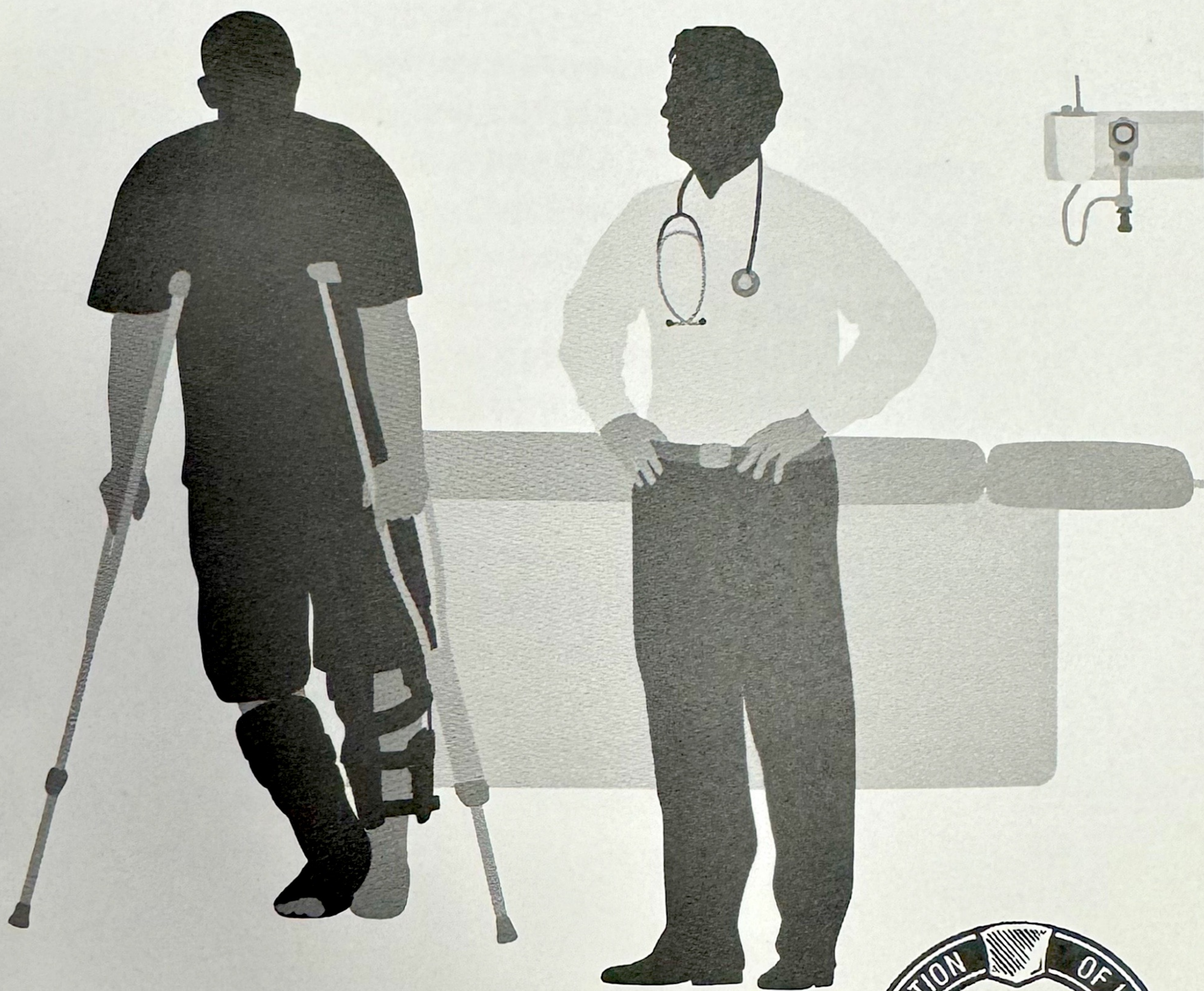


# Grieving Management's OWCP Violations



**National Association of Letter Carriers**





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## About this guide

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Letter carriers suffer more injuries than any other federal employees. Injured letter carriers are protected by federal law which is known as the Federal Employees Compensation Act (FECA). The FECA is codified at 5 United States Code 81 (5 USC 81) and its implementing regulations are found at 20 Code of Federal Regulations Part 10 (20 CFR 10).

The FECA established the Office of Workers' Compensation Programs (OWCP) in the Department of Labor (DOL) and tasks that agency with deciding all matters relating to claims for on-the-job injuries by federal employees.

This guide was written to assist shop stewards processing grievances related to OWCP for postal management violations of FECA and postal regulations, however, the best solution to what management does wrong is to take them out of the picture.

