

NALC

Injury Compensation Manual



**National
Association
of Letter
Carriers, AFL-CIO
December 2002**

Introduction

Letter carriers work hard delivering the mail. Physical strain, wear and tear on the body, and injuries on the job are facts of life. The NALC strives to improve safety and protect letter carriers, but some injuries are bound to occur.

The Federal Employees' Compensation Act (FECA) covers letter carriers who get injured as a result of their jobs. The FECA is administered by the United States Department of Labor's Office of Workers' Compensation Programs (OWCP).

OWCP regulations and contract language dealing with the FECA are extensive and complicated. Few letter carriers feel comfortable saying that they fully understand their rights and benefits.

The purpose of this manual is to help carriers navigate the bureaucratic process and provide a reference guide to assist with the processing of claims.*

The 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. You will also find an extensive appendix that contains links to the FECA, the Code of Federal Regulations pertaining to OWCP, OWCP manuals and pamphlets, USPS manual sections dealing with workers' compensation, OWCP forms, and relevant NALC contractual materials—national-level settlements and both regional and national arbitration decisions. The hyperlinks (blue text) within the document make the manual easy to browse.

* Although the National Association of Letter Carriers has absolutely no legal obligation to represent letter carriers in their OWCP claims, the union often volunteers to assist those injured letter carriers who are members of the NALC in good standing.

Table of Contents (click to view)

OWCP BASICS	1-1
MEDICAL BENEFIT	1-1
COMPENSATION FOR TEMPORARY TOTAL DISABILITY	1-2
COMPENSATION FOR PERMANENT EFFECTS OF INJURY	1-2
COMPENSATION FOR DEATH	1-3
COST OF LIVING INCREASES	1-3
SETTLEMENTS WITH THIRD PARTIES	1-4
APPEAL RIGHTS	1-4
COMMUNICATING WITH OWCP	2-1
WRITTEN COMMUNICATION	2-2
TELEPHONE CONTACT	2-3
DISTRICT OFFICE CONTACTS	2-5
OWCP DISTRICT OFFICES	2-6
REPRESENTATION.....	3-1
CLAIMS	4-1
CONDITIONS OF COVERAGE	4-1
<i>Time</i>	<i>4-1</i>
<i>Civil Employee</i>	<i>4-2</i>
<i>Fact of Injury</i>	<i>4-3</i>
<i>Performance of Duty</i>	<i>4-3</i>
<i>Emotional Reaction</i>	<i>4-5</i>
<i>Causal Relationship</i>	<i>4-5</i>
TRAUMATIC INJURY (CA-1)	4-7
OCCUPATIONAL DISEASE AND ILLNESS (CA-2)	4-9
<i>Employee Narratives</i>	<i>4-9</i>
RECURRENCE (CA-2A)	4-12
<i>Filing For Recurrence</i>	<i>4-14</i>
COMPENSATION	4-16
<i>Temporary total:</i>	<i>4-16</i>
<i>Temporary partial:</i>	<i>4-17</i>
<i>Permanent total:</i>	<i>4-17</i>
<i>Permanent partial:</i>	<i>4-17</i>
<i>Pay Rate Determination:</i>	<i>4-17</i>
BENEFITS.....	5-1
CONTINUATION OF PAY	5-1
<i>Eligibility</i>	<i>5-2</i>
<i>Calculation of COP</i>	<i>5-3</i>
LEAVE BUY BACK	5-5
COST OF LIVING ADJUSTMENTS	5-7
<i>Cost of Living Adjustments – History</i>	<i>5-7</i>
SCHEDULE AWARDS	5-8
WAGE EARNING CAPACITY	5-10
DUAL BENEFITS	5-12
<i>Office of Personnel Management (OPM)</i>	<i>5-12</i>

Table of Contents, continued (click to view)

Other OPM Related Issues 5-13

Veterans’ Disability or Death Benefits 5-14

Military Pension 5-15

Social Security 5-15

DEATH CLAIMS..... 5-15

Compensation to Widow/Widower 5-16

Compensation to Children..... 5-17

Compensation to Parents..... 5-18

Compensation to Siblings, Grandparents, and Grandchildren..... 5-18

Payments..... 5-18

Percentages of Entitlement Compensation for Widow/Widower and Children 5-19

Burial Expenses..... 5-19

MEDICAL..... 5-20

Definition of Physician..... 5-20

Choice of Physician..... 5-21

Physician Narrative..... 5-21

Payment of Bills..... 5-23

Transportation 5-24

Medical Treatment / Evaluation 5-25

THIRD PARTY LIABILITY 6-1

IDENTIFYING THIRD PARTY LIABILITY 6-2

HIRING YOUR OWN ATTORNEY..... 6-4

REPRESENTING YOURSELF 6-5

USPS PURSUES CLAIM..... 6-5

STATEMENT OF RECOVERY 6-7

RETURN TO WORK 7-1

LIMITED DUTY..... 7-1

PERMANENT REHABILITATION 7-5

VOCATIONAL REHABILITATION SERVICES 7-8

THE VOCATIONAL REHABILITATION PROCESS AT A GLANCE..... 7-9

Initial Interview 7-9

Placement with the Previous Employer 7-9

Medical Rehabilitation 7-9

Guidance and Counseling..... 7-9

Vocational Testing and Work Evaluations..... 7-9

Placement with New Employer 7-10

Assisted Reemployment 7-10

Follow-up Services 7-10

APPEAL RIGHTS 8-1

HEARING..... 8-1

RECONSIDERATION 8-3

EMPLOYEES’ COMPENSATION APPEALS BOARD (ECAB)..... 8-3

APPENDIX..... 9-1

THE LAW, MANUALS AND FORMS 9-1

RELEVANT STEP 4 (NATIONAL-LEVEL) SETTLEMENTS 9-2

RELEVANT ARBITRATION DECISIONS 9-2

END NOTES AND REFERENCES 10-1

Chapter**1**

OWCP Basics

The Federal Employees' Compensation Act¹ (FECA) is administered by the Office of Workers' Compensation Programs (OWCP) of the U.S. Department of Labor. It provides compensation benefits to civilian employees of the United States for disability due to personal injury sustained while in the performance of duty or to employment-related disease. The FECA also provides for the payment of benefits to dependents if the injury or disease causes the employee's death. Benefits cannot be paid if the injury or death is caused by the willful misconduct of the employee, by the employee's intention to bring about his or her injury or death or that of another, or if intoxication (by alcohol or drugs) is the proximate cause of the injury or death.

The FECA was enacted on September 7, 1916. It has been substantially modified over the years, with major overhauls in 1949, 1960, 1966, and 1974 designed to provide more liberalized benefits and increased coverage.

A federal employee who is injured at work or who sustains an occupational disease has no right of action (can't sue) against the United States for the effects of the injury or disease other than the right to receive the benefits provided by the FECA. The Act is the exclusive remedy². Although you cannot sue the Postal Service for an injury sustained while on duty, you can grieve certain actions taken by the employer as they relate to the processing of your claim. These actions will be described in greater detail in each chapter. The OWCP process is non-adversarial in nature. Most problems result from interactions with the Postal Service, not with the US Department of Labor.

Medical Benefit

An employee is entitled to medical, surgical and hospital services and supplies needed for treatment of an injury as well as transportation for obtaining care. The employee has initial choice of physician and may select any qualified local physician or hospital to provide necessary treatment or may use agency facilities if available. The Postal Service, according to the ELM Section 544.112 has an obligation to advise the employee of the right to select a physician of choice. Except for referral by the attending physician, any change in treating

physician after the initial choice must be authorized by OWCP. Otherwise, OWCP will not be liable for the expenses of treatment.

The term “physician” includes surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists and chiropractors within the scope of their practice as defined by State law. Payment for chiropractic services is limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.³ If the physician has been excluded from participating in the Compensation Program the OWCP District Office will advise the employee of the exclusion and the need to select another physician.

Compensation for Temporary Total Disability

An employee who sustains a disabling, job-related traumatic injury may request continuation of regular pay for the period of disability not to exceed 45 calendar days. If disability results from an occupational disease, the employing agency is not authorized to continue the employee’s pay. The employee may use sick or annual leave or enter a leave without pay status and claim compensation from OWCP.

Compensation for loss of wages may not be paid until after a three-day waiting period, except when permanent effects result from the injury or where the disability causing wage loss exceeds 14 calendar days. Compensation is generally paid at the rate of 2/3 of the salary if the employee has no dependents and 3/4 of the salary if one or more dependents are claimed.

The term “dependent” includes a husband, wife, unmarried child under 18 years of age, and a wholly dependent parent. An unmarried child may qualify as a dependent after reaching the age of 18 if incapable of self-support by reason of mental or physical disability, or as long as the child continues to be a full-time student at an accredited institution, until he or she reaches the age of 23 or has completed four years of education beyond the high school level.⁴

Compensation for Permanent Effects of Injury

The Act provides a schedule of benefits for permanent impairment of certain members, functions, and organs of the body, such as the eye, arm, or kidney and for serious disfigurement of the head, face or neck. For example, an award of 160 weeks of compensation is payable for total loss of vision in one eye.

In addition, compensation for loss of earning capacity may be paid if the employee is unable to resume regular work because of injury-related disability. This compensation is paid on the basis of the difference between the employee’s capacity to earn wages after an injury and the wages of the job he or she held when injured.

OWCP may arrange for vocational rehabilitation and provide a maintenance allowance not to exceed \$200 per month. A disabled employee participating in an OWCP approved training or vocational rehabilitation program is paid at the compensation rate for total disability.

If the employee's condition requires a constant attendant, an additional amount not to exceed \$1500 per month may be allowed.

Compensation for Death

If no child is eligible for benefits, the widow or widower's compensation is 50% of the employee's pay at the time of death, if death was due to the employment-related injury or disease. If a child or children are eligible for benefits, the widow or widower is entitled to 45% of the pay and each child is entitled to 15%. If children are the sole survivors, 40% is paid for the first child and 15% for each additional child, to be shared equally. Other persons such as dependent parents, brothers, sisters, grandparents, and grandchildren may also be entitled to benefits. The total compensation may not exceed 75% of the employee's pay or the pay of the highest step for GS-15 of the General Schedule, except when such excess is created by authorized cost-of-living increases.

Compensation to an employee's surviving spouse terminates upon his or her death or remarriage. A widow or widower's benefits continue however, if the remarriage takes place after the age of 55. Awards to children, brothers, sisters, and grandchildren terminate at the age of 18, unless the dependent is incapable of self-support, or continues to be a full-time student at an accredited institution, until he or she reaches the age of 23, or has completed four years of education beyond the high school level.

Burial expenses not to exceed \$800 are payable. Transportation of the body to the employee's former residence in the United States is provided where death occurs away from the employee's home station. In addition to any burial expenses or transportation costs, a \$200 allowance is paid for the administrative costs of terminating an employee's status with the Federal Government.

Cost of Living Increases

Compensation payments on account of a disability or death which occurred more than one year before March 1 of each year, are increased on that date by any percentage change in the Consumer Price Index published for December of the preceding year.

Settlements with Third Parties

Where an employee's injury or death in the performance of duty occurs under circumstances placing a legal liability on a party other than the United States, a portion of the cost of compensation and other benefits paid by OWCP must be refunded from any settlement obtained. OWCP will assist in obtaining the settlement and the Act guarantees that the employee may retain a certain proportion of the settlement (after any attorney fees and costs are deducted) even when the cost of compensation and other benefits exceeds the amount of the settlement.

Appeal Rights

An employee or survivor who disagrees with a final determination of OWCP may request an oral hearing or a review of the written record from the Branch of Hearings and Review. Oral and/or written evidence in further support of the claim may be presented. The employee may also request a reconsideration of a decision by submitting a written request to the District Office, which issues the decision. The request must be accompanied by evidence not previously submitted. If reconsideration has been requested, a hearing on the same issue may not be granted. The employee or survivor may also request review by the Employees' Compensation Appeals Board (ECAB). Because the ECAB rules solely on the evidence of record at the time the decision was issued, no additional evidence may be presented.

Chapter**2**

Communicating with OWCP

In order to communicate effectively with OWCP, it is necessary to understand certain fundamentals of OWCP procedures and organization.

OWCP establishes a separate case folder for each report of injury, occupational disease or death (except in instances where more than one injury occurs to the same employee during a given work day or shift). Each of these folders, or case files, are 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, OWCP usually will combine the case file under one master number.

Each of the OWCP district offices has a separate geographical jurisdiction and is responsible for jacketing reports of injury, occupational disease, or death as they are received. Certain key information on the report forms is entered into an automated alphabetical index, which serves as a general database and file number/location finder. All subsequent correspondence, forms, bills, etc. are placed in the appropriate case file, with some few exceptions. Correspondence received without a file number is reviewed in the automated index and the number is written in by hand. If the employee or survivor moves from within an OWCP 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, however, will not change.

Employees or survivors should keep a copy of everything that is submitted to OWCP by them or on their behalf. Employees should be sure to obtain the receipt attached to their notice of injury or occupational disease (CA-1 or CA-2) when it is turned over to the employing agency; and should ask the employing agency for a copy of the notice after the official superior's portion has been completed.⁵ Employees should ask their physician, if right of choice of initial attending physician has been exercised, to provide a photocopy of any medical report the physician sends to the employing agency or OWCP. This physician is the employee's physician and there should be no problem in obtaining copies of the physician's medical reports—particularly any narrative medical reports that may be necessary. Employees or survivors should also keep a copy of all medical bills sent to OWCP, or

sent on the employee's, or survivor's behalf. Employees or survivors should maintain their records in chronological order (most recent documents on top) for convenient reference as necessary and for duplication should the original copies be lost. Certified mail can be used when sending important documents to OWCP—but use of such mail will not by itself provide any special handling within OWCP.

Because all new reports of injury, occupational disease or death are routed through the employing agency, employees or survivors should make sure that OWCP has the applicable new report before contacting OWCP.

Employees or survivors should place the file number (if known) in the upper right hand corner on each and every piece of correspondence, medical bill, etc. and make sure that physicians and others do the same. This is basic common sense but, unfortunately, as much as 50% or more of the mail received by OWCP must be researched through the automated database index to find the case file number. Delay will always occur, even in the best OWCP district offices, without the case file number being supplied.

Written Communication

OWCP has implemented a new process for handling mail for each of their District Offices. They have created one central mailroom to service the entire country. The central mail room contractor has the capacity to rapidly scan large volumes of documents and create quality images. The system will route these imaged documents to the appropriate District Office and directly to the assigned responsible claims examiner for review. The original paper submitted will never return to the District Office. It is anticipated that this system will actually assist the mail in reaching the responsible claims examiner quicker than through the existing methods. The possibility of misplacing mail or filing it in the wrong case file will be greatly diminished.

A notice will be sent to all letter carriers that have active claims on a staggered basis. The new address for all mail submitted by injured employees nationwide is:

U.S. Department of Labor
Federal Employees' Compensation
PO Box 8300
London, KY 40742-8300

When writing to OWCP, employees or survivors should limit their inquiries to a single topic per 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 errors. This does not mean that employees or survivors can not write to OWCP regarding problems pertaining to pay-

ments of compensation benefits and medical bills 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 are best handled through separate letters.

Employees or survivors are cautioned to avoid sending a barrage of correspondence to OWCP. Too many letters serve to slow the processing of a case file. Employees or survivors 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, contact should be made with a higher authority in OWCP—followed in another 30 days by further contact and then possibly by requesting congressional assistance. It should be kept in mind, however, that a Congressional buck slip which is sent to OWCP (with the employee's or survivor'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. It should also be kept in mind that virtually all letters to the President of the United States are routed routinely to OWCP for reply. In effect, employees or survivors should be selective—and avoid flooding OWCP with dozens of letters from various sources. Quality of communication is much more important than quantity.

Telephone Contact

Employees should use the telephone to communicate with OWCP on problems when 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. The case file number should be given when telephoning OWCP, but employees or survivors should expect to be told 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, employees or survivors should call before and ask for an appointment so they can be sure the file will be available.

As part of the Department of Labor's efforts to meet the performance goal of improving responsiveness to customer inquiries by 10%, established in the 1999-2004 Strategic Plan for the Federal Employees' Compensation Act, OWCP determined that there was a great need to improve telephone service, equipment and software, use new automated tools to increase response to telephone calls, streamline and accelerate medical authorizations and make a broad effort to educate and inform all parties about benefits and services.

OWCP has been aware for some time that their customer service efforts needed to be improved. Customer surveys have continued to show that rising dissatisfaction with the level of communication between injured worker and claims examiner and injured worker and agency personnel are increasing factors in the adjudication process.

To this end, OWCP has announced that they have launched two new initiatives. The first is a toll-free national Call Center and the other is a toll-free automated Interactive Voice Response system.

The Call Center is intended for use mainly by injured employees who have general questions about their rights and responsibilities when filing a workers' compensation claim. Customer Service Representatives will provide answers to frequently asked questions about claims under the FECA, as well as referral information on the new Central Interactive Voice Response system, the program's web site (www.dol.gov/dol/esa/dfec.htm) and the district offices. Callers will also be able to request single copies of commonly used forms from the Call Center.

The Call Center personnel will not be able to address any case-specific questions, such as claims status, bill payments, lost wage claims or medical authorizations. They will refer the caller to their claims examiner at the district office for those types of detail.

Information is available in both English and Spanish. The telephone numbers are 1-866-999-3322 (voice) and 1-877-889-5627 (TTY), and the lines are staffed from 8 am to 5 p.m. Eastern Standard Time, Monday through Friday.

