician.

MI EL 540-91-1 states:

Under the Federal Employees' Compensation Act (FECA), an employee is guaranteed the right to a free choice of physician. The employee's immediate supervisor is responsible for fully explaining this right to the employee.

Employees have a right to free choice of physician. Supervisors have an obligation to inform employees of that right. Employees are generally better off seeking treatment from their own doctors because some postal contract doctors are susceptible to inappropriate pressures from supervisors regarding work restrictions, release to work, and so on. Stewards should enforce this right.

10. Delaying forwarding of CA-7 to OWCP

Form CA-7, *Claim For Compensation*, is used for claiming compensation for wage loss due to an on-the-job injury. Employees complete the front side and submit it to the employer. The employer completes the reverse and forwards it to OWCP. When OWCP does not timely receive CA-7s, employees suffer delayed payment of benefits.

Both the law and the contract require management to complete and transmit Form CA-7 to OWCP within 5 working days after receipt from the employee.

20 CFR 10.111(c) and 10.112(c) provide:

Upon receipt of Form CA-7 from the employee...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...to OWCP.

Note: The language in 10.112(c) refers to Form CA-8. However, Form CA-8 is obsolete and has been replaced with the new CA-7. In the past, OWCP required CA-7 to be used for the first claim for compensation and CA-8 to be used for all subsequent claims. OWCP redesigned Form CA-7 and now requires its use for both.

ELM 544.12 states:

Control office and control point supervisors are responsible for reviewing all claims for accuracy and completeness and for forwarding claims and related documents to OWCP within prescribed FECA time frames.

ELM 545.52d states:

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.

Despite this crystal-clear language, in Fiscal Year 2003 the Postal Service failed to timely submit Form CA-7 to OWCP **in more than 50 percent of all cases.**

It can be difficult for stewards to determine whether a form has been

transmitted to OWCP within the time limits. The solution is for injured workers to request, in writing, a completed copy of each CA-7 at the time they submit the form.

OWCP's regulations do not require the employer to provide a right to a completed copy of Form CA-7. However, both the Privacy Act and the Administrative Support Manual give employees a general right to any information which USPS files under their name or other identifying means.

The **ASM 353.324** states:

Individuals may review and have copies of any information about themselves that is in a record filed or cross-indexed under their names or other identifiers...

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

Upon receipt of the CA-7, the employee can compare the date the completing manager signed the reverse of the form to the date the employee submitted it. If there is more than a 5 workday spread, the employee should request to see his or her steward.

If management does not provide a copy of the CA-7, as often happens, the employee should request to see his steward regarding violation of ASM 353.324. The steward's investigation of that violation should include request of copy of the CA-7.

Timely submission of Form CA-7 to OWCP is important to injured workers. The Postal Service only gets away with a 50 percent failure rate because stewards don't hold managers accountable for the failures. Shop stewards should enforce the applicable regulations.

How to grieve management's OWCP violations

To succeed, any grievance filing should contain certain well-established elements: 1) documented, proven facts, 2) accurate citations of contract and law, and 3) appropriate requested remedies. The same elements must be present in a grievance protesting management violations of on-the-job injury procedures.

1. Documented, proven facts

It is not enough for a steward to allege that management did something wrong, or failed to do something it should have done. The steward must prove it. Evidence will depend on the specific facts of the case.

Say, for instance, that management failed to provide an injured employee with a CA-16. The steward can provide strong evidence of this failure in different ways. For example, he or she could obtain a signed, dated statement from the injured worker stating that he or she asked the supervisor for a CA-16, but the supervisor refused. Equally persuasive would be a signed, dated statement from the shop steward stating that he or she interviewed the supervisor and the supervisor admitted he refused to provide a CA-16. A management document stating a local policy to not issue CA-16s would be compelling evidence.

For another example, say management failed to forward a CA-1 or CA-2 to OWCP within 10 working days. The steward could provide

compelling evidence by obtaining a copy of the completed form showing that the supervisor completed and dated it more than ten working days after the employee submitted it. Alternative proof, also strong, could consist of a signed, dated statement from the shop steward that he or she interviewed the manager of the Injury Compensation Control Office and the manager admitted the form was not forwarded within the time limits.

2. Accurate citations of contract and law

This issue of the *Activist* provides guidance to many specific citations that can be used for various violations. Those cited are by no means all-inclusive. There are other citations, including handbooks and manuals, Interpretive Step and national prearbitration settlements, and OWCP publications, to name a few. Stewards could cite to the CA-810, *Injury Compensation for Federal Employees* and CA-550 FECA, *Questions and Answers*. These OWCP publications do not contain the actual laws or regulations, but can be cited in grievances, for instance, as follows:

OWCP's explanation of its own regulations in the CA-810 Section 2.2C states, "If an employee requires medical treatment for the injury, the supervisor should complete the front of Form CA-16 within four hours of the request whenever possible."

Stewards have ready access to

OWCP publications, as well USPS manuals, the Code of Federal Regulations, OWCP forms and contract materials, all dealing with OWCP issues, via the NALC Injury Compensation CD. See page 13. The CD is available for purchase from the NALC supply department. The CD's contents are also available on the internet at www.nalc.org.