The Department of Labor, Office of Worker's Compensation Program has developed a program called ECOMP, which allows you to file your claim electronically without needing to turn documents in to your supervisor.

You can register in ECOMP at any time. The NALC encourages every letter carrier to be registered in ECOMP.



## Introduction

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Letter carriers suffering on the job injuries are protected by federal law which is known as the Federal Employees Compensation Act (FECA). The FECA is codified at 5 United States Code 81 (5 USC 81) and its implementing regulations are found at 20 Code of Federal Regulations Part 10 (20 CFR 10).

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

The FECA was intended to protect federal employees by providing compensation when they suffer job-related injury or illness. The law places the burden on the injured worker to prove that the injury is work-related. While the OWCP claims process is designed to operate efficiently and to result in fair, accurate decisions, the procedures required to meet that burden are often complex and difficult to navigate.

For many, the OWCP claims process fails to deliver the benefits intended by FECA. Letter carriers know that too many legitimate claims are challenged by management or become unnecessarily complicated due to management mistakes in handling claims.

As a result, some letter carriers suffer on-the-job injuries but fail to obtain the protections of FECA. Management's



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

Management's mistakes often result in legitimate claims being delayed or even denied. Their mistakes also violate the law, as well as Postal regulations, and the National Agreement.

This guide is intended to provide shop stewards and contract enforcers with the necessary tools and references to hold Postal management accountable in complying with the laws and regulations governing on-the-job injuries. Holding management accountable will benefit all parties – the Postal Service, NALC, and individual letter carriers.

Failure to process claims hides the true cost of maintaining a safe and healthy workplace. When claims are erroneously denied, those costs are being transferred to employees and their health benefit plans, instead of being paid by the Postal Service.

Letter carriers should not allow Postal management, through its own errors, to transfer the costs of legitimate on-the-job injuries onto workers, their families, and their health benefit plans. The grievance procedure can be used to educate supervisors and managers concerning their legal and contractual obligations.

Assisting letter carriers with their OWCP claims is a great union organizing tool. Newly hired City Carrier Assistants (CCAs) as well as long-term non-members are more likely to



join the NALC when they see concrete benefits like assistance in filing a claim for a workplace injury and the processing of appeals for claim denials

Finally, of course, the individual letter carriers who have experienced on-the-job injuries will benefit. Having their claim processed timely and accurately by the Postal Service will allow OWCP to adjudicate the claim without unnecessary delays. Prompt acceptance of the claim will allow the letter carrier to enjoy the financial protection intended by the FECA and enable the medical care necessary to recover and return to return to regular duties faster.

When necessary, shop stewards should use the grievance procedure to hold management accountable. In doing so, shop stewards should be mindful of the distinction between helping an injured worker with an OWCP claim and dealing with management violations of contract and law.

## **ECOMP Claim Filing**

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Many of the common postal violations can be avoided when injured letter carriers register and file claims electronically via the Office of Workers' Compensation Programs' (OWCP) the Employees' Compensation Operations & Management Portal (ECOMP) web portal. You can register and file claims from your home computer, tablet, or cell phone.

ECOMP allows employees to electronically file claim forms, compensation forms, track the status of forms or documents submitted through ECOMP, and electronically upload and submit documents to existing OWCP claim files.



Injured workers should go to the ECOMP website, <https://www.ecomp.dol.gov/> and click on HELP on the upper right corner of the page. A page will open with an icon for FECA Claimant/injured worker. Click on the icon to access user guide videos created to chronologically walk the injured worker through their ECOMP experience.

ECOMP allows the injured worker to file a claim of their choice and submit factual and medical documentation without management interference. The Postal Service is required to give access to a computer if the injured worker does not have access to a device to file a claim ECOMP.

With ECOMP, injured workers should never be intimidated in the claim filing process. OSHA prohibits employers, including the Postal Service, from retaliating against injured workers who report workplace injuries.

Reporting a work-related injury or illness is a core employee right and retaliating against a worker for reporting an injury or illness is illegal discrimination under OSHA section 11(c).

### Registering in ECOMP

Injured letter carriers must register and file claims electronically via OWCP's ECOMP web portal. You can register and file claims from your home computer, tablet, or smart phone.

Go to the ECOMP website, <https://www.ecomp.dol.gov/> and click on HELP on the upper right corner of the page. Click on the FECA Claimant, Injured Worker icon. Click on that link to access step-by-step instructions and instructional videos on



registering in ECOMP and filing claim forms. The videos can be viewed in less than a half hour.

Once registered, the injured worker can access complete claim files for every claim they have filed over the course of their career.

When registered in ECOMP, an employee can view every document in their claim file. The transparency provided in ECOMP allows injured workers and contract enforcers to view correspondence between management and OWCP, including challenges that may not have been sent to the injured worker.