Callers from states where the Call Center is not yet available will hear a blocking message. This message will refer them to the Central Interactive Voice Response system for the kinds of information that may be obtained there, and also refers them to the program's web site for detailed general information about claims processing. The caller is advised to call the district office for information that cannot be obtained from either of those sources. The Call Center does not have telephone lines connecting it to the district offices. For this reason, it cannot transfer or connect calls, and all calls to the district office will remain toll calls.

The Interactive Voice Response is a completely automated system that provides case-specific information about established claims. The system is intended for use by injured employees and medical providers. The information available includes case status, compensation payments, reimbursement of medical treatment and travel expenses, payment of medical bills and authorization of medical treatment such as physical therapy and diagnostic testing. The Central Interactive Voice Response system is available to all callers across the country. The telephone number is 1-866-OWCP-IVR (1-866-692-7487). For the time being, callers may continue to call the district office IVR numbers if they wish to do so, but those are not toll-free calls.

District Office Contacts

There are four key positions in OWCP District Offices:

- Regional Director
- District Director
- Assistant District Director
- Technical Assistance Advisor

In most cases, an injured employee will communicate with three types of claims examiners during the course of their claim. These are:

- Supervisory Claims Examiner
- Senior Claims Examiner
- Claims Examiner

Delays, failure to respond to inquiries, problems in determining the status of case files, and other problems in communicating with an OWCP district office should be taken up with the District Director or Assistant District Director.

If the District Director is not available or the problem still remains after contact with that level, contact should be made with the Regional Director.

A Technical Assistance Advisor (TA) can be invaluable in solving procedural problems with an employing agency, conducting seminars for NALC branches, and providing copies of CA forms, pamphlets, etc. A TA is not usually contacted on matters relating to individual case files.

Most employees of OWCP are dedicated to helping employees or survivors—in spite of backlogs and other pressures of work—and should be thanked when thanks are in order.

OWCP District Offices

District 1 - Boston
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

U.S. Department of Labor, OWCP
JFK Federal Building, Room E-260
Boston, MA 02203
(617) 624-6600

District 3 - Philadelphia
(Delaware, Pennsylvania, and West Virginia)

U.S. Department of Labor, OWCP
Curtis Center, Suite 715 East
170 South Independence Mall West
Philadelphia, PA 19106-3308
(215) 861-5481

District 9 - Cleveland
(Indiana, Michigan, and Ohio)

U.S. Department of Labor, OWCP
1240 East Ninth Street, Room 851
Cleveland, OH 44199
(216) 357-5100

District 11 - Kansas City
(Iowa, Kansas, Missouri, and Nebraska)

U.S. Department of Labor, OWCP
City Center Square
1100 Main Street, Suite 750
Kansas City, MO 64105
(816) 502-0301

District 13 - San Francisco
(Arizona, California, Hawaii, and Nevada)

U.S. Department of Labor, OWCP
71 Stevenson Street
San Francisco, CA 94105
(415) 848-6700

District 16 - Dallas
(Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

U.S. Department of Labor, OWCP
525 Griffin Street, Room 100
Dallas, TX 75202
(972) 850-2300

District 2 - New York
(New Jersey, New York, Puerto Rico and the Virgin Islands)

U.S. Department of Labor, OWCP
201 Varick Street, Room 740
New York, NY 10014
(212) 337-2075

District 6 - Jacksonville
(Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina and Tennessee)

U.S. Department of Labor, OWCP
214 North Hogan Street, Suite 1006
Jacksonville, FL 32202
(904) 357-4777

District 10 - Chicago
(Illinois, Minnesota, and Wisconsin)

U.S. Department of Labor, OWCP
230 South Dearborn Street, Eighth Floor
Chicago, IL 60604
(312) 596-7157

District 12 - Denver
(Colorado, Montana, N. Dakota, S. Dakota, Utah and Wyoming)

U.S. Department of Labor, OWCP
1999 Broadway, Suite 600
Denver, CO 80202

District 14 - Seattle
(Alaska, Idaho, Oregon, and Washington)

U.S. Department of Labor, OWCP
1111 Third Avenue, Suite 615
Seattle, WA 98101-3212
(206) 398-8100

District 25 - Washington, DC
(DC, Maryland, and Virginia)

U.S. Department of Labor, OWCP
800 North Capitol Street, N.W., Room 800
Washington, DC 20211
(202) 513-6800

Chapter**3**

Representation

In some instances, it is necessary to obtain assistance from the National Association of Letter Carriers in order to obtain information about a claim or assistance with a particular issue. (*Note: The NALC provides assistance only to Union members.*) Section 8127 of the Federal Employees' Compensation Act (FECA) provides that an employee or survivor may authorize an individual to represent them before any proceeding under the Act. Any knowledgeable member of the NALC can represent an employee or survivor provided that no fee or gratuity is charged.

OWCP's regulations require an employee or survivor to provide OWCP with written notice of any appointment of a representative. While OWCP has traditionally furnished representatives of the NALC general information regarding the injuries or deaths of employees within the NALC's bargaining unit, it is necessary to furnish the written and signed notice when performing more than routine services for an employee or survivor (e.g., representation at a hearing). In order to avoid any unnecessary delays, an employee requesting the assistance of an NALC representative should always provide written authorization.

OWCP's regulations limit employees or survivors to only one representative at any one time. For example, an employee cannot be represented by an attorney and an NALC representative at the same time. Naming more than one NALC representative, however, counts as only one appointment. A suggested format for [an NALC representation authorization](#) can be found in the Forms section of this manual. (The form may be reproduced for use.)

Chapter**4**

Claims

Conditions of Coverage

Each claim for compensation must meet certain requirements before it can be accepted. This is true whether the claim is for traumatic injury, occupational disease, or death. While the requirements are addressed somewhat differently according to the type of claim, they are always considered in the same order:

1. **Time**
2. **Civil Employee**
3. **Fact of Injury**
4. **Performance of Duty**
5. **Causal Relationship**

Time

The Federal Employees' Compensation Act (FECA) requires that an employee give written notice of injury or occupational disease and file claim for compensation within specified time periods. If the employee fails to meet the appropriate time limitations, the claim will be denied even if it is otherwise valid. Forms CA-1, CA-2 and CA-7 are provided for the purpose of giving written notice of injury and claiming compensation.

The time limitations imposed by the FECA do not apply to minors under the age of 21 or an incompetent individual while he or she is incompetent and does not have a duly appointed legal representative. For all other employees, the following time limitations apply.

For injuries and deaths on or after September 7, 1974, the law provides that a claim for compensation must be filed within three years of the injury or death. Even if a CA-1 or CA-2 is not filed within three years, compensation may still be allowed if written notice of injury was given within 30 days or the immediate superior had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written

records or verbal notification; an entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the agency on notice of a possible work-related injury or illness.

For traumatic injury, the statutory time limitation begins to run from the date of injury. Since traumatic injuries are identifiable as to time and place of occurrence, meeting this time limit is fairly obvious. Although the FECA provides a three-year time frame for entitlement, it should be noted that in order to qualify to receive Continuation of Pay (COP), a CA-1 for a traumatic injury must be filed within 30 days of the date of injury.

For a latent condition or occupational disease claim, time begins to run when an injured employee who has a compensable disability becomes aware, or reasonably should have been aware, of a possible relationship between the medical condition and the employment. Where the exposure to the identified factors of employment continues after this knowledge, the time for filing begins to run on the date of the employee's last exposure to those factors.

For instance, you could have been diagnosed with Carpal Tunnel Syndrome four or five years ago, but were able to continue working. You and your physician determine that the repetitive motion of casing your route has caused or contributed to the condition, but it is not that serious yet and you are released to return to full duties. Finally the condition gets to such a point that your physician wants to either perform particular treatment options or pull you from work for a period of time. Your three-year statutory time limit would begin running from the last day at work when you were casing mail.

Civil Employee

If the claim is timely filed, it must next be determined whether the injured or deceased individual was an "employee" within the meaning of the law.

The FECA covers all civilian federal employees. Temporary employees are covered on the same basis as permanent employees. Contract employees, volunteers, and loaned employees are covered under some circumstances; such determinations must be made on a case-by-case basis once a claim is filed. Federal employees who are not citizens or residents of the United States or Canada are covered subject to certain special provisions governing their pay rates and computation of compensation payments. All Postal Service employees in the letter carrier craft are covered by the FECA, regardless of designation status or length of employment.

Fact of Injury

After the elements of “time” and “civil employee” have been considered, the claims examiner must decide whether the employee sustained a personal injury. This is called “fact of injury.”

1. Whether the claimant actually experienced the accident, event, or employment factor, which is alleged to have occurred; and
2. Whether a medical condition has been diagnosed in connection with this event.

Performance of Duty

If the first three criteria have been accepted, it must be determined whether the employee was in the performance of duty when the injury occurred. Generally the issue of performance of duty falls within three distinct areas: on agency premises, off agency premises, and other factors.

On Agency Premises: The majority of cases reported to OWCP involve straightforward situations in which the injury occurs while the employee is performing assigned duties or engaging in an activity which is reasonably associated with the employment on agency premises. Such activities include use of facilities for the employee’s comfort, health, and convenience. The premises include areas immediately outside the building such as steps or sidewalks, if they are federally owned or maintained.

Coverage is extended to employees who are on the premises for a reasonable time (usually considered 30 minutes) before or after working hours. It is not extended, however, to employees who are visiting the premises for non-work related reasons.

Injuries to employees performing representational functions entitling them to official time are also covered while on the agency premises. Injuries to employees engaged in the internal business of a labor organization, such as soliciting new members or collecting dues, are not covered.

The agency’s premises include the parking facilities, which it owns, controls or manages. An employee will usually be covered if injured on such parking facilities.

Off Premises Injuries: Coverage is extended to workers such as letter carriers who perform service away from the agency’s premises. It is also extended to workers who are sent on errands or special missions.

Employees do not have the protection of the FECA when injured en route between work and home; except where the agency furnishes transportation to and from work, the employee is required to travel during a curfew or an emergency, or the employee is required to use his or her personal vehicle during the workday.

Injuries that occur during lunch hour off the premises are not ordinarily covered unless the employee is in travel status or is performing regular duties off premises. Different rules, however, apply to letter carriers who must have lunch on or near their route. In such cases, lunch off the premises is covered if the eating facility is on or reasonably near the carrier's route. Caution: An identifiable unauthorized deviation from the route for a personal reason, including lunch, may remove you from coverage. It should be noted that deviations of less than 3/10 of a mile have resulted in denied claims.

Other Factors: Some injuries occur under circumstances, which are not governed, or not completely governed, by the premises rules. Injuries involving any of the circumstances indicated below must be determined on a case-by-case basis.

- **Recreation.** An employee is covered while engaged in formal recreation for which he or she is paid or is required to perform as part of training or assigned duties.
- **Horseplay.** An employee who is injured during horseplay is covered if the activity was one, which could reasonably be expected where a group of workers are closely associated for extended periods of time. In this kind of case, it must be determined whether the specific activity was a reasonable incident of the employment or whether it was an isolated event which could not reasonably have been expected to result from close association.
- **Assault.** An injury or death caused by the assault of another person may be covered if it is established that the assault was accidental and arose out of an activity directly related to the work or work environment. Coverage may also be extended if the injury arose out of a personal matter having no connection with the employment if it was materially and substantially aggravated by the work association.
- **Harassment or Teasing** of employees by coworkers is a compensable factor of employment. Employees who are harassed, teased or called derogatory names by coworkers are considered to be in the performance of duty provided that the reasons for the harassment or teasing are not imported into the employment from the employee's domestic or private life.
- **Emergencies.** Coverage is extended to employees who momentarily step outside the sphere of their employment to assist in an emergency such as to extinguish a fire or help a person hit by a car.
- **Union Representation:** Employees performing representational functions, which entitle them to official time, are in the performance of duty and entitled to all benefits of the FECA if injured while performing those functions. Activities relating to the internal business of the union organization, such as soliciting new members or collecting dues are not included.

The issue of performance of duty, while seemingly straightforward, becomes much more confusing when dealing with Emotional Reaction claims.

Emotional Reaction

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. Where the disability results from an emotional reaction to regular or specially assigned duties or to a requirement imposed by the employment, the disability would come within the coverage of FECA. The Employees' Compensation Appeals Board (ECAB) held, in the case of Lillian Cutler, 28 ECAB 125, that when an employee experiences emotional stress in carrying out assigned employment duties, or has fear and anxiety regarding his or her ability to carry out these duties, a resulting disability is considered to have "arisen out of and in the course of employment." On the other hand, the disability is not covered where it results from a frustration from not being permitted to work in a particular environment or to hold a particular position.

Personnel actions such as the regular administrative functions of an agency (leave usage, disciplinary action, etc.), performance ratings, performance assessments and informal discussions of performance, standing alone, are not sufficient to provide coverage under the FECA. In general, for a personnel action to be compensable, the injured employee must establish an error or abuse of administrative authority by the agency for the condition to be compensable. Without this showing of error or abuse of administrative authority, the emotional reaction is considered to self-generated. In order to establish this error, an employee claiming an emotional reaction should document the error through either the grievance procedure or EEO. Please keep in mind that personnel actions may be canceled or modified through various procedures such as arbitration, grievance, etc., or disputes may be settled without prejudice to the position of any party. Cancellation or modification of personnel actions and settlements of disputes do not, of themselves, establish that the actions were erroneous or unreasonable. However, when a grievance is sustained in the employee's favor or EEO makes a finding supporting the employee that establishes the error or abuse of administrative authority, the employee's reaction cannot be considered self-generated.

Causal Relationship

After the four factors described above have been considered, the causal relationship between the condition claimed and the injury or disease sustained is examined. Unlike "fact of injury" which involves the determination that a medical condition is present, "causal relationship" involves the establishment of a connection between the injury and the condition found. This factor is based entirely on the medical evidence provided by physicians who have examined and treated the employee.

An injury or disease may be related to employment factors in any one of four ways:

1. **Direct Causation:** This term refers to situations where the injury or factors of employment result in the condition claimed through a natural and unbroken sequence. A fractured arm sustained in a fall would be considered a direct result of the fall, and a sensorineural hearing loss might likewise be caused directly by occupational noise exposure over a period of time.
2. **Aggravation:** If a pre-existing condition is worsened, either temporarily or permanently, by a work-related injury, that condition is said to be aggravated. For instance, a traumatic back injury may aggravate a claimant's pre-existing degenerative disc disease, and compensation would be payable for the duration of the aggravation as medically determined.

Temporary aggravation involves a limited period of medical treatment and/or disability, after which the employee returns to his or her previous medical status. Compensation is payable only for the period of aggravation established by the medical evidence, and not for any disability caused by the underlying disease. This is true even if the employee cannot return to the job held at the time of injury because the pre-existing condition may be aggravated again.

Temporary aggravations may involve either symptoms or short-term worsening of a condition. For instance, a claim may be accepted for angina, which is essentially a symptom, in which case medical treatment and compensation would be limited to the period of work-related angina and would not encompass treatment or disability due to the underlying condition. Likewise, a claimant with a psychiatric condition may suffer a short-term worsening of the condition, which then reverts to its prior state. Both of these situations qualify as temporary aggravation.

Permanent aggravation occurs when a condition will persist indefinitely due to the effects of the work-related injury or when a condition is materially worsened by a factor of employment such that it will not return to the pre-injury state. For instance, an allergy which would have persisted in any event may be permanently aggravated by exposure to dust and fumes in the workplace such that subsequent episodes are more severe than they otherwise would have been.

3. **Acceleration:** A work-related injury or disease may hasten the development of an underlying condition, and acceleration is said to occur when the ordinary course of the disease does not account for the speed with which a condition develops. For example, a claimant's diabetes may be accelerated by a work schedule, which is so erratic that it prohibits the regular food intake required by persons with this condition. An acceptance for acceleration of a condition carries the same force as an acceptance for direct causation. That is, the condition has been accepted with no limitation on its duration or severity.

4. **Precipitation:** This term refers to a latent condition, which would not have manifested itself on this occasion but for the employment. For example, tuberculosis may be latent for a number of years, then become manifest due to renewed exposure in the workplace. The claim would be accepted for precipitation, but the acceptance would be limited to the period of work-related tuberculosis and the OWCP's responsibility for the condition would cease once the person recovered. Any ensuing episode of the disease would be considered work-related only if medical evidence supported such a continued relationship. In this way acceptance for precipitation may resemble acceptance for temporary aggravation.

Traumatic Injury (CA-1)

According to the Federal Employees' Compensation Act (FECA) a traumatic injury is defined as:

"A wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to the time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift."⁶

The key to this definition is that an event must have occurred during one workday.

If you suffer an on-the-job traumatic injury, you should immediately notify your supervisor and request authorization for medical treatment. The Postal Service is required to provide you with a CA-16, but if it is not made readily available, you should request it and identify the physician that you have selected to provide medical treatment for the injury. When you receive the CA-16 you should review the form for correctness, focusing on Box 12. Box 12 should include the address for the US Department of Labor, OWCP for your region and not the address for USPS Injury Compensation. If the Postal Service has entered the incorrect address, you should make the correction so there is no confusion about where the form is to be returned. You should also ensure that the form is signed.

The injured employee may, in non-emergency situations, be required to be examined (but not treated) by a Postal Medical Office (PMO) or contract equivalent, prior to obtaining initial medical treatment. This examination must in no way interfere with the employee's right to seek prompt examination/treatment from a physician of choice.