3. Appropriate requested remedies

Crafting an appropriate remedy is an important element in every grievance, including those involving management OWCP violations.

The general principles to consider in the formation of a requested remedy include:

- A. The remedy should fit the violation,
- B. The grievant should be made whole, and
- C. The remedy should fix the underlying problem.

These same general principles should be applied in cases protesting management OWCP procedure violations.

A. The remedy should fit the violation. Say, for instance, management improperly refused to provide a CA-16, and later claimed the supervisor didn't know he was required to do so. An appropriate remedy might include an order that the Postmaster instruct all of the supervisors and 204Bs, in writing, to comply with the regulations regard-

ing Form CA-16. It would not be appropriate to request that the prime-time percentage in the LMOU be increased. There must be a logical connection between the remedy and the violation.

B. The grievant should be made whole. In most cases involving management errors in handling on-the-job injuries, no monetary make-whole remedy will be appropriate. The FECA provides that the benefits provided by OWCP are the sole remedies available to compensate employees who suffer on-the-job injuries. Stewards should never request as a remedy that OWCP accept a claim and pay benefits. OWCP has exclusive authority to make decisions regarding a claim. Those decisions are not subject to review by an arbitrator, or anyone else.

However, in some cases a monetary make-whole remedy will be appropriate. For instance, in one case the Postal Service failed to advise an injured letter carrier of his right to elect COP. By the time the carrier found out about his rights it was too late and OWCP denied his request for COP. Arbitrator Claude Ames, while acknowledging that only OWCP has final authority to determine COP payment, found:

Failure of Grievant's supervisor to inform him of his COP rights and time limits for filing was the proximate cause of OWCP's denial of his COP.

Arbitrator Ames sustained the grievance, holding that USPS had violated Articles 19 and 21 of the National Agreement by failing to advise the grievant of his right to elect COP. He ordered USPS to reimburse to the grievant

...sick leave used due to his injury in an amount equivalent to COP that he would have received, less compensation benefits.

Case No. F94N-F4-C 99031789, C-22599.

In the usual case, a steward arguing for a make-whole remedy should be prepared to show a direct link between the **contractual violation** and the **demonstrable loss** to the employee.

3. The remedy should fix the problem. Sometimes a simple cease and desist agreement by management will fix an underlying problem. Often it won't. Local stewards are in the best position to determine this.

If a steward determines that a simple promise by management to cease and desist is not likely to solve an ongoing issue, he or she should consider carefully what it will take to do so.

If management admits to a mistake, try to determine why it was made. If the reason was lack of training, a good remedy might include a requirement that the supervisor receive training in OWCP procedures, and that management provide a copy of the training records to

USPS BY THE NUMBERS

USPS Operations—Feb 2004	Number	Chg from SPLY*
Total mail volume year-to-date (YTD) (Billions of pieces)	87.7	0.3%
Mail volume by class (YTD in billions)		
<i>First-Class</i>	42.3	-1.6%
<i>Priority Mail</i>	0.4	-2.9%
<i>Express</i>	0.1	-4.6%
<i>Periodicals</i>	3.8	-4.4%
<i>Standard (bulk mail)</i>	40.1	2.7%
<i>Packages</i>	0.5	2.1%
<i>International</i>	0.4	7.2%
Daily delivery points	142.0 mil.	1.2%
<i>Percent city</i>	74.0%	—
<i>Percent rural</i>	26.0%	—
City carrier routes	164,607	-0.8%
Rural carrier routes	69,985	0.7%
Estimated Net Income (\$mil.)	\$2,241	-30.0%
<i>Total Revenue</i>	\$29,441	-1.0%
<i>Total Expense</i>	\$27,200	2.5%
USPS Operations—Feb 2004		
City carrier employment	227,800	-1.6%
<i>Percent union members</i>	92.5%	—
City Carrier Casuals	5,703	-8.6%
<i>Percent of bargaining unit</i>	2.5%	—
Transitional	3	-79.0%
<i>Percent of bargaining unit</i>	0.0%	—
City carriers per delivery supervisor	18.2	3.9%
Career USPS employment	714,140	-3.9%
City carrier avg. straight-time wage	\$20.96/hr	2.6%
City carrier overtime ratio (OT hrs/total work hours)	13.6%	—
<i>Ratio SPLY</i>	12.5%	—

*SPLY = Same Period Last Year

The NALC Research Department compiled this information from U.S. Postal Service Reports.

Challenging management's OWCP mistakes helps carriers and NALC

The Federal Employees' Compensation Act is intended to protect federal workers, including postal employees, from the adverse financial consequences of on-the-job injuries. But the FECA places the burden of proof on the injured worker. The procedures required to meet that burden are often complex and difficult to navigate.

As a result, some letter carriers suffer on-the-job injuries but fail to obtain the protections of the Act. This can happen for many reasons, including mistakes made in the handling of OWCP claims. Mistakes may be made by the injured worker, by his or her physician, and by Postal Service supervisors and managers.

Branch activists and shop stewards should educate managers and supervisors about their legal and contractual obligations when letter carriers report on-the-job injuries. Then they should hold those managers and supervisors accountable for compliance.