### **Stewards' Rights in OWCP Cases**

Decisions made by OWCP are not grievable, whereas violations by the Postal Service (as well as contractual requirements) are grievable.

When it comes to helping injured workers pursue on-the-job injury claims with OWCP, NALC representatives have no right to time on the clock. Additionally, non-members of the NALC are not entitled to our assistance on OWCP claims as this is a members only benefit.

However, when it comes to grieving management's violations relating to on-the-job injuries shop stewards do have the right to time on the clock. And they have an obligation to fairly represent all letter carriers, not just NALC members.



## **Non Grievable – Decisions by OWCP**

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For example, OWCP has the exclusive authority to decide:

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

These decisions are not grievable.

## **Grievable – Postal Service mistakes in handling OWCP Claims**

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

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

Stewards should be ready for management's non-grievable arguments and be prepared to argue that violations of the law, the contract and postal regulations are grievable.

## **Handbook and Manual violations are grievable**

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First, many of the FECA implementing regulations found in 20 CFR 10 are echoed in Postal Service handbooks and manuals. This is because Article 21.4 of the National



Agreement requires the Postal Service to promulgate regulations which comply with OWCP regulations. The Postal Service regulations sometimes restate the CFR's provisions word-for-word. In other cases, they paraphrase them or contain implementing language for use within the Postal Service.

When management violates provisions found in the Postal Service's handbooks or manuals relating to on-the-job injuries, cite Article 19 of the National Agreement. It requires management to comply with its own handbooks and manuals.

Also cite the Article 15.1 definition of a grievance, as noted at Joint Contract Administration Manual (JCAM) page 15-1. It addresses disputes that may be handled within the grievance procedure and may include alleged violations of Postal handbooks or manuals.

### **The law and regulations may be grieved directly**

Second, even when there is no echoing Postal Service handbook or manual language, management violations of the FECA, 20 CFR 10, and other OWCP regulations are grievable.

In such cases, start by arguing Articles 3, 5, 15 and 21 of the National Agreement. Article 3 limits management's exclusive rights by requiring consistency with applicable laws and regulations.

Article 5 prohibits management from actions that are inconsistent with its obligations under law. The FECA (at 5



USC 81) and its implementing regulations (at 20 CFR 10) are applicable law and regulations. Article 21.4 specifically requires the Postal Service to comply with applicable regulations of OWCP.

Thus, the National Agreement clearly requires the Postal Service to comply with OWCP law and regulations. Again, cite the broad grievance definition in Article 15.1 (JCAM page 15-1), where the parties agreed that disputes that may be handled within the grievance procedure may include alleged violations of law.

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

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

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

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



## **How to Grieve Violations**

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As you investigate a potential violation and prepare any subsequent grievance file, you should always keep a few things in mind. In order for a grievance to have the best chance of success, stewards should be able to answer “yes” to each of the five questions below:

1. Is there a violation of the National Agreement?
2. Did we properly frame the issue?
3. Did we determine all the facts of the case and document each one?
4. Do our contentions clearly explain the documented facts and how the National Agreement was violated?
5. Did we request an appropriate remedy for the contract violation?

To succeed, any grievance filing should contain certain well-established elements:

- 1) documented, proven facts;
- 2) accurate citations of contract and law; and
- 3) appropriate requested remedies.

The same elements must be present in a grievance protesting management violations of on-the-job injury procedures.

### **Documented, proven facts**

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



Say for instance, that management failed to provide an injured employee with a CA-16. The steward can provide strong evidence of this failure in different ways. For example, they could obtain a signed, dated statement from the injured worker stating that they asked the supervisor for a CA-16, but the supervisor refused.

Equally persuasive would be a signed, dated statement from the shop steward stating that they interviewed the supervisor, and the supervisor admitted he refused to provide a CA-16. A management document stating a local policy to not issue CA-16's would be compelling evidence.

For another example, say management failed to forward a CA-1 or CA-2 to OWCP within 10 working days. The steward could provide compelling evidence by obtaining a copy of the completed form showing that the supervisor completed and dated it more than ten working days after the employee submitted it. If the injured worker filed the claim online, they could print the confirmation of submission.

Alternative proof, also strong, could consist of a signed, dated statement from the shop steward that they interviewed the manager of the Injury Compensation Control Office (ICCO) (now Occupational Health Claims Office (OHC), and the manager admitted the form was not forwarded within the time limits.

If the letter carrier filed the claim online, the shop steward should request a copy of the confirmation tracking number and the emails sent to the letter carrier verifying submission to OWCP.