If possible, you should take the CA-16 with you when you first go to the doctor. The Postal Service should also provide you with a [CA-17](#) (Duty Status Report) for the physician to complete and return to the Postal Service.

Now that you have obtained proper medical attention, you will want to complete a Form [CA-1](#) (Federal Employees' Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation). This must be done within 30 days of the date of injury in order for you to be eligible for continuation of pay (Continuation of Pay will be discussed in another

section.). Please retain your receipt and request a copy of the completed CA-1 from your supervisor.

The Postal Service is required to forward your completed CA-1 to OWCP within 10 working days from the date that you submit it. This time limitation does not mean that your supervisor has 10 days to get the form to the District Injury Compensation Office and they have another 10 days to forward it to OWCP.

After OWCP receives the CA-1 from the Postal Service, they will send you a CA-14 pamphlet that identifies your OWCP case file number and spells out your rights and benefits. You should receive this case number in approximately 2 weeks from the date that OWCP receives your claim. Use this number on all documents submitted to OWCP. Instruct your doctor and other medical providers to include this case file number on all bills or other correspondence sent to OWCP.

To establish the essential elements of a claim: you must provide the evidence needed to show that you filed for benefits in a timely manner; that you are a civil employee; that the injury occurred as reported and in the performance of duty; and that your condition or disability is related to the injury.

In order for a claim to be considered timely, the CA-1 must be received by the Postal Service within 30 days of the date of injury; however, the claim will be accepted if submitted within 3 years. Being an employee of the United States Postal Service will qualify you as a civil employee under the definition of the Federal Employees' Compensation Act. The rest of an essential claim rests with your physician. You must ensure that your physician provides: a clear diagnosis of your medical condition (please note that pain is not a diagnosis; it is a symptom), all the objective test results that support the diagnosis, and his rationalized medical opinion about the relationship between your condition and what you relay as having occurred that one day at work.

Some CA-1 claims are accepted by OWCP under the "Quick Close" provision. What this means is that OWCP will unconditionally approve a claim until lost wages and/or medical expenses exceed \$1,000. Once that monetary threshold is met, OWCP will evaluate the claim and place it into development for a review of the evidence. "Quick Close" claims generally do not receive an acceptance letter. If you think your claim has been accepted this way, you should contact your OWCP Claims Examiner or National Business Agent's office for verification.

All other CA-1 claims will receive an approval letter in the mail from OWCP. This letter will spell out what condition has been accepted as being work related and will provide you with a list of your benefits and entitlements. This letter will explain filing for lost wage compensation, submitting medical bills for payment, and how to be reimbursed for medical expenses.

Occupational Disease and Illness (CA-2)

An occupational disease is defined as a condition produced in the work environment over a period longer than one workday or shift. It may involve infection, repeated stress or strain, exposure to toxins, fumes or other continuing conditions of the work environment. Some of the more widely recognized occupational diseases/illnesses include carpal tunnel syndrome, arthritis, rotator cuff strains, tendonitis, back injuries, and heart conditions. These medical conditions usually develop slowly and do not generally occur at a specific time and place. Occupational disease claims do not provide continuation of pay provisions. They also do not allow for the issuance of a CA-16.

Occupational disease claims are filed on a [CA-2](#) form (Notice of Occupational Disease and Claim for Compensation). To establish a claim for compensation benefits for Occupational Disease or Illness, complete the front of the CA-2 and submit it to your supervisor as soon as possible, but not later than 30 days after you are aware of the connection between your disease or illness and your employment as a letter carrier, or within 30 days from your last exposure to the conditions of employment implicated in your claim, whichever is later. Although you are entitled to file a claim for benefits within three years, if the form is submitted more than 30 days from the last exposure you will be required to explain the reasons for delay.

Submit the medical evidence necessary to support your claim. There are checklists available for specific medical conditions in order to serve as an aid (Forms CA-35a through g). This additional factual and medical evidence is essential to your Occupational Disease claim.

Details are extremely important for all Workers' Compensation claims. But this is even more essential for Occupational Disease claims. You must explain in detail the work that you do, as well as the type of injury you are claiming. You must urge your doctor to be as specific as possible in diagnosing your injury and showing how specific job functions have caused, aggravated or accelerated your condition. You will want to provide a very detailed description of what you do at work on a daily basis for your doctor. Keep in mind that your doctor might not get a clear picture of what you mean if you simply say, "I case mail". Try to avoid postal-related language and concentrate on the actual physical functions of your job.

Employee Narratives

When filing a claim for workers' compensation, it is generally necessary to develop two different types of employee narrative. The first would involve a step-by-step breakdown of your job duties for your doctor to refer to. You should keep in mind that most people do not understand what must take place for mail to show up in their mailbox. Avoid "postal phrases" when explaining your job to your physician. The second narrative will focus on what parts of your job you find to be responsible for either causing or aggravating the medical condition that you are claiming as an occupational disease.

An appropriate narrative for your physician should include information such as:

Upon reporting for work, retrieve mail from designated location and place on mail case ledge, cutting strings, straps, bands, etc... as appropriate for returning equipment to its proper location. While standing the entire time, pick up fold/crease newspaper-sized articles to fit into one or two-inch separations on a mail case twisting to reach as necessary. The mail case has approximately four hundred separations in a "U" shaped configuration. The bottom shelf is approximately three feet from the floor and extends upward to approximately six feet, with six shelves. This movement/action is repeated until all flats (newspaper-type items) are inserted into the mail case. On my route I repeat this motion approximately ... (number of flats that you fold on your route and the number of hours normally spent casing).

Pick up handful of letters and hold in one hand with the other hand taking individual letter pieces to insert into the one- or two-inch separations of the mail case. This action is repeated (number of letter sized items on your route and the number of hours spent casing). Any other items, which can be cased into the mail case of odd size or shape, are sorted.

Parcel post hamper is then retrieved from its designated location and brought to the mail case where parcels are arranged in delivery sequence. Once all mail is inserted into the mail case, it is extracted from the case by pulling down the individual customer's mail from the one or two inch separations. This mail is held, tied, bundled, banded, or compressed by straps or containers until all mail that has previously been inserted into the mail case has been placed into delivery sequence.

The mail (now in bundles, trays, etc...) is now taken to the vehicle and loaded using a heavily laden cart. The carrier drives to the first delivery point or park and loop location (describe the type of route you have, i.e., mounted, park and loop, business or VIM. Include information such as number of miles and/or hours walking, carrying a satchel weighing up to 35 pounds, etc...) You will now need to describe the delivery process for your particular type of route. As an example, the carrier arrives at the first delivery point and pulls up the mailbox or begins the park and loop process. The mail for that delivery is gathered and combined into one bundle to be inserted into the mailbox. Any outgoing mail is also collected and placed in the vehicle, push cart or satchel. At that point, the carrier drives/walks to the next delivery point. This is a typical action that is repeated (insert number of deliveries/boxes on your route).

Upon return to the office, the mail collected from patrons on the route and other items that need to be brought to the post office are again loaded onto a conveyance and transported to the designated work location.

The above sample will be useful for most occupational repetitive motion injury claims. Some conditions will need a more detailed description of other types of events. The sample is not meant to be used for each and every situation, but is being provided as a template for you to use.

Once you have submitted the CA-2, the Postal Service will forward your claim to OWCP within 10 working days. Within two weeks you will receive a postcard in the mail that contains an OWCP case file number. Use this number on all documents, correspondence and billing information submitted to OWCP.

If you need medical care for an Occupational Disease claim, you should arrange for such treatment by choosing your own physician. If OWCP approves your claim, they will pay for medical treatment related to the accepted condition(s).

If you are unable to work because of an Occupational Disease, you may use sick or annual leave⁷, leave without pay, and/or claim compensation for wage loss. Occupational Disease claims are different from Traumatic Injury claims (CA-1) in that there is no provision for Continuation of Pay (COP). Occupational claims generally take longer to adjudicate (generally it takes 3 to 6 months, depending upon the medical support).

As with all injuries, you are expected to return to work as soon as possible. If the Postal Service advises you that limited duty is available or is willing to provide work that is compatible with the work restrictions imposed by your doctor, you must let your doctor know. Generally the Postal Service is not willing to accommodate letter carriers with limited duty until the Occupational Disease claim has been approved by OWCP. If this is the case, we suggest that you get something in writing that states that you are available for limited duty, but that the Postal Service has refused to make a job offer until the final adjudication of the claim. This serves to support any claim for compensation that you may make for this period of time. If you are in a leave-without-pay status or expect to lose wages because you are unable to work, you may claim compensation by filing Form CA-7 (Claim for Compensation on Account of Traumatic Injury or Occupational Disease). If your disability continues beyond the period of time claimed on the CA-7, you should submit CA-7's each pay period where you have wage loss. OWCP will not process open-ended claims. (i.e., 1/1/01 through the present).

Recurrence (CA-2a)

Under the Federal Employees' Compensation Act (FECA), a recurrence is defined as follows:

A **work stoppage** that occurs after an employee has returned to work following a preceding period of disability and is the result of:

- A spontaneous return of symptoms (disability) of a previously accepted work-related condition without intervening cause; or
- A return or increase of disability due to a consequential injury.⁸

In most cases, the key to differentiating a recurrence from a new injury is that, in a recurrence situation, the only evident cause of disability or increased symptoms is the original accepted injury. No new identifiable event or events are responsible for the increased symptoms or disability. The exception to this rule is a "consequential injury."

Many employees mistakenly file a recurrence simply because at one time they had the same problem or had previously filed a claim for the same condition to the same body part.

For example: Tom filed a CA-1 for a knee injury in 1998. The claim was accepted as a strain. He received treatment and was eventually released to full duty. On October 12, 2001, Tom feels the same kind of pain in his knee. He sees his doctor and he is once again diagnosed as having a strain to his knee.

In this example, Tom would **not** file a CA-2a. Since it is not possible that his strained knee spontaneously reappeared, Tom would need to determine whether his new injury resulted from something he did at work on October 12 or whether it is a cumulative injury resulting from walking his route over a period of time. The proper forms would be a CA-1 and CA-2 respectively.

The following are examples of a Recurrence that would require the submission of a form [CA-2a](#).

Tom is a letter carrier who has a previously accepted left knee condition. Following initial disability, Tom returned to work in a limited duty position that met all of his medical restrictions, in which he is seated at a table answering the phone. There is no unusual use of the legs involved in this limited duty position.

Several weeks later, Tom's knee symptoms increased to the point that he was unable to continue in his limited duty position answering the phone. There was no identifiable cause for the increase in symptoms other than the original accepted injury. By definition, this would be classified as a recurrence. Tom should file a CA-2a for claiming workers' compensation benefits.

Tom's original knee condition required him to have surgery. During that surgery screws were inserted in his knee to stabilize the condition. Tom's doctor releases him to

his regular duties. After a period of time, Tom's doctor informs him that the screws need to be removed and replaced because they are only safe for a few years. In order for Tom to have this procedure done and authorized by OWCP, he will need to file a CA-2a. The same scenario would also apply if Tom's surgery resulted in the formation of scar tissue in his knee. Occasionally his physician will need to go back into the knee to remove the scar tissue.

These are relatively simple recurrences that are easily identified because there is no apparent, identifiable cause for the worsening of the condition other than the original condition itself.

Included in the definition of recurrence is the special case of "consequential injury". A consequential injury is a new injury which occurs as the result of a previously accepted work-related injury; for example, it occurs because of weakness or impairment caused by a work-related injury. Included in this definition are injuries sustained while obtaining medical care for a work-related injury.

Consequential injuries may resemble traumatic injuries in certain cases. Like a traumatic injury, a consequential injury may be the result of a specific, identifiable traumatic event. This event, however, must be related in some way to a previously accepted, work-related condition.

Unlike a traumatic injury, a consequential injury may be accepted even if it occurs when an employee is in a non-pay, non-working status (that is "off the clock").

It is important to differentiate between new traumatic injuries and consequential injuries. The procedures for claiming a consequential injury are different than the procedures for claiming a new traumatic injury.

As stated above, a consequential injury may result from medical treatment of a previously accepted injury. A consequential injury may affect the same body part as the previously accepted injury, as in the following example:

Tom has a previously accepted claim for a strain of the left knee, which was sustained when he slipped on a wet floor at work. While at his doctor's office for treatment of the strained left knee, Tom's left knee gave out and he fell to the floor, bruising the same knee. The new injury would be considered a consequential injury and a claim would be submitted on a form CA-2a.

A consequential injury to a new body part may result from medical treatment, as in the following example:

Tom has a previously accepted claim for a strain of the left knee. While attending physical therapy for his knee, Tom was involved in weight training. Tom developed a back injury due to the strengthening exercises. Tom must file a form CA-2a to claim this as a workers' compensation injury.

A consequential injury to a new body part may also result directly from the original injury, as in the following example:

Tom has an approved claim for a strain to his left knee. As a result of this knee problem, he is forced to walk with a limp. After a period of time, his back begins to hurt. Tom's physician explains that the reason his back went out is a direct result of walking with the limp. Since the new back condition is not related to factors of Tom's employment, he will need to file a CA-2a explaining that the reason for his back condition is directly related to his approved knee condition.

The following example shows a consequential injury sustained by a claimant in his own home:

Tom has an accepted claim for a strained left knee. Following initial disability, Tom was on crutches due to the accepted injury, working in a limited duty assignment. One day, while walking to his car, Tom's crutch slipped on a patch of ice in his driveway. He fell to the ground, worsening the condition in his left knee and making him unable to continue in his limited duty assignment. This would be considered a consequential injury and a form CA-2a would be filed by Tom to claim this injury.

Please note that, in all of the examples above, the consequential injuries were all caused by a previously accepted injury. This is the most important factor in identifying a consequential injury.

It is helpful to note that while a consequential injury may occur outside of work, a consequential injury rarely occurs at work since a new condition or disability that develops as a result of an incident **in the work place** is almost always considered a new injury, not a recurrence.

A third reason for filing a CA-2a Recurrence claim would be the withdrawal of limited duty by the Postal Service. If you have been working at a modified assignment and receive word that the Postal Service can no longer accommodate your restrictions (even though your condition or restrictions have not changed), you will need to submit a CA-2a and a CA-7 to claim an increase in disability and be compensated. When filing a CA-2a for this reason, it is important to note the withdrawal of accommodation on the form itself.

Filing For Recurrence

Recurrence within 90 days of return to duty: It is usually accepted that, following initial disability due to an accepted injury, renewed symptoms shortly after return to work are likely to result from the same injury. Because of the close connection between the claimed recurrence and the original injury in these cases, the issue of disability rather than causal relationship is the main focus.

The claimant should submit medical evidence supporting disability due to the original injury or condition along with a form CA-2a. If the claimant has lost wages due to the recurrence, a form CA-7 should also be filed at that time.

Recurrence after 90 days of return to duty: The evidence required in these cases should be as conclusive as the evidence needed to establish an original claim. It should not be presumed that any subsequent incapacity involving the injured member or part of the body is the result of the original injury solely because the original injury was accepted. The issue of causal relationship must be focused on in these cases.

The claimant should submit both factual and medical evidence supporting causal relationship of the recurrence to the original injury or condition.

In the case of recurrence after six (6) months of return to duty: The evidence required in these cases should be same as for recurrence after 90 days of return to duty.

The only difference is that a claimant may be entitled to a recurrent pay rate (i.e. a recalculation of compensation based on new salary information) for wage loss if the disability occurs more than six (6) months after his/her first return to full-time regular duty.

The following important facts should be considered prior to the submission of any form CA-2a:

If a claim is being filed for a consequential injury, it is helpful to indicate this on the form CA-2a.

As with any claim form, it is important to file a CA-2a as timely as possible.

When completing form CA-2a (or any other workers' compensation form), it is very important to record accurate information and to complete the entire form, leaving out none of the requested information.

It is important to submit any additional relevant factual or medical evidence, which is immediately available. This greatly expedites the processing of the claim.

It is important to determine whether or not the form CA-2a is the most appropriate form to file for the current disability. If this is a new injury, continuing medical treatment or a surgery request, do not submit form CA-2a.

Do not file multiple claim forms for the same injury. Filing multiple claim forms causes confusion and delays in processing.

Submit form CA-7 along with form CA-2a if wage loss has occurred.

Ensure that form CA-2a clearly indicates exactly what is being claimed by the submission of the form. For example: Is this a claim for additional medical benefits? Has the claimant lost wages as a result of the recurrence? Is this a notification of consequential injury?

Many times, an injured letter carrier who has returned to duty following a previously accepted work-related disability may experience an increase in disability due to the physical factors of the current employment (either full duty or limited duty). Over a period of time, the physical stress of even a limited duty assignment may cause a new medical condition to arise.

When a new condition arises out of factors of a claimant's current employment or symptoms increase, disability caused by the new condition is considered to be the result of a new occupational disease (not a recurrence). It is always important to decide whether a new injury has been sustained. Keep in mind that in order for a condition to be classified as a recurrence, there must be a spontaneous return or worsening of symptoms.

Compensation

Compensation for disability is designed to compensate the disabled employee for the loss of earning capacity which he or she suffers as a result of an on-the-job injury. Compensation is claimed through the submission of a [Form CA-7](#).

Compensation begins after a three calendar-day waiting period. This waiting period begins on the first day or partial day of wage loss following the day or shift during which the injury occurred. However, the waiting period is waived if the period of wage loss exceeds 14 calendar days or if OWCP determines that the employee has a permanent disability. For those employees who have received Continuation of Pay (COP) and whose disability continues beyond the 45 days, the waiting period begins on the 46th day. However, the three-day waiting period is waived if the period of wage loss exceeds 14 calendar days (which begins on the 46th day for employees who have received COP) or if OWCP determines that the employee has a permanent disability.