This will benefit all parties—USPS, NALC and individual letter carriers. The Postal Service will

benefit because it will learn the true cost of maintaining a safe and healthful workplace. As things stand now, some of that cost is being transferred to the employees and their health benefit plans, instead of being paid by the Postal Service.

For example, consider what happens if 20% of the letter carriers who have developed carpal tunnel syndrome (as a result of casing and delivering mail) have their OWCP claims denied. In such circumstances, the Postal Service will pay only 80% of the true cost of its decisions relating to ergonomic matters.

The Postal Service should pay the full cost so it can make informed decisions about investing to prevent injuries. USPS is a numbers-driven organization. If it determines that it is spending more on letter carrier on-the-job injuries than it would cost to prevent those injuries, then it will act to make the needed ergonomic changes in letter carrier work.

Activists should not allow Postal management, through its

own errors, to transfer the costs of legitimate on-the-job injuries onto letter carriers and their HBPs. They should educate their supervisors and managers concerning their legal and contractual obligations when a letter carrier reports an on-the-job injury. Then they should enforce those obligations.

This enforcement will promote the safety and welfare of every NALC member, by encouraging the Postal Service to correct unsafe working conditions. In addition, assisting letter carriers with their OWCP claims is potentially a great union organizing tool. Newly hired letter carriers as well as long-term holdouts are more likely to join the NALC when they see concrete benefits.

Finally, of course, the individual letter carriers who have experienced on-the-job injuries will benefit. Their legitimate claims will more likely be accepted by OWCP and they will enjoy the financial protection intended by the FECA.

Grieving violations

(Continued from page 14)

the union. If the violations continue by other supervisors, consider a remedy that requires training for all office supervisors and 204Bs. If the same supervisor continues the violations, ask that his or her superior issue written instructions stating that his or her specific action on a specific date violated a specific provi-

sion of the ELM, CFR, EL-505, etc, and instructs him or her to cease such violations, with a copy to the union.

Stewards should consider the underlying problems and craft remedy requests to resolve them. Doing so may involve progressive remedies in cases of repeated violations. Such remedies might be unpleasant

for the offending supervisors, but all parties benefit from solutions that fix underlying problems. The benefits include fewer grievances, greater contract compliance, less resources spent not moving the mail, and, in the case of grievances concerning on-the-job injury procedures, more legitimate claims accepted by OWCP with less delay.

Regional Training Seminars

Contact your national business agent for more information about these scheduled regional training seminars.

Pacific Northwest Region 2

(Alaska, Utah, Idaho, Montana, Oregon, Washington)

April 26-29, Idaho Shop Steward College, Pocatello, ID.

April 30-May 1, Idaho/Montana State Convention, Pocatello, ID.

May 3-6, Montana Shop Steward College, Fairmont Hot Springs, MT.

May 20-23, Washington State Convention, Kelso, WA.

June 6-10, Washington Shop Steward College, Gold Bar, WA.

Sept 22-25, Regional Assembly, Snowbird, UT.

National Business Agent Paul Price, 360-892-6545.

St. Louis Region 5 (Missouri, Iowa, Nebraska, Kansas)

April 30 to May 1, 2004, Kansas State Training and Convention, Best Western Inn, Salina, KS.

May 2-4, 2004, Iowa State Training and Convention, Ramada Inn, Waterloo, IA.

June 11-13, 2004, Missouri State Training and Convention, Radisson Hotel, St. Louis, MO.

National Business Agent Arthur W. Buck, 314-872-0227.

Minneapolis Region 7 (Minnesota, North Dakota, South Dakota, Wisconsin)

April 26 through 30th, Regional Training Session, NALC Region 7, Holiday Inn Metrodome, Minneapolis, MN.

May 14, 15, 16 - Wisconsin State Association of Letter Carriers Convention, Radisson Inn Harbourwalk, Racine, WI.

National Business Agent Barry Weiner, 612-378-3035.

Atlanta Region 9 (Florida, Georgia, North Carolina, SC)

May 13 & 15, 2004, South Carolina State Convention, Ramada Limited, Beaufort, SC.

May 21-23, 2004, Florida State Training Seminar, Holiday Inn, Gainesville, FL.

June 10 & 12, 2004, Georgia State Convention, Holiday Inn Select, Decatur, GA.

June 18-19, 2004, State Training Seminar, Best Western, Burlington, NC.

National Business Agent Judith R. Willoughby, 954-964-2116.

Dallas Region 10 (New Mexico, Texas)

April 22-23, 2004, OWCP Training (in conjunction with the Department of Labor), Dallas Branch 132 Union Hall, Dallas, TX.

April 29-30, 2004, OWCP Training (in conjunction with the Department of Labor), Houston Branch 283 Union Hall, Houston, TX.

October 10-11, 2004, Regional Training (Fall School), Hyatt Regency IAH, Houston, TX.

National Business Agent Gene Goodwin, 281-540-5627.

ACTIVIST

NALC

A NEWSLETTER FOR BRANCH LEADERS OF THE
NATIONAL ASSOCIATION OF LETTER CARRIERS



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