## **Accurate citations of contract and law**

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This guide provides guidance to many specific citations that can be used for various violations. Those cited are by no means all-inclusive. There are other citations, including handbooks and manuals, Interpretive Step 4, and national pre-arbitration settlements, and OWCP publications, to name a few. Stewards could cite the CA-810, *Injury Compensation for Federal Employees* and CA-550 FECA, *Questions and Answers*. These OWCP publications do not contain the actual laws or regulations, but can be cited in grievances, for instance, as follows:

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

Stewards have ready access to OWCP publications and forms, as well as Postal Service manuals, contract materials, and the CFR, via the NALC "Injured on the job" webpage at [nalc.org](http://nalc.org).

## **Appropriate requested remedies**

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Crafting an appropriate remedy is an important element in every grievance, including those involving management's OWCP violations. The general principles to consider in the formation of a requested remedy include:

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



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

### **The remedy should fit the violation**

In the instance where management improperly refused to provide a CA-16, and later claimed the supervisor did not know he was required to do so. An appropriate remedy might include an order requiring the Postmaster to instruct all the supervisors and 204b's, in writing, to comply with the regulations regarding Form CA-16. It would not be appropriate to request that the prime-time percentage in the Local Memorandum of Understanding (LMOU) be increased. There must be a logical connection between the remedy and the violation.

### **The grievant should be made whole**

In most cases involving management errors in handling on-the-job injuries, no monetary make-whole remedy will be appropriate. The FECA provides that the benefits provided by OWCP are the sole remedies available to compensate employees who suffer on-the-job injuries.

Stewards should never request as a remedy that OWCP accept a claim and pay benefits as a remedy. OWCP has exclusive authority to make decisions regarding a claim. Those decisions are not subject to review by an arbitrator, or anyone else.

However, in some cases a monetary make-whole remedy will be appropriate. For instance, in one case the Postal Service failed to advise an injured letter carrier of their right to elect



continuation of pay (COP). By the time the carrier found out about their rights it was too late and OWCP denied his request for COP.

In case No. F94N-F4-C 99031789 (C-22599), Arbitrator Ames sustained the grievance, holding that the Postal Service had violated Articles 19 and 21 of the National Agreement by failing to advise the grievant of his right to elect COP. He ordered the Postal Service to make the grievant whole by reinstating the grievant's sick leave that was used due to their injury. This resulted in converting sick leave to COP (during the 45-day COP eligibility period) and paying the grievant for the remainder of his sick leave used, minus compensation benefits.

Arbitrator Claude Ames, while acknowledging only OWCP has final authority to determine COP payment, found, *"Failure of grievant's supervisor to inform him of his COP rights and time limits for filing was the proximate cause of OWCP's denial of his COP."*

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

### **The remedy should fix the problem**

Sometimes a simple cease and desist agreement by management will fix an underlying problem. Often it will not. Local stewards are in the best position to determine this.

If a steward determines that a simple promise by management to cease and desist is not likely to solve an



ongoing issue, he or she should consider carefully what it will take to do so.

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

If the violations continue by other supervisors, consider a remedy that requires training for all office supervisors and 204b's. If the same supervisor continues the violations, request written acknowledgement indicating their action violated a specific provision of the ELM, CFR, EL-505, etc., and they have been instructed to cease such violations, with a copy to the Union.

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

Such remedies might be unpleasant for the offending supervisors, but all parties benefit from solutions that fix underlying problems. The benefits include fewer grievances, greater contract compliance, less resources spent on grievance processing and in the case of grievances concerning on-the-job injury procedures, more OWCP claims accepted without delay.

## **Common Violations**

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Problems with OWCP claims can begin from the very first moment an injured worker attempts to file a claim. While FECA forbids management from denying or interfering with



the right of an injured worker to file a claim for an on-the-job injury, many carriers feel intimidated when they attempt to exercise their rights under FECA.

If that happens, letter carriers should contact their steward and file a grievance immediately if they are not given the proper forms. Injured workers also have 30 days to file an OSHA Whistleblower Complaint by calling 1-800-321-OSHA.

Section 11(c) of the OSH Act prohibits an employer from discriminating against an employee because the employee reports an injury or illness.<sup>1</sup> (29 CFR 1904.36)

The following violations of OWCP rules are listed in order of occurrence in the claim cycle. It is by no means the entire list of violations that injured letter carriers may have to grieve.

For every common violation, there is a corresponding grievance starter listed at the end of this guide. These grievance starters can be found in the members-only portal at [nalc.org](http://nalc.org). After logging into the members-only portal, go to Member Documents, then the OWCP tab.

#### **a. Choosing what claim form to file**

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ECOMP allows the injured worker to choose which type of form to file. While management may suggest what form to file, ECOMP allows the worker to file the claim of their choice without management interference.

<sup>1</sup> *"In addition to § 1904.35, section 11(c) of the OSH Act also prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files*