There are four types of disability for compensation purposes:

- Temporary total;
- Temporary partial;
- Permanent total; and
- Permanent partial.

Temporary total:

A temporary total disability is one that prevents the employee from working in any capacity for a limited period of time. Recovery without permanent effects is normally, but not always, expected. Compensation payments for temporary total disability are based upon loss of earning capacity. Thus, until the employee recovers from the injury or disease and is able to return to work, he or she will receive compensation payments equal to 66 2/3% of their regular pay or 75% of regular pay if he or she has a spouse and/or other dependents.

Temporary partial:

The term “temporary partial disability” applies to those employees whose work-related disabling condition partially reduces their earning capacity for a limited period of time. In other words, the disabled employee cannot physically perform all of the duties of his or her regular job for a period of time, but is able to work in a limited duty position either full time or part time. Complete recovery is normally, but not always, expected. Compensation for temporary partial disability is paid only for those regular duty hours the employee is not able to work. For example, a temporarily disabled employee who is able to work only five hours of a regular eight-hour shift, would receive compensation for the remaining three hours he or she is unable to work.

Permanent total:

The FECA provides compensation to an employee unable to return to any type of work because of a permanent disability caused by an employment-related injury or disease. Permanent total disability payments are equal to 66 2/3% of the employee’s regular pay or 75% of the regular pay if there is a spouse and/or other dependents. OWCP is reluctant to classify an employee as permanently totally disabled because of the possibility that medical improvement and/or vocational rehabilitation could restore at least some earning capacity. Nevertheless, if an employee has a disability which, combined with age and other factors, is so severe that there is no hope of recovery and the employee is incapable of performing any and all work, OWCP may make such a determination. The loss of use of both hands, both arms, both feet or both legs, or the loss of sight in both eyes is prima facie permanent total disability.

Permanent partial:

Many employees, after reaching maximum medical improvement, have residual permanent disability, which does not prevent them from being able to perform some type of work, but not the work performed at the time of the injury or at the same wage level. These employees are considered to have a permanent partial disability. Permanent partial disability compensates the employee for his or her loss of “earning capacity.” The payments are based on 66 2/3% of the difference between the employee’s adjusted “earning capacity” as established by OWCP and the employee’s former earnings at the time of injury. If the partially disabled employee has a spouse and/or dependents, compensation is equal to 75% of this difference.

Pay Rate Determination:

The actual amount of compensation for disability is based on the employee’s regular pay rate. This term is not as simple as it seems; and many factors are taken into account in OWCP’s determination of this pay rate.

Three dates are possible in determining the pay rate for compensation purposes, and OWCP must choose the date on which the pay is greatest.

- The date of injury;
- The date the disability began (if different from the date of injury); or
- The date of recurrence, if the recurrence begins more than 6 months after the employee has gone back to regular work following the original disability.

The FECA specifically refers to certain items that must be included or excluded in determining an employee's regular pay rate. In addition, OWCP has administratively decided that certain other items should be included or excluded.

Items included in determining the pay rate for compensation purposes are:

- The employee's full salary and full cash wage.
- The value of any subsistence and quarters received for services in addition to the cash wage. This does not include subsistence and quarters furnished by the employing agency for which the employee pays or for which a deduction is made from the employee's salary.
- Premium-pay for standby or unscheduled duty.
- Night or shift differential.
- Extra pay for Sunday or holiday work.
- Guaranteed lump-sum cash payments such as those provided in USPS/NALC National Agreements.
- "Heavy Duty Pay" for rural carriers serving heavily patronized routes.⁹
- "Dirty-Work Pay" given to employees subjected to work conditions which soil the body or clothing beyond that normally expected.
- "Hazard Pay" when it is included for work that is recurrent in nature and is part of the normal routine of the employee's duties.
- "Territorial COLA" paid to employees within the United States (i.e., Hawaii) and its possessions (i.e., Puerto Rico) due to cost of living differentials.
- Postal Service cost-of-living adjustments (COLA's).

The FECA and OWCP exclude the following items from consideration in determining pay rate:

- Overtime pay.
- Additional pay or allowance authorized outside the United States and its possessions because of differential in cost-of-living or other special circumstances.
- Bonus or premium pay for extraordinary service, including amounts paid for particularly hazardous duty in time of war.
- Per Diem received by an employee while in travel status, and extra allowances paid for an employee's use of his or her private motor vehicle.

The monthly pay at the time of injury is deemed 1/12 of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed 1/52 of the average annual earnings.

Average annual earnings are determined as follows:¹⁰

If the employee worked in the employment during substantially the whole year¹¹ immediately preceding the injury and the employment was in a position for which an annual rate of pay was fixed, the average annual earnings are the annual rate of pay. If the rate was not fixed, the average annual earnings are obtained by multiplying the daily wage for the particular job by 300 if he or she was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5 ½ day week, and 260 if employed on the basis of a 5-day week.

If the employee did not work during substantially the whole year immediately preceding the injury, but the position was one that would have afforded employment for substantially the whole year, the average annual earnings are the sum equal to the average annual earnings of an employee of the same class working substantially the whole year in the same or similar employment.

If either of the above methods cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury, having regard to the previous earnings of the employee in Federal employment, and of other employees of the US in the same or most similar class, working in the same or most similar employment, in the same or neighboring location, other previous employment of the employee, or other relevant factor. However, the average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within one year preceding his or her injury.

If the employee served without pay or at nominal pay, paragraphs 1,2 and 3 above apply as far as practicable, but the average annual earnings of the employee shall be determined at the reasonable value of the service performed but not in excess of \$3,600 a year.

Chapter**5**

Benefits

Continuation of Pay

Continuation of Pay (COP) is the continuance of the employee's regular pay for a period not to exceed 45 calendar days of disability.

Effective September 7, 1974, the FECA was amended to authorize the employing agency to continue an employee's pay for a period not to exceed 45 calendar days of disability, pending the OWCP's determination of the employee's claim for compensation.¹² COP applies only to traumatic, disabling reported on Form CA-1 within 30 days of the date of injury.

The intent of the COP provision is to eliminate interruption in the employee's income for the period immediately following a job-related traumatic injury, not to increase the amount of compensation. COP during the 45-day period is not considered compensation as defined by 5 USC 8101(12) and therefore is subject to income tax, retirement and other usual payroll deductions.

If the employee has stopped work due to the disabling effects of a traumatic injury, the period begins with the first full day or shift of the disability, provided that it begins within 45 days of the injury. The employing agency will keep the employee in a pay status or grant administrative leave for any fraction of a day or shift lost on the date of injury with no charge to the 45-day period. Only if the injury occurs before the beginning of the workday may the date of injury be charged to COP.

If the employee stops work for a portion of a day or shift other than the day of injury, such day or shift will be counted as one calendar (full) day for purposes of tolling the 45 days. The 45 days during which pay may be continued are calendar days, not work days.

The employer must continue the pay of an employee who is eligible for COP, and may not require the employee to use his or her own sick or annual leave. However, while continuing the employee's pay, the employer may controvert¹³ the employee's COP entitlement pending a final determination by OWCP. OWCP has the exclusive authority to determine questions of entitlement and all other issues relating to COP. If a claim for

COP is controverted, the Postal Service is required to notify the injured employee of their reasoning.¹⁴

Eligibility

To be eligible for COP, a person must:

1. Have a traumatic injury as defined by the FECA¹⁵ which is job-related and the cause of the disability, and/or the cause of lost time due to the need for medical treatment;
2. File Form CA-1 within 30 days of the date of injury; and
3. Begin losing time from work due to the traumatic injury within 45 days of the injury.

On Form CA-1, an employee may 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 following provisions apply:

The request must be made 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.

Where the employee is otherwise eligible, the agency shall restore leave taken in lieu of any of the 45 COP days. Where any of the 45 COP days remain unused, the agency shall continue pay prospectively.

The use of leave may not be used to delay or extend the 45 day COP period or otherwise affect the time limitation as provided by 5 USC 8117. Therefore, any leave used during the period of eligibility counts towards the 45-day maximum entitlement to COP.

If the employee recovers from disability again and stops work, the employer shall pay any of the 45 days of entitlement to COP not used during the initial period of disability where:

- The employee completes CA-2A and elects to receive regular pay;
- OWCP did not deny the original claim for disability;
- The disability recurs and the employee stops work within 45 days of the time the employee first returned to work following the injury; and
- Pay has not been continued for the entire 45 days.

Calculation of COP

The pay rate for COP purposes is equal to the employee's regular "weekly" pay (the average of the weekly pay over the preceding 52 weeks). The pay excludes overtime pay, but includes other applicable extra pay except to the extent prohibited by law. Changes in pay or salary (for example, promotion, demotion, within grade increases, termination of a temporary detail, etc.) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

The weekly pay for COP purposes is determined according to the following formulas:¹⁶

- 1 For full or part-time workers (permanent or temporary) who work the same number of hours each week of the year, the weekly pay rate is the hourly pay rate (A) in effect on the date of injury multiplied by (x) the number of hours worked each week (B): $A \times B = \text{weekly pay rate}$.
- 2 For part-time workers (permanent or temporary) who do not work the same number of hours each week, but who do work each week of the year (or period of appointment), the weekly pay rate is an average of the weekly earnings, established by dividing (\div) the total earnings (excluding overtime) from the year immediately preceding the injury (A) by the number of weeks (or partial weeks) worked in that year (B): $A \div B = \text{Weekly Pay Rate}$.
- 3 For intermittent, seasonal and on-call workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year (or period of appointment), the weekly pay rate is the average weekly earnings established by dividing (\div) the total earnings during the full 12-month period immediately preceding the date of injury (excluding overtime) (A), by the number of weeks (or partial weeks) worked during the year (B) (that is $A \div B$); or 150 times the average daily wage earned in the employment during the days employed within the full year immediately preceding the date of injury divided by 52 weeks, whichever is greater.

If the employee cannot perform the duties of his or her regular position, but instead works in another job with different duties with no loss in pay, then COP is not chargeable. COP must be paid and the days counted against the 45 days authorized by law, whenever an actual reduction of pay results from the injury, including a reduction of pay for the employee's normal administrative workweek that results from a change or diminution in his or her duties following an injury. However, this does not include a reduction of pay that is due solely to an employer being prohibited by law from paying extra pay to employee for work he or she does not actually perform.

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:¹⁷

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 had 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 30 days following the injury.

When the employer stops an employee's pay for one of the above reasons, the employer 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 always rests with OWCP.

Where the employer has continued the pay of the employee, it may be stopped only when at least one of the following circumstances is present:¹⁸

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 (Note: Although this is a regulatory obligation, Postal Service practice is to wait for the receipt of medical evidence before paying COP. This practice is clearly in violation of the ELM and should be grieved;
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 refused 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.

An employer may not interrupt or stop COP to which the employee is otherwise entitled because of a disciplinary action, unless a preliminary notice was issued to the employee before the date of injury and the action become final or otherwise takes effect during the COP period.

When OWCP finds that an employee obstructs a medical examination required by OWCP, the right to COP is suspended until the refusal or obstruction ceases. COP already paid or payable for the period of suspension is forfeited. If already paid, the COP may be charged to sick or annual leave or considered an overpayment.

Where OWCP finds that an employee is not entitled to COP after it has been paid, the employee may choose to have the time charged to annual or sick leave, or considered an overpayment.

Leave Buy Back

When an employee elects to use sick or annual leave during the period of disability, he or she may later, with the concurrence of the employing agency, claim compensation for the period of disability and "buy back" the leave used.

A major change in the processing of leave buy back claims was implemented on August 1, 1996. Surveys of OWCP employees indicated that the existing leave buy back process was cumbersome and time-consuming for both injured workers and federal employing agency staff. In addition, data showed that only about one-half of claimants elected to repurchase their leave after the CA-1207 was issued and they became aware of the additional payment the Postal Service requires beyond the amount of their FECA entitlement.

A decision was made to simplify the procedure from a two step process to a one step process, with the claims examiner issuing an immediate payment (instead of a CA-1207) when possible.

Two new forms, a Time Analysis Form ([CA-7a](#)) and a Worksheet/Certification and Election Form ([CA-7b](#)), have been developed to be filed with Form CA-7 in leave buy back claims. The new form CA-7a is to be used when leave dates are intermittent or when more than one continuous period of leave is claimed. The CA-7b fully explains the process to the claimant and allows an estimate of the FECA entitlement. It requires the Postal

Service to advise the employee of the amount required to reinstate the leave in question and to agree to the process in advance of submission of the form.

Generally the process goes as follows:

- Injured employee files a claim for leave buy back.
- Postal Service contacts the Postal Data Center for an accounting of the total amount paid to the employee for the period claimed. Usually a bill for this amount will be sent to the employee. The bill is simply an administrative procedure for processing leave buy back requests. Payment is not due at the time this initial bill is received.
- Postal Service forwards the claim to OWCP for payment.
- OWCP sends applicable payment to the Postal Service.
- The Postal Data Center credits the payment and issues a second bill with a balance due. The remaining balance of the bill must be paid in full by the employee before the leave is restored.

Leave buy back is neither authorized nor required by the Federal Employees' Compensation Act (FECA), nor is it controlled by OWCP. The regulatory language states:

The employee may claim compensation for periods of annual and sick leave, which are restorable in accordance with the rules of the employing agency. Forms CA-7a and CA-7b are used for this purpose.¹⁹

The key to this section is "in accordance with the rules of the employing agency". The USPS has, in the past, allowed leave buyback for all annual and sick leave used for approved OWCP claims. However, the language in ELM 512.923 limits the leave that can be repurchased by injured employees.

Under the provisions of the Injury Compensation Program (545.73b(6)), current employees may be permitted to buy back sick leave and annual leave they used while awaiting adjudication of their cases by the Office of Workers' Compensation Programs (OWCP).²⁰

Recently, directives from various District Injury Compensation offices have been issued notifying injured employees that they will only be permitted to buy back leave that is used before OWCP approved the claim. Once a claim is accepted, the employee is being required to either use LWOP-IOD (Leave Without Pay – Injured On Duty) or forfeit their right to repurchase any leave that is used after OWCP notifies the employee that his or her claim is accepted.

Cost of Living Adjustments

In cases of disability, an injured employee is eligible for cost-of-living adjustments where injury related disability began more than one year prior to the date the cost-of-living adjustment took effect.²¹

Each year on March 1, the increase in the cost of living for the preceding calendar year is determined. If the injured employee has been entitled to compensation for at least one year before that March 1, a cost-of-living increase is applied to the benefits.

Cost of Living Adjustments – History

Effective Date	Increase	Effective Date	Increase
10/01/66	12.5%	03/01/81	3.6%
01/01/68	3.7%	03/01/82	8.7%
12/01/68	4.0%	03/01/83	3.9%
09/01/69	4.4%	03/01/84	3.3%
06/01/70	4.4%	03/01/85	3.5%
03/01/71	4.0%	03/01/87	0.7%
05/01/72	3.9%	03/01/88	4.5%
06/01/73	4.8%	03/01/89	4.4%
01/01/74	5.2%	03/01/90	4.5%
07/01/74	5.3%	03/01/91	6.1%
11/01/74	6.3%	03/01/92	2.8%
06/01/75	4.1%	03/01/93	2.9%
01/01/76	4.4%	03/01/94	2.5%
11/01/76	4.2%	03/01/95	2.7%
07/01/77	4.9%	03/01/96	2.5%
05/01/78	5.3%	03/01/97	3.3%
11/01/78	4.9%	03/01/98	1.5%
05/01/79	5.5%	03/01/99	1.6%
10/01/79	5.6%	03/01/00	2.7%
04/01/80	7.2%	03/01/01	3.4%
09/01/80	4.0%	03/01/02	1.3%

Schedule Awards

Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs, and functions of the body. Such loss or loss of use is known as permanent impairment.

Permanent impairment is defined as the loss or loss of use of a part of the body, whether total or partial. The degree of impairment is established by medical evidence and expressed as a percentage of loss of the member involved. Permanent impairment may originate either within the effected member or in another part of the body. For instance, a back injury may result in impairment to a leg, for which a schedule award would be payable. A claimant may also receive an award for more than one part of the body in connection with a single injury.

Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. For example, a 6% loss of use of an arm would result in 6% of 312 weeks or 18.72 weeks worth of compensation. A 40% loss of use of the hand would be 40% of 244 weeks or 97.6 weeks worth of compensation.

Form CA-7 may be used to file a claim for schedule award, or consideration may be requested in the form of a narrative letter. In some instances, OWCP will initiate a claim for a schedule award on the employee's behalf. Compensation for schedule awards is computed by multiplying the indicated number of weeks by $66 \frac{2}{3}$ (without dependents) or 75% (with dependents) of the pay rate.

OWCP evaluates the degree of impairment of scheduled members, organs or functions as defined in 5 USC 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. The current edition being used is Edition 5.

To support a schedule award, the file must contain competent medical evidence which:

- Shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement);
- Describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability; and
- Gives a percentage evaluation of the impairment (in terms of the affected member or function, not the body as a whole, except for impairment to the lungs).

The attending physician should make the evaluation whenever possible. The report of the examination should include: a detailed description of the impairment, which includes,

where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment.

Injuries sometimes leave objective or subjective impairments, which cannot easily be measured by the AMA Guides. Some examples are: pain, atrophy, deformity, loss of sensation, loss of strength, sensitivity to heat or cold, or soft tissue damage (scarring, discoloration, etc...) The effects of any such factors should be explicitly considered along with the impairment measurable by the AMA Guides and correlated as closely as possible with the factors set forth there.

The following chart shows the member and associated number of weeks worth of compensation for total loss or loss of use.

Schedule Awards – Weeks of Compensation

Member	Weeks	Member	Weeks
Arm	312	Loss of Hearing (One Ear)	52
Leg	288	Loss of Hearing (Both Ears)	200
Hand	244	Breast	52
Foot	205	Kidney	156
Eye	160	Larynx	160
Thumb	75	Lung	156
First Finger	46	Penis	205
Great Toe	38	Testicle	52
Second Finger	30	Tongue	160
Third Finger	25	Ovary (Incl. Fallopian Tube)	52
Toe (not great toe)	16	Uterus/Cervix	205
Fourth Finger	15	Vulva/Vagina	205

Note: The law does not allow for payment of a schedule award for impairment to the back, heart or brain.

Wage Earning Capacity

The loss of wage earning capacity benefit insures that an injured worker will not be penalized for returning to a lower-paying job because of a disabling condition. It also permits the adjustment of compensation to reflect partial rather than total disability, if the requirements of the law are strictly met.

If there is any permanent disability resulting from the injury, identifiable at the time of maximum medical improvement, which prevents the employee from returning to the job held at time of injury or to other work paying a comparable wage, OWCP must determine what work the employee can perform in his or her partially disabled condition.

If the medical evidence does not support total disability, OWCP is required by the FECA to reduce the employee's compensation on the basis of a determination of the employee's capacity to earn wages.

A typical case would be a letter carrier who sustained a shoulder injury and is discharged from medical care with a permanent restriction of lifting over 10 pounds. In such an example, the letter carrier is most likely not able to perform the duties of the position held at the time of injury. If the USPS does not offer other suitable work at the same or greater salary earned at the time of injury, the letter carrier is entitled to claim further compensation on the basis of OWCP's determination of what the letter carrier can earn with the resulting impairment. Such a determination is termed an "earning capacity determination" and once established, compensation will be based on $66\frac{2}{3}\%$ of the difference between the employee's adjusted earning capacity established by OWCP and the employee's former earnings at the time of injury. If the worker has a spouse and/or dependents, the compensation is based on 75% of the difference.

If the employee is working, his or her actual earnings will in all probability be used by OWCP, if such earnings fairly and reasonably represent the current earning capacity. However, if they do not, or if the employee has no job—which is often the situation—then OWCP determines what type of work the disabled employee can best perform, taking into account the following factors:

- Nature and degree of injury related disability (and any other disabilities that preceded the injury).
- Work limitations resulting from injury-related and preceding disabilities.
- Usual or former employment.
- Age and education of the employee.
- Qualifications for other employment (experience).

- Availability of suitable employment in the employee's commuting area.
- Any other factors or circumstances which may affect the employee's earning capacity.

It should also be noted that the selected job does not have to actually be available to the employee in the form of a vacancy, but must be a type of job that exists in the employee's commuting area.

After a specific job is identified by the OWCP claims examiner and a description of the job and its physical requirements is prepared and placed in the employee's compensation case file, an OWCP district medical advisor must review the case and provide an opinion concerning whether the employee is physically able to perform the specific job selected.

The claims examiner then obtains the employee's pay rate at the time of injury, the current pay rate of the employee's former job and the wage paid in the area for the specific job selected. If the current pay rate for the employee's former job is the same or lower than the pay rate at the time of injury, then OWCP considers the employee's earning capacity to be simply the wages paid in the area for the specific job selected. The employee's loss of wage earning capacity is then the difference between the employee's pay rate at the time of injury and the wage paid in the area for the specific job selected.

However, if the current pay rate for the employee's former job is greater than the pay rate at the time of the injury and OWCP must make an "adjusted earning capacity" in accordance with a far more complicated formula.

This formula, known as the Shadrick Formula, was first applied as a result of a 1952 Employees' Compensation Appeals Board decision (Shadrick, 5 ECAB 376).

The "Shadrick Formula" is designed to establish an adjusted earning capacity in those situations where OWCP selects a job as representing the partially disabled employee's current earning capacity, and where the current pay rate for the employee's job at the time of injury is greater than the pay rate in effect at the time of injury.

This essentially consists of relating the amount of pay OWCP believes the employee is currently capable of earning to the current pay rate for the job held at the time of injury; and then applying the resulting percentage figure to the pay rate at the time of injury, thereby allowing for the increase in the pay rate that has occurred between the time of injury and the effective date of the earning capacity determination.

Example: A letter carrier earned \$25,000 at the time of injury; the current pay rate for that job is \$29,000. OWCP determined that the carrier could earn \$19,000 as a data entry clerk. The Shadrick Formula would give you:

(1) Weekly pay rate at the time of injury (\$25,000 / 52)	\$480.77
(2) Current weekly pay rate for the same job (\$29,000 / 52)	\$557.69
(3) Current earning capability (\$19,000 / 52)	\$365.38
(4) Earning capacity divided by current pay rate ((3) / (2))	65%
(5) Adjusted earning capacity ((4) times (1))	\$312.50
(6) Loss of earning capacity ((1) minus (5))	\$168.27
(7) Compensation with dependent (75% times (6))	\$126.20

Thus, after applying the Shadrick Formula the employee's compensation in the above example would be \$126.20 per week. If the Shadrick Formula were not used, the employee's compensation in the above example would be \$86.54 per week (\$25,000 minus \$19,000 divided by 52 weeks times 75%).

Dual Benefits

The FECA prohibits payment of compensation and certain other Federal benefits at the same time.²² This prohibition does not, however, prevent an individual from filing for benefits from more than one government program at a time. For instance, a claimant may file for a retirement annuity (regular or disability) while his or her claim with OWCP is pending. Only if both benefits are approved will the rules governing dual benefits be applied.

Office of Personnel Management (OPM)

When a claimant is entitled to disability benefits under the Federal Employees' Compensation Act (FECA) and annuity benefits from OPM under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS), the employee must make an election between OWCP benefits and OPM benefits. The employee has the right to elect the monetary benefit, which is the more advantageous. The policy also applies to reemployed annuitants. However, if any payments have been received from OPM, those payments must be repaid in full either directly by the employee or by OWCP from the FECA payments due, before the employee may begin receiving OWCP benefits. If OPM benefits are elected, the employee is entitled to have medical expenses for treatment of the accepted condition(s) paid by OWCP. There is no prohibition against receiving OWCP benefits concurrently with benefits from the Thrift Savings Fund.

Section 5 USC 8337(f) provides that the prohibition against the payment of dual benefits does not bar the right of a claimant to the greater benefit conferred by either Act for any part of the same period of time. Thus, an election of disability compensation under the FECA or an election of an annuity benefit provided by OPM is not irrevocable.

When compensation for death is payable under the FECA and death benefits are payable under CSRS or FERS, the eligible survivor(s) must make an election between OWCP benefits and OPM benefits. This includes the lump sum death benefit paid under the FERS, though any beneficiary may concurrently receive benefits from OWCP and the Thrift Savings Fund.

When a survivor is entitled to both an annuity from OPM in his or her own right because of his or her own Federal service, and entitlement to death benefits under the FECA, no election is required between these two benefits.

OWCP does not consider the election of OPM benefits to be irrevocable for an injured employee. However, OPM considers an informed election of death benefits provided by OWCP to be irrevocable. This means that once a survivor elects to receive OWCP benefits for the death of a Federal employee, he/she can not change their mind and start receiving OPM survivor benefits at a later date. If OPM benefits have been paid, the lump sum payment provided as part of the death benefit must be repaid in full either directly by the beneficiary or by OWCP from benefits due, before the beneficiary may begin receiving OWCP benefits. Where a survivor is entitled to both an OPM annuity in his or her own right because of his or her own Federal service, and an entitlement to death benefits under OWCP for a spouse, no election is required between the two benefits.

Other OPM Related Issues

Medical Treatment: Regardless of which monetary benefits the claimant elects, any medical treatment required for the effects of the compensable injury will continue to be provided under the FECA.

Schedule Awards: Schedule Awards payable for the permanent loss or loss of use of specified members, organs, or functions of the body, are the only FECA monetary compensation benefits payable concurrently within an OPM annuity.

Vocational Rehabilitation: An employee is receipt of OPM retirement benefits is prohibited from receiving vocational rehabilitation assistance under FECA

Third Party Credits: Where a claimant has made a third-party recovery resulting in a credit against the compensation entitlement, and it appears that additional compensation may be paid and medical expenses claimed, compensation payments are calculated and charged against the recovery credit to the case, as are injury related medical expenses paid by the claimant. This procedure continues until the third party credit is absorbed. There is no prohibition against receipt of an OPM annuity during the period that the third party credit is being absorbed by OWCP. The claimant is not actually receiving compensation

from OWCP during this period, so the payment of an annuity does not constitute a prohibited dual payment. When the credit has been exhausted, the claimant should be given an opportunity to elect between FECA benefits and continuation of the OPM annuity.

Veterans' Disability or Death Benefits

If the veteran's benefit was for a non-service-related condition, no election is required. The following discussion addresses claims involving service-related conditions.

1. The prohibition against dual payment of FECA and veteran's benefits applies to those cases where the disability or death of an employee has resulted from an injury sustained in civilian employment by the United States and the Department of Veterans Affairs (DVA) has held that the same disability or death was caused by the military service.
2. The prohibition also extends to an increase in a veteran's service-connected disability award, where the increase is brought about by an injury sustained while in civilian employment.
3. The prohibition does not extend to pensions, since Section 5 USC 8116(a)(2) expressly provides that there is no limitation on the right to receive FECA compensation because of the receipt of a pension for service in the Army, Navy or Air Force. The receipt of a pension from the DVA for a non-service connected disability or death and the payment of compensation under the FECA is therefore not a prohibited dual benefit, and no election is required.
4. The DVA pays other benefits to veterans and their survivors, which are variously termed compensation, dependency and indemnity compensation, and educational assistance, etc., other than for educational awards. The payment of compensation under the FECA concurrently with such veterans' benefits would constitute a prohibited dual payment only where the veteran's award is based on the finding that the same disability or death for which FECA benefits are payable was caused by the military service.

The election is irrevocable only in those cases where the disability or death of the employee has resulted from an injury sustained in civilian employment by the United States, and the Department of Veterans Affairs has held that the same disability or death was caused by military service. What this means is that the VA has determined that the disability or death was caused by events or hazards experienced during military service and OWCP has determined that the disability or death is related to the employee's civilian employment. An injured worker may be entitled to both benefits; but cannot receive them concurrently. OWCP will require an election to be made. Once this election is made, the employee cannot switch back to the other.

Military Pension

There is no limitation on the right to receive OWCP compensation at the same time that you are in receipt of a pension for military service in the armed forces. There is also no limitation on the right to receive OWCP compensation concurrently with retainer pay, retirement pay, or equivalent pay for service in the armed forces or other uniformed service.

Social Security

OWCP does not require an election between FECA benefits and Social Security benefits, except when they are attributable to the employee's federal service. The Social Security Act was amended on July 30, 1965, providing a reduction in Social Security benefits to certain individuals receiving workers' compensation.

Injured employees receiving a Social Security Disability benefit shall have their Social Security benefit reduced by the amount of OWCP compensation that is payable. OWCP does not consider this to be a dual benefit, but the Social Security Administration does.

An injured employee, who is covered under the Federal Employees' Retirement System (FERS) or the Civil Service Offset Retirement System (CSRS Offset) and is receiving regular Social Security benefits (age 62), will have their OWCP benefits reduced by the amount of Social Security attributable to their service with the U.S. Postal Service. The same holds true for a survivor of a FERS employee who is receiving Social Security spousal benefits. The survivor's benefits for the death of an employee will be reduced by the amount of Social Security attributable to the employee's Federal service.

Death Claims

The survivors of a Federal employee whose death is work related are entitled to benefits in the form of compensation payments, funeral expenses, transportation expenses for the remains if necessary, and payment for termination of the deceased's status as a Federal Employee. Death benefits to dependents of employees who die from job-related illness or injury are outlined in 5 U.S.C. 8101, 8102, 8119-8122 and 8133. The claimant is responsible for giving notice of death and has the burden of proving a relationship between an employee's death and factors of federal employment. Except where the relationship between the death and the employment is obvious, the claimant must present medical evidence relating the death to the injury.

When an employee dies in the performance of duty, the employing agency must report the death immediately to OWCP by telephone or telefax so that an autopsy may be considered. As soon as possible, the agency must complete and submit Form CA-6, Official Superior's Report of Employee's Death. In accordance with 5 U.S.C. 8119, an eligible beneficiary, or someone acting in his or her behalf, must give notice of death on Form [CA-5](#) or CA-5b. This notice must be given within 30 days of the date of death, but the timely

filing of a disability claim will satisfy the time requirements for a death claim based on the same injury as long as the claim is filed during the dependent's lifetime.

In addition to showing the causal relationship between the employee's death and his/her employment, the claimant must also submit the following evidence:

1. Death certificate.
2. Name(s) and address(es) of next of kin.
3. Marriage certificate (civil certificate).
4. Birth certificate for each child (to show the legal relationship upon which the claim is based).
5. Divorce dissolution, or death certificate for prior marriages.
6. Itemized burial bills, receipted if paid.

Compensation to Widow/Widower

To determine if a spouse is entitled, OWCP will examine the status of the marriage at the time of the employee's death. If neither the decedent nor the surviving spouse was previously married, a copy of the marriage certificate will establish that the survivor is an eligible beneficiary. If either was married previously, the surviving spouse must also submit copies of the divorce or annulment decree showing dissolution of the previous marriage, or death certificate showing the demise of the former spouse, as the case may be.

If the surviving spouse was not living with the deceased at the time of death, OWCP will investigate the circumstances surrounding the separation.

The following examples show how the facts may apply in different cases when determining eligibility:

1. Where the parties maintain separate abodes but all other evidence points to the existence of a marital relationship at the time of death, the claimant is entitled to compensation benefits as the surviving spouse.
2. If the parties lived apart for reasonable cause (i.e., hospitalization due to the fatal illness) or because of desertion by the employee, entitlement exists.
3. If the parties lived apart for other reasons, entitlement may exist if the spouse was dependent on the decedent.
4. If common law marriage is at issue, OWCP must determine the status of the marriage according to the law of the state(s) in which the participants lived.

Prior to September 7, 1974, all remarriages resulted in termination of compensation benefits. For remarriages between that date and May 28, 1990, entitlement continues if the beneficiary is age 60 or over, but not if he or she is under that age. After May 29, 1990, entitlement continues if the beneficiary is age 55 or over, but not if he or she is under that age.

Although entitlement to benefits ends with a spouse's remarriage before age 55, benefits may be reinstated if the marriage is later annulled.

Compensation to Children

Section 8101(9) defines a "child" as one who is under 18 years old, or incapable of self-support, or a full-time student under age 23. Included are stepchildren and children who are legally adopted prior to the parent's death according to the laws of the state having jurisdiction.

Illegitimate children and posthumous children of the deceased are also entitled to compensation (a posthumous child is entitled to benefits effective the date of its birth). Excluded are married children and foster children. Compensation payable to, or on behalf of, a child is continued until the child dies, marries, or becomes 18, or, if over 18 and incapable of self-support, becomes capable of self-support.

Where a child has reached the age of 18 and has indicated no intention to attend school after high school, compensation will cease at the end of the month in which the child graduated from high school. Compensation paid on behalf of an unmarried child, which would otherwise be terminated at age 18 may continue, however, if the child is a student at an accredited institution. Such benefits may be paid for four years of education beyond the high school level, or until the beneficiary reaches age 23, whichever comes first.

A dependent child's eligibility for benefits terminates on the date of the child's marriage. A child whose marriage ended prior to the employee's death will not be barred from receiving survivor's benefits if otherwise entitled.

To be entitled to benefits, a child over 18 at the time of the employee's death must have been incapable of self-support at the time of the death by reason of a mental or physical disability. A claimant is incapable of self-support if his or her physical or mental condition is such that he or she is unable to obtain and retain a job, or engage in self-employment that would provide a sustained living wage. Please note that a child over 18 is not entitled to benefits because of an inability to obtain employment due to economic conditions or lack of job skills. The inability must be directly related to the physical or mental condition only.

Compensation to a child under the age of 18 will be paid to a parent, guardian, or other competent individual responsible for the child's welfare. If a child under age 18 without a parent, guardian or other individual responsible for supervision is found to be competent to receive payments, compensation can be paid directly to the child. Compen-

sation to a student will be paid directly to the child if he or she is of legal age in the state of residence. On request, compensation will be paid directly to a child of legal age who is incapable of self-support due to physical disability. Compensation on behalf of mentally incompetent individuals must be paid to a parent, guardian, or other person responsible for the individual's welfare.

Compensation to Parents

Parents, stepparents, and parents by adoption may be entitled to survivors' benefits, but foster parents and in-laws are excluded.

Section 8133 provides benefits to parent(s) who were wholly or partly dependent on the employee at the time of death. The test of dependency under the FECA is not whether the parent is capable of self-support without the amount that was previously provided by the deceased. It is only necessary to show that the person claiming as a dependent looked to and relied upon the contributions in whole or in part, as a means of maintaining or helping to maintain a customary standard of living.²³

Compensation to Siblings, Grandparents, and Grandchildren

As with parents, the relationship on the date of death and the degree of financial dependence determines entitlement to benefits for siblings, grandparents and grandchildren. The term "sibling" includes stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption. The category of grandparents does not include step-grandparents. The term grandchildren includes all biological and adopted grandchildren, whether born into a marriage or not, but does not include step-grandchildren.

Payments

Compensation for death is based on the pay rate on the date of injury, date disability began, or date of recurrence. The survivors will be eligible for continued coverage if the decedent was enrolled at the time of death in a health benefits plan for which the agency (or OWCP) was making deduction.

The FECA provides that a spouse and children have the first right to compensation, which means that other classes of dependents may receive compensation only after the entitlements of the spouse and/or children has been satisfied fully.

Percentages of Entitlement Compensation for Widow/Widower and Children

Beneficiary	Prior to 9/7/74	On or After 9/7/74
Widow/Widower Only	45%	50%
Widow(er) With One Child	40% 15%	45% 15%
Widow(er) With 2 Children	40% 15% + 15%	45% 15% + 15%
Widow(er) With 3 or More Children	40% 35%	45% 30%
One Child Only	35%	40%
Two Children Only	35% + 15%	40% + 15% (Share Alike)
Three Children Only	35% + 15% + 15% %	40% + 15% + 15% (SA)
Four or More Children Only	75%	75% (SA)

Burial Expenses

Section 8134 provides for the payment of burial and funeral expenses by the U.S. not to exceed \$800. Like related medical expenses in a disability claim, funeral expenses in a death case may be paid even if the case as a whole is denied on the basis of timeliness as long as a causal relationship is established and the requirements for giving notice are met. They will be paid without regard to any life insurance or burial insurance policy, which may be in force. If another Federal agency pays any part of the burial expense for the deceased employee, OWCP's payment shall not exceed the difference between the amount paid by the other agency and \$800. Neither the \$225 Social Security lump sum death benefit nor benefits from life insurance or burial policies are deducted from OWCP funeral benefits, however.

An additional sum of \$200 is payable to the personal representative of the decedent to reimburse the cost of terminating his or her status as a Federal employee. A spouse is considered to be the personal representative unless incompetent. If no spouse survives, the payment will be made to the administrator of the estate.

Medical

The FECA authorizes medical services for treatment of any condition that is causally related to factors of Federal employment. No limit is imposed on the amount of medical expenses or the length of time for which they are paid, as long as the charges represent the reasonable and customary fees for the services involved and the need for the treatment can be shown.

Federal employees are entitled to all services, appliances, and supplies prescribed or recommended by qualified physicians which, in the opinion of OWCP, are likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.

Medical care includes examination, treatment, and related services such as medications and hospitalization, as well as transportation needed to secure these services. Preventive care is not authorized.

Definition of Physician

The term “physician” includes surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within the scope of their practice as defined by state law. Naturopaths, faith healers, and other practitioners of the healing arts are not recognized as physicians within the meaning of the law.

The term “qualified physician” does not include those whose licenses to practice medicine have been suspended or revoked by the state licensing or regulatory authority or who have been excluded from payment under the FECA. Providers who have been convicted under a criminal statute for fraudulent activities in connection with a Federal or state program, which makes payments to providers for medical services are automatically excluded from participation in the FECA program. This means that OWCP will not honor their bills for services. Providers who are excluded or suspended from similar Federal or state programs, including Medicare, are also automatically excluded from participation in the FECA program.

OWCP may also exclude a provider who has knowingly made a false statement or misrepresented a fact in connection with a claim for reimbursement or request for payment; charged more than the provider’s customary fee for similar services without good cause; failed to reimburse an employee who has paid a bill for treatment, which was also paid by OWCP; repeatedly failed to submit full and accurate medical reports or failed to respond to requests for medical information; or furnished treatment substantially beyond the employee’s needs, or which fails to meet professionally recognized standards.

Under the FECA, the services of chiropractors may be reimbursed only for treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. The term “subluxation” is defined as an incomplete dislocation, off centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically. Chi-

ropractors may interpret their own X-rays, and if a subluxation is diagnosed, OWCP will accept the chiropractor's assessment of any disability caused by it.

Choice of Physician

An employee is entitled to initial choice of physician for treatment of an injury. He or she may choose any licensed physician in private practice who is not excluded, or he or she may choose to be treated at a government medical facility if one is available.

The Postal Service may not interfere with the employee's right to choose a physician, nor may they require an employee to go to a physician who is employed by or under contract to the agency before going to the physician of the employee's choice. Agency personnel may contact the attending physician only to obtain additional information about or clarify the employee's duty status or medical progress, and only in writing. Telephone contact is specifically prohibited.

PS Form 2488 was developed to obtain the release of medical information concerning persons seeking employment with the Postal Service. It was not originally intended to obtain medical information concerning current employees. Nevertheless, the Postal Service occasionally attempts to use this form for that purpose. Employees may not be required to complete the form.²⁴ The Contract Administration Unit and the Compensation Department strongly recommend that letter carriers never sign a Form 2488. There is simply too much potential for abuse and the Postal Service may seek to obtain information unrelated to the current illness or injury.

The attending physician may engage the services of facilities, which provide X-ray or laboratory services, or the services of specialists who can provide consultation. Charges for such services will usually be paid on the basis that the attending physician requested them.

Except for referral made by the attending physician, any change in treating physician must be authorized by OWCP. Otherwise, OWCP will not pay for the treatment. The employee should request any such change in writing and explain the reasons for the request. If a physician chosen by the employee is later excluded under the regulations, the employee should choose another physician. Otherwise, and upon notification by OWCP, he or she will be liable for payment of the bills from the excluded provider.

Physician Narrative

The key to having a claim accepted by OWCP rests with the medical evidence. As a result, the medical narrative, submitted by your treating physician, is of the utmost importance. The following is a checklist of items required in the narrative:

- Carrier's name and address; and OWCP file number (if one has been assigned)
- History of occupational disease or traumatic event. This is a key item and should consist of a written statement by the physician reflecting knowledge of the conditions of the patient's employment believed to be the causative factors. It is suggested that the

physician first be furnished with your written statement. The physician should ideally include or attach a copy of the statement referencing it with remarks similar to the following: "I have read the statement dated (date) prepared by (claimants name) regarding the conditions of employment at (location of Post Office) during the period (provide dates)."

- Dates of examinations and/or treatment (past and present)
- Periods of hospitalization, if any
- Tests given, findings and results (x-rays, lab tests, EKG, MRI, etc.)
- Definitive diagnosis (no impressions). Please remember that "pain" is not a diagnosis. It is a symptom of some medical condition.
- Opinion: was condition caused, permanently or temporarily aggravated, accelerated, or precipitated (hastened) by conditions of employment described by the patient?
- Medical reasons for opinion (i.e., how did the physician, from a medical point of view, arrive at the opinion?). This is very important and it should be as specific as possible and include how any test results helped form a basis for the opinion.
- Statement describing any concurrent medical conditions unrelated to the Occupational Disease.
- Period(s) of disability and the extent of disability during the period(s). This should specify whether the disability is total or partial; and if partial, the work limitations in working while partially disabled. The work limitations should describe the restrictions and include the number of hours allowed for each function per day. Disability from any apparent concurrent medical conditions unrelated to the Occupational disease must be considered in determining the employee's ability to work; and an explanation included describing how any unrelated injuries affects the employee's ability to work.
- Statement concerning whether maximum medical improvement has been reached; and if so, the nature and extent of any remaining disability.
- Signature of physician (show specialty and Board Certifications; and date.

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. Failure to comply may result in the denial of a claim, and the loss of COP and other benefits.

Payment of Bills

OWCP will pay for or reimburse only those services rendered for work-related injuries. Documentation must be submitted with the bill that substantiates that the service was rendered for the approved medical condition. These bills should be submitted on the American Medical Association (AMA) Standard Health Insurance Claim [Form \(HCFA-1500\)](#). A version of the form, which includes instructions for submitting bills to OWCP, carries the form number OWCP-1500. All physicians, laboratories and X-ray facilities, chiropractors, therapists and suppliers of medical equipment and goods are required to submit the HCFA-1500 for payment. Dentists are encouraged to use the HCFA-1500 but may use the standard ADA form instead. Pharmacies must use the Universal Claim Form. Hospitals must use [Form UB-92](#). Bills rendered by ambulance services may be submitted on billhead, as may bills from foreign providers. Veteran's Administration facilities may submit bills using Form VA-10-9014.

At no time should bills be submitted for payment through the Postal Service. Once a claim number has been assigned to your case, all medical bills, medical reports and general correspondence should be submitted directly to OWCP.

To be accepted for payment, the bill must include the following information at a minimum:

1. Employee's name;
2. Provider's name and address;
3. Diagnosis;
4. Itemized list of services, with charges; and
5. Tax identification number (the provider's Employer Identification Number or Social Security number).

All bills must be sufficiently itemized to allow for evaluation of the charges. The Current Procedural Terminology (CPT) code for each medical, surgical, X-ray or laboratory service should be shown on the HCFA-1500, and bills should state the dates on which the services or supplies were furnished. Individual dates are not necessary if the bill is for repetitive charges over a period of time. In such cases the billing should show the beginning and ending dates of service, and the number of units of service.

No bill will be paid unless it is submitted to OWCP on or before December 31st of the year following the calendar year in which the expense was incurred or the claim was first accepted as compensable by OWCP, whichever is later.

Unless the amount involved is minor, OWCP will advise the provider fully of any adjustments to the bill by letter which explains the amount of the deletion or reduction, the particular charge affected, the reasons for the action, and the amount for which the bill is being approved. If a bill is reduced because the charges exceed the amount allowed by the OWCP fee schedule, a separate notice will be issued. These notifications are called "Explanation of Benefits". If a provider's charges have been reduced as a result of the fee

schedule, it should be noted that the provider cannot charge the employee for the reduction amount. A provider whose fee for service is partially paid by OWCP as a result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision by OWCP, shall be subject to the exclusion provisions.²⁵

An employee may request reimbursement by submitting either receipted bills from the provider or a completed HCFA-1500 signed by the provider directly to OWCP. Hospital bills must be stamped "paid" or otherwise show that payment was made. Cash sales receipts that bear imprints of mechanical cash registers may be accepted if the nature of the sale is identified. Photocopies of cancelled checks may be accepted in lieu of receipts but must be accompanied by itemized bills or other evidence of the charge for which payment was made. Prescription receipts must include the name of the drug and the date the prescription was filled. Reimbursement for prescription expenses should be requested on Form CA-915, which is used in addition to the Universal Claim Form.

As with direct payments, the amount claimed may be reduced according to the OWCP fee schedule.

Sometimes bills for a work-related condition are submitted to an employee's health insurance carrier. The carrier may request reimbursement for such charges by submitting a completed HCFA-1500 or similar OWCP-approved form. The form should list procedures and charges for each provider and copies of paid bills and cancelled checks should be attached. The form should also note the carrier's Tax Identification Number.

Transportation

Unless the government furnishes transportation, the employee may be reimbursed for travel expenses to obtain medical care. Travel should be undertaken by the shortest route and by public conveyance, such as bus, or subway, unless the medical condition requires the use of a taxicab or specifically equipped vehicle. An employee who uses his or her automobile will be reimbursed at the standard mileage rate for government travel.

Standard Form 1012 should be used to claim reimbursement for travel expenses. All items will be reimbursed on the basis of actual expense; a per diem allowance is not payable. Wages and travel expenses of an attendant to accompany the employee may be approved if his or her condition is such that travel cannot be accomplished otherwise. Authorization for this expense should be obtained in advance of the travel if possible.

Medical Treatment / Evaluation

To guarantee payment, some forms of medical treatment should be approved by OWCP in advance. Such forms of treatment include:

1. Non-emergency surgery. A second opinion examination may be required before the procedure can be approved. Please note that OWCP will not require an employee to undergo surgery or any other invasive procedure.
2. Private hospital room accommodations. Only semi-private rooms will be authorized unless the employee's condition requires private accommodations.
3. Hospital beds, traction apparatus, wheel chairs and similar equipment.
4. Orthopedic appliances and shoes.
5. Nursing home care.
6. Courses of physical therapy.
7. Hearing aids and lip-reading services;
8. The services of hearing and Seeing Eye dogs.
9. Membership in health clubs.

The attending physician is responsible for requesting such services, and his or her reasons for believing that the services are needed should be included in the request. Prior authorization need not be obtained to purchase minor appliances such as a sacroiliac belt or an ankle strap, or for such items as crutches and canes if prescribed by the attending physician.

OWCP may ask other physicians beside the attending physician to evaluate an employee and/or file. OWCP may request such evaluations in connection with the original or continuing entitlement to benefits, the percentage of the employee's permanent impairment or ability to return to full or light duty, or other issues. Physicians who may be asked to examine the employee and/or file are as follows:

District Medical Director / Advisor (DMD / DMA). Each district office has one or more physicians on staff or under contract who respond to questions raised by OWCP claims staff. These physicians interpret medical issues posed by treating physicians and provide their own opinions on medical questions. DMDs and DMAs also consider requests for surgery and other kinds of treatment requiring OWCP approval. They do not, however, examine employees except where a claim for disfigurement of the face, head or neck is involved.

Medical Specialists (Second Opinion Examiners). Medical issues sometimes arise which cannot be resolved on the basis of opinions given by the attending physician and the DMD/DMA. Opinions then will be requested from a physician who specializes in the field of medicine pertinent to the issue. OWCP will arrange the appointment and advise the employee of the arrangements. OWCP pays for the examination, as well as for reasonable travel expenses and wage loss incurred in connection with it. The employee may bring a physician paid by him or her to the examination if desired. The compensation of an employee who fails to attend an OWCP scheduled examination without good cause will be suspended until the employee reports for examination.

Referee Medical Specialist (Independent Medical Examiners). A conflict of medical opinion may occur when the file contains differing medical opinions of approximately equal weight. Medical opinions from a referee specialist will then be arranged to resolve the conflict of opinion, which may concern the relationship of a condition to factors of employee, or the extent of disability, for example. OWCP selects the referee physician on the basis of rotation among the available specialists within a given geographical area who practice in the pertinent field of medicine. OWCP will arrange the appointment and advise the employee of the arrangements. As with second opinion referrals, OWCP will pay the cost of the examination, reasonable travel expenses, and the amount of lost wages. Here again, the compensation of an employee who fails to attend the examination will be suspended until the employee reports for examination.

The FECA does not address the issue of medical examinations desired by the Postal Service.²⁶ OPM's regulations grant authority to agencies to arrange for examination of any employee who files a compensation claim by a physician of the agency's choice, at the agency's expense. However, the purpose of such an examination is solely to determine if the employee can work in some capacity, thereby facilitating return to work.

Medical examinations may not be used to intimidate employees. While the Postal Service must send the results of such examinations to OWCP and notify OWCP if the employee refuses to be examined, the results of such fitness-for-duty examinations per se do not affect entitlement to compensation. In other words, a fitness-for-duty physician's report can not act as a second opinion. At best, the report may cause OWCP to send the employee for their own second opinion in response to issues raised by the report. When it comes to limited duty medical restrictions, a fitness-for-duty physician can not loosen any of the restrictions dictated by a treating physician, but he or she can make them tighter. For instance, your treating physician provides a weight lifting restriction of 25 pounds. The fitness-for-duty physician can reduce that amount to a 10-pound restriction, but he or she cannot release you to lift 50 pounds.

Chapter**6**

Third Party Liability

Letter carriers sometime sustain injuries in the performance of their duties under circumstances, which place a legal liability on a person or persons other than the United States Postal Service to pay damages. The person or persons responsible for the injury to the employee is generally referred to as a "third party". The term "person or persons other than the United States Postal Service" means someone other than the employing agency or the United States Government. Thus, a third party may be a private citizen or can even be another Federal employee, including (on rare occasions) a co-worker of the injured employee. These types of "third party" claims may include vehicle accidents, fights, falls on a customer's property, etc...

When an employee is injured, as a result of a third party's action, the employee can file a claim or suit against the third party or the third party's insurance company. This claim will be for damages resulting from the injury. Damages can include medical expenses, lost wages, property damage, pain and suffering, etc...

Under the Federal Employees' Compensation Act (FECA), when an injured employee, who is entitled to compensation for the injury, recovers money or other property as a result of a suit or settlement against a third party, the injured employee has an obligation to refund, to the United States Postal Service, the compensation that has been paid (COP is excluded from the amount that must be refunded).

If the injured employee recovers more than what has been paid in compensation and medical expenses, he or she is said to have a surplus. The employee's entitlement to future compensation payable for the same injury will be a credit toward the surplus and no additional compensation will be paid until the surplus is absorbed.

The United States Postal Service has an interest in recovering compensation when one of its workers suffers a job-related injury that was caused by a third party.

Identifying Third Party Liability

The responsibility for identifying the potential for third party liability in a given case lies jointly with the OWCP claims examiner and the Postal Service's Injury Compensation Specialist.

If the potential third party liability is not recognized in a case, or not recognized soon enough, the matter may never be pursued. All states have statutes of limitations for personal injury, wrongful death, medical malpractice, and product liability. An injured employee who does not file a claim or suit against the third party within the applicable statutory time limitation cannot recover damages that result from the injury. Money, which the United States may otherwise have recovered, would be lost.

The word "potential" in the context of identifying third party liability is very significant. The claims examiner does not need to be positive that a third party has legal liability for an injury. Instead, they only need to recognize cases in which this kind of liability is a possibility.

In many cases the potential for a third party claim is fairly evident from the circumstances of the injury. The following situations clearly indicate potential third party liability:

- A letter carrier is attacked by an unleashed dog owned by the customer to whom the carrier is delivering the mail;
- A letter carrier trips and falls on a broken porch step at a home to which the carrier is delivering mail;
- A letter carrier in his/her vehicle is "rear-ended" by another automobile while delivering the route;

In other cases, such as malpractice and product liability, the potential is not so easy to recognize:

- A letter carrier sustains an arm injury when a piece of equipment malfunctions;
- A letter carrier suffers an injury to his/her hands while handling a solvent or cleaning supply sample.
- A letter carrier who sustained a job-related injury, obtains treatment from a physician and that treatment (or lack of correct and proper treatment) worsens the injury or causes another injury.

In many cases, especially those involving medical malpractice and product liability, the information available at the time the injury is first reported may not permit a determination as to whether there is in fact third party liability. Many factual and legal issues will

require resolution. This is why such cases as medical malpractice and product liability are handled by the Department of Labor's Office of the Solicitor.

Some third party claims may be further complicated by "contributory negligence". Sometimes a third party is responsible for a claimant's injury, but an element of responsibility might also be attributable to the claimant. For example, a 300-pound letter carrier falls and injures himself while delivering mail because the homeowner's steps collapsed. Although the homeowner is responsible for maintaining the steps in good condition, an argument could be made that holding a 300 pound person is not normal wear for the steps. In cases such as this, the third party is not absolved of responsibility for the injury, but the degree of responsibility can be acknowledged as less than complete by settling for a smaller sum.

The United States Postal Service may, in certain cases, administratively pursue the collection of damages from the third party responsible for the injury to a letter carrier. Such pursuit is limited to cases of traumatic injury, except those traumatic injury cases that fall within one or more of the following categories:

- Where the traumatic injury results in the death of the employee;
- Where the injury occurred outside of the US or Canada;
- Where the injury occurred when the employee was a passenger on a common carrier's conveyance (train, bus, airplane, etc...);
- Where injuries are sustained by more than one employee in the same incident (group injuries).

The USPS will prepare and release correspondence to the appropriate parties, and will pursue the collection of damages from the responsible third party by administrative means. This may include obtaining the employee's full assignment to the USPS of any right of action the employee may have to enforce the liability, provided that such assignment is voluntary on the part of the employee.

It is the responsibility of the OWCP claims examiner to identify all potential third party liability situations, including those cases that are to be administratively pursued by the USPS. If there is information in the case file that indicates the USPS has also identified the case as having third party potential the claims examiner will simply monitor progress of the case. However, if there is no indication that appropriate action is being taken by the employee or by the USPS, the claims examiner will release a letter to the USPS bringing the case to their attention and asking what actions have been taken with regard to the third party aspect of the case.

The purpose of pursuing a third party claim is to recover 100% of actual and, in some serious cases, projected expenses and to secure a settlement that compensates for inconvenience, pain and suffering, etc... The USPS will always keep OWCP advised of all third party actions, particularly when settlement discussions commence. The injured worker's

authorized representative should always call OWCP to get an update on the total disbursements before agreeing to any settlement.

If, in reviewing the CA-1 form, the Postal Service sees the potential for third party liability, this will be annotated on the back of the CA-1. The USPS will then send a letter to the employee informing him or her that:

1. In cases involving potential third party liability employees are encouraged to seek recovery from the responsible party;
2. If damages are recovered, the US Government must be reimbursed for any payments made on the employees' behalf;
3. The employee is guaranteed a minimum of 20% of the net recovery as well as any surplus remaining after the disbursements have been made;
4. Employees who refuse to pursue third party action may be denied compensation by OWCP.

The USPS will explain to the injured worker how he or she can collect damages. The choices are:

- To hire an outside attorney to sue the third party;
- To try to settle with the third party directly;
- To ask the agency to pursue in his/her stead;
- To refuse to pursue (in which case the employee will be informed that this may result in benefits being denied.)

Note: OWCP may sometimes agree that third party liability should not be pursued. For example, it might be bad publicity for an agency to sue an elderly person on a fixed income for failing to clear an icy sidewalk on which an employee fell. Also, where the injury is minor (total compensation costs do not, or are not expected to exceed \$1000) OWCP may close the case if the claimant does not respond to OWCP's request for information or if the claimant indicates he or she is not asserting third party liability or retaining an attorney. In these cases the potential returns do not justify the administrative costs to pursue the action.

Hiring Your Own Attorney

If an employee hires an outside attorney to pursue the third party suit, the USPS will probably suggest that the employee hire the attorney on a contingency fee basis. This means that the attorney takes a percentage of the amount recovered, rather than a fee paid

"up front". Otherwise, if the attorney does not recover for the employee, the employee may be stuck with attorney's fees that he or she will have to pay out of pocket. Usual percentages range from 30% to 40%.

- After the claimant has chosen an attorney, the USPS will send OWCP the third party form that identifies the claimant's choice and includes the name of the attorney.
- OWCP will help to make sure the agency gives the attorney correspondence and documents establishing liability and current wage loss information and medical expenses making up the lien.
- When the attorney settles the case, the USPS will obtain the Statement of Recovery and settlement check from the attorney.

The employee is always guaranteed at least 1/5 (20%) of the gross recovery after the attorney's fee is paid and before offsets are taken for OWCP benefits paid.

Representing Yourself

If the employee settles directly, he or she is, in effect, acting as his or her own attorney.

- The USPS will give the employee all documents normally given to an attorney.
- The employee will contact the third party and settle the claim.
- The employee makes the settlement and sends the disbursement check to OWCP. OWCP then credits the agency's account.
- Any surplus, after the lien is paid, goes to the employee. However, this amount must be used by the employee for expenses incurred for the same injury before the employee is eligible to collect additional compensation from OWCP.

USPS Pursues Claim

If the USPS pursues the third party claim for its employee, the employee assigns his or her case to the agency. In such cases the USPS, in effect, acts as the injured worker's attorney. The advantage to the employee is that he or she pays no attorney fees. In this situation:

- The claimant must reach maximum medical recovery before the agency attempts to settle the claim.
- The agency handles only routine cases (e.g., less than \$5000 and a week off work). If the case starts off simple but then becomes complicated, the employee may revoke assignment to the agency and hire an attorney.

- Once the employee assigns the agency to handle the claim, he or she may not negotiate the settlement figure that the agency arrives at. On the other hand, the agency may choose to discuss the projected settlement figure with the employee. Then, the employee has the opportunity to revoke the assignment and hire an attorney to pursue it himself or herself.

If the agency pursues the claim on behalf of the injured worker, the compensation specialist for the Postal Service will:

1. Contact the responsible third party explaining the accident and asking that the responsible party, the insurance carrier, or the third party's attorney contact the workers' compensation office to discuss the case.
2. Send OWCP a letter requesting an itemized statement of disbursements made on behalf of the claim. (The employee or doctor may have sent bills directly to OWCP; these would not be in the agency's files.)
3. Write to the employee's supervisor stating that the USPS anticipates negotiating a settlement of the claim regarding his or her employee. In that letter, the compensation specialist will list expenses incurred as a result of the injury. The supervisor will be instructed to ask the employee to identify any additional expenses that should be included in the settlement. (Sometimes the employee has babysitting charges or extra transportation costs for a light duty assignment following the injury.)
4. Figure the lien by adding up all costs for: Compensation payments, medical bills and related expenses, and any other employee out-of-pocket expenses.
5. Prepare a projected settlement figure.
6. Inform the employee of the dollar amount of the proposed settlement.
7. Make an offer in writing to the third party's claims adjuster.
8. Obtain the release form, signed by the employee.
9. Send the release form to the insurance company.
10. Collect and disburse the money.
11. Send a letter to the employee informing him or her of the settlement figure.
12. Complete the Statement of Recovery and forward it to OWCP. OWCP must have this before it closes the case.

UNITED STATES DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMPENSATION PROGRAMS

STATEMENT OF RECOVERY

Claimant: _____ File Number: _____

Date of Injury/Death: _____ Employing Agency: _____

- (1) Gross Recovery..... \$ _____
- (2) Less Property Damage..... \$ _____
- (3) Balance..... \$ _____
- (4) Less Attorney's Fee (Fee is _____ % of line 3)..... \$ _____
- (5) Balance..... \$ _____
- (6) Less Court Costs (must be itemized)..... \$ _____
- (7) Balance (adjusted gross recover)..... \$ _____
- (8) Less 1/5 (20% of line 7)..... \$ _____
- (9) Balance..... \$ _____
- (10) Less Payment to Public Health Service..... \$ _____
- (11) Balance..... \$ _____
- (12) Less Medical Expenses Paid by Claimant..... \$ _____
- (13) Balance..... \$ _____
- (14) OWCP Disbursements (including compensation and medical but excluding COP) or line 13, whichever is less..... \$ _____
- (15) Less Government Allowance for Attorney's Fee (retained by claimant)..... \$ _____
- (16) Refund..... \$ _____
- (17) Surplus (line 13 less line 14)..... \$ _____

Chapter**7**

Return to Work

Limited duty assignments are provided to employees during the recovery process when the effects of the injury are considered temporary. A rehabilitation assignment is provided when the effects of the injury are considered permanent and/or the employee has reached maximum medical improvement. If the employing agency is unable, or unwilling to accommodate an injured employee, the Department of Labor will use the services of a vocational rehabilitation specialist in order to assist the employee in obtaining suitable employment. Section 8151 of the FECA provides job retention rights to federal employees who have recovered either fully or partially from an employment-related injury or illness, and who can perform the duties of the original job or its equivalent. The employing agency must restore a permanent employee who recovers within one year after beginning compensation to that position or its equivalent. If recovery occurs after one year, the employee is entitled to priority consideration, provided the employee applies within 30 days of the date compensation ceases.

Limited Duty

When an employee has partially recovered from a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance. In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee. The following considerations must be made in creating such limited duty assignments for current employees:

1. To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours the employee regularly works, that work constitutes the limited duty to which the employee is assigned.
2. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.

3. If adequate work is not available at the facility within the employee's regular hours or duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.
4. An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.²⁷

When a former employee has partially recovered from a compensable injury or disability within one year of the date of injury, the Postal Service must make every reasonable effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which he or she is qualified, including a lower grade position than that which the employee held when compensation began.

Where the employer has specific alternative positions available for partially disabled employees, they should notify the employee in writing of the specific duties and physical requirements of those positions. Where the employer does not have specific alternative positions, they should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury.

The Postal Service may monitor an injured employee's medical progress and duty status by obtaining period medical reports.²⁸ [Form CA-17](#) is the form generally used for this purpose. The Postal Service may also contact the employee's treating physician in writing concerning the work limitations imposed by the effects of the injury, and possible job assignments. The employer shall not contact the physician by telephone or through personal visit.²⁹ Whenever the agency contacts the employee's treating physician, they must send a copy of the written correspondence and the physician's response to both OWCP and the injured employee.

When a treating physician or OWCP notifies the Postal Service that the employee is partially disabled (that is, the employee can work limited duty but not return to the position held when injured), they will consider positions that might be suitable. All limited duty job offers must be in writing. However, the offer may be made verbally as long as a written offer is provided within two business days of the verbal offer.

All job offers must include the following:

- Description of the duties of the position,
- The physical requirements of those duties,
- The location of the job,
- The date on which the job will first be available, and
- The date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer.

An injured employee must seek employment once they have recovered to such a degree as to be able to perform some sort of work. They are also required to accept suitable work when it is offered. In determining what constitutes "suitable work" for a particular employee, OWCP considers the employee's current physical limitations, whether the work is available within the employee's commuting area, the employee's qualifications to perform such work and other relevant factors.

When OWCP receives a copy of the job offer, the claims examiner will review it and consider the factors listed below in making a preliminary assessment of whether the offered job is suitable:

1. A job, which involves less than four hours of work per day where the claimant is capable of working four or more hours per day, will be considered unsuitable.
2. A job, which represents permanent seasonal employment, will generally be considered unsuitable unless the claimant was a career seasonal or temporary employee when injured.
3. A temporary job will be considered unsuitable unless the claimant was a temporary employee when injured and the temporary job reasonably represents the claimant's WEC. Even if these conditions are met, a job, which will terminate in less than 90 days, will be considered unsuitable.
4. If medical reports in file document a condition which has arisen since the compensable injury, and this condition disables the claimant from the offered job, the job will be considered unsuitable (even if this subsequently acquired condition is not work-related.)

Once this review has taken place, OWCP will notify the injured employee that the job has been found suitable, it remains open and that compensation will be paid for the difference (if any) between the pay of the offered position and the pay they had at the date of injury. This notification will also inform the employee that they have 30 days from the

date of this letter to either accept the job or provide a written explanation of the reason(s) for refusing it.

If the injured employee submits evidence and/or reasons for refusing the offered position, the claims examiner will review the responses and determine whether the claimant's reasons for refusing the job are valid.

Acceptable reasons for refusal include (but are not limited to):

1. The offered position was withdrawn.
2. The claimant found other work, which fairly and reasonably represents his or her earning capacity (in which case compensation would be adjusted or terminated based on actual earnings).
3. The medical evidence establishes that the claimant's condition has worsened since the beginning of the reemployment effort and the claimant is now disabled for the job in question.
4. The claimant provides evidence that his or her decision was based on the attending physician's advice and that such advice included medical reasoning in support of the opinion.
5. The medical evidence establishes that the claimant is unable to travel to the job because of residuals of the injury. (However, the expenditures of a claimant, who is able to travel but requires special arrangements to do so may be reimbursed as a vocational rehabilitation expense.)³⁰

Reasons which may not be considered acceptable for refusing the offered position include (but are not limited to):

1. The claimant's preference for the area in which he or she currently resides;
2. Personal dislike of the position offered or the work hours scheduled, lack of potential for promotion; lack of job security, etc.;
3. Retirement; and
4. Previously issued rating for LWEC based on a constructed position where the claimant is not already working at a job which fairly and reasonably represents his or her WEC.

If the employee's reasons for refusal are not found justified, the claims examiner will advise the claimant and allow him or her 15 additional days to accept the job.³¹ The notice will state that no further reason for refusal will be considered. If the claimant again refuses to accept the position, OWCP will issue a formal decision terminating compensation.

If the employee's reasons for refusal are found justified, the claims examiner will notify both parties (the employee and the agency). The injured employee will continue on temporary total disability while further attempts at accommodation are made.

The following chart further illustrates the pecking order of assignment priorities.

Priority of Choice	Regular Craft	Regular Tour	Regular Facility
1 st	Within	Within	Within
2 nd	Outside	Within	Within
3 rd	Within	Outside	Within
4 th	Outside	Outside	Within
5 th	Within	Within	Outside
6 th	Outside	Within	Outside
7 th	Within	Outside	Outside
8 th	Outside	Outside	Outside

Permanent Rehabilitation

Once a claimant has reached maximum medical improvement or the effects of the injury are considered permanent, the Postal Service will attempt to accommodate the injured employee with a permanent assignment. The procedures listed above for limited duty purposes also cover permanent rehabilitation assignments.

When a current or former employee has partially overcome the injury or disability, he or she has the following rights and benefits upon reassignment or reemployment:

1. **Seniority.** Former employees who are reemployed into bargaining unit positions or current career employees who are reassigned into such positions are credited with seniority in accordance with the collective bargaining agreements covering the position to which they are assigned.
2. **Probationary Period.** Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, are not required to serve a new probationary period.

3. **Leave Credit.** For purposes of computed leave rate accrual, former employees, who were eligible to accrue leave under 510, are credited upon reemployment with the total time compensation was received from OWCP.
4. **Retirement.** Former employees (not reemployed annuitants) who were covered by the Civil Service Retirement Act, are credited with the time spent on OWCP compensation in computing retirement credit. Annuitants who are reemployed after a period of separation during which they received OWCP benefits in lieu of an annuity receive credit for the separation only after they have qualified for a re-determination of the annuity.
5. **Salary Determination.** The following salary restoration criteria must be met for both reemployment and reassignment actions.
 - a. **Reassignment or Reemployment to the Former Grade or Step in the Same Salary Schedule.** Those individuals who are reemployed into a position with the same grade or step as held at the time of injury or disability receive the current salary for that grade and the step that they would have acquired in there had been no injury or disability.
 - b. **Reassignment or Reemployment to a Higher Grade Step in the Same Salary Schedule.** Those individuals, who are reemployed to a position with a grade higher than that of the position held at the time of injury or disability, are placed in the higher grade, at the current salary for the grade or step that they would have acquired if there had been no injury or disability. If that salary is between steps in the higher grade, their salary is increased to the next higher step.
 - c. **Reassignment or Reemployment to a Lower Grade or Step in the Same Salary Schedule.**
 1. **Salary Below Maximum of Lower Grade.** The individual is placed in any higher step above the current salary for the grade or step that he or she would have acquired if there had been no injury or disability.
 2. **Salary Above Maximum of Lower Grade.** In those cases where the current salary for the grade that the individual would have acquired if there had been no injury or disability exceeds the maximum salary of the lower grade position, he or she is afforded a saved rate at the higher grade or step salary. These saved-rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

- d. **Reassignment or Reemployment to a Position in a Different Salary Schedule.** When an individual is reemployed or reassigned to a position in a salary schedule that is different from the schedule under which he or she was paid at the time of the injury or disability, he or she is treated under the rules applicable to the salary schedule to which reemployed or reassigned:
1. The individual is reemployed or reassigned at the grade appropriate for the position to which reemployed or reassigned.
 2. The individual is placed in any higher step in the new grade that is less than one full step above the current salary for the grade or step that he or she would have acquired if there had been no injury or disability.
 3. If reemployment or reassignment is in a nonstep schedule, the individual is placed at a salary plus any salary increases that he or she would have acquired if there had been no injury or disability. Bargaining unit merit salary increases are based on the most recent performance rating prior to the injury or disability.
 4. If the current salary for the grade that the individual would have acquired if there had been no injury or disability exceeds the maximum salary of the new grade, he or she is given a saved rate. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.
- e. **Reassignment or Reemployment to a Former Position Under Different Salary Schedule.** If the position held at the time of injury or disability is no longer under the same salary schedule, the current salary for the former grade or step is determined by the manager of Corporate Personnel Management for Headquarters and Headquarters field unit positions, the area Human Resources manager for area positions, and the district Human Resources manager for other field positions.
1. **Step Increases.** Upon reemployment or reassignment, the partially recovered and permanently partially disabled individuals are assigned a new waiting period for step or merit increases. The date assigned is based on the effective date for the most recent step, merit or equivalent increase the individual would have acquired if there had been no injury or disability.³²

All reassignment offers must be in compliance with the applicable collective bargaining agreements. Collective bargaining agreement provisions for filling job vacancies must be complied with before an offer of reassignment or reemployment is made to a current or former postal employee on OWCP rolls for more than one year

Vocational Rehabilitation Services

The Office of Workers' Compensation Programs (OWCP) emphasizes returning partially disabled workers to suitable employment through vocational rehabilitation efforts and determining the worker's wage earning capacity on the basis of that employment.

When it appears that the claimant's work-related injury will prevent return to the job held when injured, vocational rehabilitation services are provided to assist the claimant in returning to suitable work. The Federal Employees' Compensation Act (FECA) provides for the imposition of certain penalties against workers who refuse vocational rehabilitation services.

OWCP may, in its discretion provide vocational rehabilitation services as authorized by 5 USC 8104. These services include assistance from registered nurses working under the direction of OWCP. Among other things, these nurses visit the work-site, ensure that the duties of the position do not exceed the medical limitations as represented by the weight of the medical evidence, and address any problems the employee may have in adjusting to the work setting. The nurses do not evaluate medical evidence; OWCP claims staff performs this function. These nurses, assigned by OWCP, can not require a physician or an injured employee to allow them into the treatment room during an examination, but they can require the physician to discuss the results of that examination. Participation and cooperation with OWCP nurses is mandatory, but it must be pointed out that participation with USPS nurses is not. If you are contacted by a nurse concerning your injury, make sure that you determine whether he or she works for the Postal Service or OWCP. If they are employed by the Postal Service, it is suggested that you do not participate in this voluntary program.

OWCP will make every reasonable effort to arrange for employment of a partially disabled claimant, taking into consideration not only the effects of the work-related condition and any condition(s) pre-existing the injury, but also any medical condition(s) arising after the compensable injury. Such efforts will be directed initially to the employing agency. Where reemployment with the employing agency is not possible, OWCP will help the claimant secure work with a new employer. OWCP will also sponsor vocational training if needed to furnish the claimant with necessary skills.

The Vocational Rehabilitation Process At a Glance

The following is an overview of the various stages and services in the vocational rehabilitation process:

Initial Interview

Usually the rehabilitation specialist will interview the claimant by telephone to discuss the services available and the claimant's attempts to return to work. This is the first step in the rehabilitation effort.

Placement with the Previous Employer

Generally, following the initial interview, the case will be opened for placement with the previous employer, and a rehabilitation counselor will be assigned. Unlike the registered nurse, who attempts to identify light or limited duty for the claimant, the rehabilitation counselor will work with agency to modify the claimant's job or identify another position within the agency, which the claimant can perform. If placement with the previous employer is not possible, the rehabilitation counselor will develop an alternative plan based on vocational testing, which may include medical rehabilitation, training and/or placement services.

Medical Rehabilitation

Services needed to correct, minimize or modify an impairment, caused by injury or disease so that the claimant can return to an adequate level of function and employment are grouped under the term medical rehabilitation. They differ from medical services, which are provided to cure or give relief from the effects of an injury. Medical rehabilitation services include physical, occupational, and speech therapy; orthotics; prosthetics; and psychiatric counseling

Guidance and Counseling

Guidance consists of providing information to claimants about such matters as looking for work; type of occupations; preparing applications and resumes; rehabilitation services and facilities; limitations and potential created by their physical conditions, interests and abilities. Counseling focuses on clarifying alternatives with respect to occupational, financial, social and emotional issues pertaining to the vocational rehabilitation effort.

Vocational Testing and Work Evaluations

The goal of these activities is to evaluate the claimant's physical, mental and emotional potential for various kinds of reemployment. Testing must be performed by a qualified professional. Specific requirements must be met for approval of college training, vocational-technical training, self-employment, and placement with a new employer.

Placement with New Employer

After any necessary testing and training has been completed, the rehabilitation counselor will attempt to match the claimant's experience, training, aptitudes, skills and physical abilities with the physical and mental requirements of jobs with other government agencies or private companies. The rehabilitation counselor will work with the claimant to identify job openings, prepare applications and undergo interviews.

Assisted Reemployment

Disabled federal workers with skills transferable to jobs within the general labor market may prove difficult to place due to economic factors in both the federal and private sectors. Assisted reemployment is a project designed to increase the number of permanently disabled employees who successfully return to the labor force even though they could not be placed with their former employers. This project will allow for three years of partial reimbursement of salaries to employers, other than the original employer, who reemploy disabled FECA beneficiaries. The project allows reimbursement on a quarterly basis up to 75% the first year, up to 50% the second year, and up to 25% the third and final year.

Follow-up Services

The rehabilitation counselor will follow a reemployed claimant for two months to ensure that the placement is viable and to identify any potential barriers to continued employment.

During vocational rehabilitation efforts, the injured employee will be entitled to receive compensation at the rate for total disability as long as they continue to cooperate with the rehabilitation counselor. Failure to cooperate with vocational rehabilitation efforts may result in a loss of benefits or reduction to zero. If the claimant later complies with OWCP direction to undergo vocational rehabilitation after a formal decision has been issued reducing compensation, compensation will be reinstated to the date that the claimant indicated in writing his or her willingness to comply.

Chapter**8**

Appeal Rights

The OWCP claims process is not adversarial in nature. During the life of a claim, decisions may be rendered on various issues. Any determination that sets forth OWCP's findings in the case and includes a description of the employee's appeal rights is known as a formal decision. OWCP issues a formal decision whenever it reaches an adverse decision about entitlement, such as denial of an initial claim or denial of continuing benefits. Three avenues of appeal are provided for employees. The employee may request only one form of appeal at a time.

Hearing

The employee is entitled to either an oral hearing before an OWCP representative or a review of the written record (but not both), as long as written request is made within 30 days of the formal decision and a reconsideration has not already been requested.

The request should be sent to the Branch of Hearings and Review at the address stated in the appeal rights. No special form is needed. If an oral hearing is requested, it will be held within 100 miles of the employee's home, and the employee may present written evidence or oral testimony in support of the case. At the discretion of the hearing representative, an oral hearing may be conducted by telephone or teleconference. If a review of the written record is chosen, the employee may not present oral testimony, but he or she may submit written evidence or argument.

The hearing is an informal process, and the hearing representative is not bound by common law or statutory rules of evidence, by technical or formal rules, but the hearing representative may conduct the hearing in such manner as to best ascertain the rights of the claimant. Testimony at oral hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

If an oral hearing is requested, OWCP will advise the agency of the date and time. The agency may send one representative (or more, where appropriate) to the hearing and/or request a copy of the transcript. The agency representative may not participate in the proceedings, however, unless specifically invited to do so by the employee or the OWCP representative.

For purposes of an oral hearing, the claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means and for witnesses only where oral testimony is the best way to ascertain the facts.

To request a subpoena, the claimant must submit the request in writing and send it to the hearing representative within 60 days after the date of the original hearing request. The request must explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

If a review of the written record is chosen by the employee, the hearing representative will review the official record and any additional information submitted by the claimant and by the agency. The hearing representative may also conduct whatever investigation deemed necessary.

When requesting a review of the written record, the employee should submit all evidence and argument that he or she wants to present to the hearing representative. A copy of all pertinent material will be sent to the employer, which will have 20 days from the date it is sent to comment. (Medical evidence is not considered "pertinent" for review and comment by the agency, and it will therefore not be furnished to the agency. OWCP has the sole responsibility for evaluating medical evidence.)

For either an oral hearing or a review of the written record, OWCP will allow the agency representative 20 days to submit comments and/or additional documents, which will be subject to review and comment by the employee within a further 20 day period.

The hearing remains open for the submittal of additional evidence until 30 days after the hearing is held, unless the hearing representative, in his or her sole discretion, grants an extension. Only one such extension may be granted. A copy of the decision will be mailed the claimant's last known address, to any representative, and to the employer. This decision will include a description of the employee's further appeal rights.

Reconsideration

An employee may ask OWCP to reconsider a formal decision made by the District Office. The request should be addressed to the district office. There is no special form required, but the request should clearly state the grounds on which it is based. The application for reconsideration, including all supporting documents must:

- Be submitted in writing;
- Set forth arguments and contain evidence that either shows that OWCP erroneously applied or interpreted a specific point of law;
- Advances a relevant legal argument not previously considered by OWCP; or
- Constitutes relevant and pertinent new evidence not previously considered by OWCP.

A reconsideration request must be submitted within one year of the date that the contested formal decision was issued.

OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its fact, that such decision was erroneous.

When an application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision. A claims examiner who did not participate in making the contested decision will conduct the merit review of the claim. Following reconsideration, OWCP will issue a new formal decision, which includes a description of the employee's further appeal rights. An employee dissatisfied with this new merit decision may again request reconsideration or appeal to the Employees' Compensation Appeals Board (ECAB). An employee may not request a hearing on this decision.

Employees' Compensation Appeals Board (ECAB)

An employee may request review by the ECAB, which is the highest authority in Federal workers' compensation claims. The employee should file for such review directly with the ECAB at the address shown in the formal decision. The ECAB's review is based solely upon the case record at the time of the formal decision; new evidence is not considered. The application for review by the ECAB must be submitted within 90 days of the date of the decision.

The ECAB was created under Reorganization Plan No. 2 of 1946, effective July 16, 1946. The Board is a three member quasi-judicial body, which has been delegated exclusive jurisdiction by Congress to hear and make final decisions on appeals of Federal employees from final decisions of OWCP in claims arising under the FECA. The Board is independent of OWCP and its jurisdiction is strictly appellate and extends to questions of fact and law and the exercise of discretion. The Board's decisions are binding upon OWCP and must be accepted and acted upon. The Board does not have authority to

authorize requests for medical treatment or other matters relating to the claim during the processing of the appeal.

An attorney, union representative, or other individual may represent an employee. The employee must submit a signed statement authorizing his or her representation ([AB-1 Form](#)). The payment of any fees for legal services must be authorized by the Board and are solely the responsibility of the employee.

When an appeal is docketed, a docket number will be assigned to the appeal and a copy of the application is served upon the Director of OWCP, who is permitted time within which to forward the case record to the Board and a pleading, which is usually a memorandum in justification of the OWCP decision. The Board will mail a copy of the Director's memorandum to the appellant and allows adequate time to file a reply, or to request oral argument if desired.

Once an appeal is docketed with ECAB, the review of the case is limited to that evidence which was in the case record at the time OWCP issued its final decision. New or additional evidence may not be submitted for consideration by the Board. If you have new evidence you wish to submit, you should select one of the other appeal options.

Oral argument may be requested before the Board and is held only in Washington, DC. The Board does not pay for travel or incidental expenses related to attending oral argument. The scheduling of the date for oral argument can be expected to add to the time in which the appeal is processed. If oral argument is not requested, the appeal will be considered by the Board based on the case record as submitted by the office. The Board will issue a written decision or order in every appeal, which sets forth the relevant facts of the case, the applicable law, and the reasoning upon which the Board based its action. A copy of the Board final decision will be sent to you and any duly authorized representative.

If you are not satisfied with the decision of the Board, a petition for reconsideration may be filed within 30 days from the date of the Board's decision. The petition should set forth the error of fact or law that you believe the Board made; not just that you disagree with the decision. A decision of the Board is final as to the subject matter appealed and is not subject to court review. After a decision of the Board becomes final (after 30 days), any further request to reopen the claim must be submitted to the district office of OWCP in the form of a reconsideration request.



9. Appendix

This appendix is a collection of links to essential OWCP materials—the OWCP law and regulations, OWCP and NALC forms, OWCP pamphlets, USPS manuals pertinent to OWCP matters, and relevant NALC national-level settlements and national arbitration decisions.

The Law, Manuals and Forms

The FECA Law and Regulations

- Federal Employees' Compensation Act
- Code of Federal Regulations

USPS Manuals

- ELM Section 540
- EL-505 Injury Compensation

OWCP Pamphlets

- CA-810 Injury Compensation for Federal Employees
- CA-550 FECA Questions and Answers

NALC Forms

- NALC Representation Authorization

OWCP Forms

- CA-1 Notice of Traumatic Injury and Claim for Continuation of Pay / Compensation
 - CA-2 Notification of Occupational Disease
 - CA-2a Notice of Recurrence
 - CA-5 Claim for Compensation by Widow, Widower, and/or Children
 - CA-6 Official Superior's Report of Employee's Death
 - CA-7 Claim for Compensation
 - CA-7a Time Analysis Form
 - CA-7b Leave Buy Back
 - CA-17 Duty Status Report
 - CA-20 Attending Physician's Report"
 - CA-915 Claimant Medical Reimbursement Form"
 - AB-1 Application for Review Form
 - HCFA-1500 Universal Medical Billing Form"
 - UB-92 Universal Hospital Billing Form
-

Relevant Step 4 (National-Level) Settlements

- Accident Interview
 - Administrative Leave for Third Party
 - Assignment of Limited Duty
 - Cross Craft Assignments
 - Day to Day Scheduling
 - Duties within Restrictions
 - Failure to Report an Accident
 - First Aid Injuries
 - Fitness for Duty
 - Fitness for Duty 2
 - Forms Availability
 - Grieving Limited Duty
 - Grieving Limited Duty 2
 - Light vs. Limited Duty
 - Limited Duty Availability
 - Locally Developed Forms
 - Locally Developed Forms 2
 - Locally Developed Forms 3
 - Mandatory Submission of Forms
 - Medical Treatment During Work Hours
 - MOU on Bidding
 - Overtime for Limited Duty
 - PS Form 2488 – Voluntary
 - PS Form 2488
 - PS Form 3971 and COP
 - PTF Assignment MOU
 - Reassignment Consistent with Collective Bargaining
 - **Reassignment to Another Craft**
 - Removal from Bid Assignment
 - Removal on Limited Duty
 - Safety Rule Violations
 - Safety Rule Violations 2
 - Safety Rule Violations 3
 - Schedule Change on Limited Duty
 - Supervisor Going to Doctor
 - Supervisor Going to Doctor 2
 - Supervisor Going to Doctor 3
 - Telephone Contact with Physicians
 - Telephone Contact w Physicians 2
 - Third Party
 - USPS Role at Hearings
 - Written Job Offers
-

Relevant Arbitration Decisions

- Advance Union Notice of Reassignment
 - Bid Assignment Disqualification
 - Changing Medical Appointments
 - Cross Craft Vacancy Posting
 - Current Employee Cross Craft Assignment
 - Former Employee Reassignment
 - Former Employee Salary Level
 - Involuntary Craft Transfer
 - Non Occupational Return to Duty
 - Out of Schedule Limited Duty
 - Right to Choose Physician
 - Rural Carrier to Clerk Reassignment
-



End Notes and References

Click to view reference materials.

¹ 5 U.S.C. 8101 et seq.

² 5 U.S.C. 8116(c).

³ 5 U.S.C. 8101(2)

⁴ 5 U.S.C. 8110

⁵ OWCP's regulations at 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.

⁶ 20 CFR Part 10.5(dd.)

⁷ See the Leave Buy Back section of this manual for more information concerning the use of leave for an on-the-job injury.

⁸ 20 CFR Part 10.5(x-y)

⁹ 39 USC 3543

¹⁰ 5 USC 8114

¹¹ The FECA defines "substantially the whole year" to be 11 months.

¹² 5 USC 8118

¹³ Controvert is defined as "to dispute or oppose by reasoning" according to Webster's Collegiate Dictionary.

¹⁴ ELM Chapter 545.75

¹⁵ CFR 10.5(ee)

¹⁶ 20 CFR §10.216

¹⁷ 20 CFR § 10.220 and ELM Chapter 545.732

¹⁸ 20 CFR §10.222 and ELM Chapter 545.741

¹⁹ 20 CFR §10.425

²⁰ ELM §512.923

²¹ 5 USC 8146a

²² 5 USC 8116

²³ Viola Davidson, 4 ECAB 263

²⁴ Step 4 settlement Q98N-4Q-C00116558, September 13, 2000 (M-01430)

²⁵ 20 CFR 10.813

²⁶ ELM Chapter 546.6

²⁷ ELM 546.142

²⁸ 20 CFR §10.506

²⁹ 20 CFR §10.506

³⁰ FECA Procedure Manual Part 2 Chapter 2-814

³¹ Maggie L. Moore, 42 ECAB 484

³² ELM 546.143