

*a safety and health complaint, asks for access to the part 1904 records, or otherwise exercises any rights afforded by the OSH Act."*

If a worker files a claim using a paper form, OWCP requires the supervisor transcribe the information from the paper form into ECOMP. The worker must keep a copy of the paper form to ensure the information is transcribed accurately and within OWCP time limits. Supervisors should not refuse paper forms, as not all employees have access to ECOMP.

Knowing the difference between a *CA-1 Traumatic Illness or Injury* and a *CA-2 Occupational Illness or Injury* is important. A *CA-1* is defined as an injury or series of events that occur during a single day, shift, or tour. A *CA-2* is then defined as an injury that occurs over more than one day, shift or tour.

Management's obligations regarding claim filing are found in ELM 544.111 titled ***Immediate Supervisor Responsibility:***

#### **544.111 General**

*When a notice of traumatic injury or occupational disease is filed, the immediate supervisor is responsible for doing the following:*

- a. Immediately ensuring that appropriate medical care is provided.*
- b. Providing the employee a Form CA-1 or a Form CA-2*

Note: You do not need to wait for supervisor to provide you with claim form when you register and file in ECOMP.

Some managers read the language found in 544.111.b above to mean that they have the discretion in determining what claim form to provide. However, a closer examination of the basic definitions found in the ELM, section 541.2 helps us



answer this question of whether management can determine or direct what type of claim an injured carrier files.

**541.2.b Claim** — *an assertion, in writing, of an individual's entitlement to benefits under FECA. This claim must be submitted on a form as required by 542. A claim may be filed for a traumatic injury, an occupational disease or illness, or death.*

**541.2.c Claimant** — *an individual whose claim for benefits and/or compensation has been filed in accordance with FECA and the provisions of 542.*

#### **542.112 Time Limit**

*FECA requires that written notice of a traumatic injury be given by the employee, or person acting on behalf of the employee, within 3 years of the injury.*

#### **542.122 Time Limit**

*FECA specifies that notice be given by the employee, or person acting on behalf of the employee, within 3 years of the onset of the condition.*

A claim is an injured worker's **assertion** that an illness or injury occurred. That individual is known as the **claimant**. To be timely filed, that claim must be **filed by the employee** within 3 years. Said another way, the employee is obligated to file their assertion that an injury occurred using the correct form based on the definitions of CA-1 or CA-2. Based on this framework of language, the decision of what type of claim to file rests solely with the individual claimant. It is not management's decision.



Filing the wrong claim form can have significant negative impacts. For example, if someone experiences a traumatic injury but is directed to file a *CA-2 Occupational injury* claim, they will not receive their entitlement to Continuation of Pay, nor will they receive a *CA-16* for medical treatment. Worse yet, the claim will most likely be denied due to the factual error of filing of the wrong claim type.

The most common violation of this occurs when management directs someone to file a *CA-2a Notice of Recurrence*. This is typically due to management not understanding the definitions of claim types. If you or a coworker is instructed to file a *CA-2a*, seek immediate guidance from your National Business Agent's (NBA) office. In nearly every circumstance, that is not the correct form and filing a *CA-2a* will only delay treatment, healing, wage loss compensation, and possibly even a return to work.

Filing claims electronically via ECOMP takes management out of the mix at this early stage and allows the carrier to submit all pertinent information directly into the new claim file immediately. The immediate supervisor is then obligated to complete the form and send it to the Postal Service's district OHC by the end of the day it was received (ELM 544.111.f). The Postal OHC person is then obligated to send the completed form to the DOL within 10 days of the date the employee filed the claim (ELM 544.212)

#### **b. Failure to provide a CA-16**

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Form *CA-16, Authorization for Examination And/Or Treatment*, is the form used in traumatic injuries to:

- authorize medical treatment for 60 days, and



- provide an initial medical report.

Form CA-16 is extremely important to injured workers. Its front is completed by management and guarantees payment by OWCP to the medical provider, even if the claim is denied. The reverse is completed by the treating physician, ensuring that OWCP immediately receives and reviews an initial medical report.

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

Claims filed in ECOMP require the supervisor complete their portion of the CA-1 online. At the end of the supervisor's page there is an icon where the supervisor can print a CA-16. The guide for supervisors has this instruction:

*"If the injured employee requires medical treatment for the injury, you may obtain Form CA-16, Authorization for Examination and/or Treatment, by clicking the button "Issue CA-16." A copy of the form will be generated in PDF format, which may be printed and completed to authorize the employee to be treated for the claimed injury."*

Contract enforcers should cite the ECOMP Supervisor's Guide language in a CA-16 grievance.

The regulations governing the CA-16 are found at 20 CFR 10.211 (a), 10.300, and 10.331; ELM 544.11, 545.2, 545.44 and 545.45; EL-505 pages 24, 37, 40, 41, 47, 48, 49, 109, and 119; and EL-806 122.2.



The CA-16 is used for traumatic injuries only.

It is not used for an occupational disease or injury. It must be issued by management in most cases where a CA-1 is submitted, and the employee seeks medical attention. Only in the very limited circumstances where the injured employee first seeks medical attention more than one week after the injury, or in cases where the injured employee accepts treatment from the Postal Service's contract physician and the injury is only a first aid injury, may management not issue a CA-16.

The CA-16 itself authorizes examination and treatment. Even if the Postal Service requests an injured worker be examined by their contract physician, the injured worker should still request a CA-16.

The definition of a job-related first aid injury is found in Management Instruction EL-540-91-1 and in the instructions for PS Form 1769/301 - *Accident Report*. A first aid injury is a minor injury that requires no more than two medical visits, the second of which is to confirm full recovery. Any injury that involves work restrictions, disability, and/or limited duty is not considered a first aid case.

Thus, even if an employee agreed to be treated by the Postal Service's contract physician, if, at the initial visit, the physician placed a restriction (e.g., a weight limit of 30 lbs.), management would have to then immediately issue a CA-16 for the follow-up visit. The CA-16 should not be issued to the contract physician.

Also, if an employee seeks medical attention from his or her own physician, even in a first aid case, a CA-16 must be provided. Federal regulations, found at 20 CFR 10.7, expressly prohibit management from using a substitute form or modifying



the existing CA-16. Management normally must issue Form CA-16 within 4 hours of the claimed injury. If management gives oral authorization for the medical care, then the CA-16 must be issued within 48 hours. The completed CA-16 must be submitted directly to OWCP as soon as possible after medical treatment, either by the employee or the physician.

When a CA-16 is properly issued, completed, and sent directly to OWCP, the injured worker will have met his or her initial burden of proof, because the CA-16 includes a comprehensive initial medical report.

When a CA-16 is not properly issued or completed, the necessary medical report needed to meet the burden of proof may or may not be sent to OWCP.

Nothing in 20 CFR 10 or relevant Postal manuals requires an employee to request a CA-16 from the supervisor. The language requiring issuance of CA-16 is couched in mandatory terms. Nevertheless, employees should specifically request it from the supervisor whenever they submit a CA-1 and seek medical attention. Injured workers should request in writing citing ELM 545.21.

Form CA-16 is critically important to injured workers. Management is required to provide it in almost every traumatic injury. The CA-16 provides coverage of medical bills, MRIs, x-rays, and physical therapy during the first 60 days. However, management routinely fails to provide it. This often causes problems for injured workers. Their claims are delayed or even denied. Shop stewards should enforce the regulations regarding the CA-16 and hold management accountable for their failures.



### **c. Failing to pay the employee on day of injury**

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Postal Service supervisors tend to be poorly trained in most OWCP procedures. An injured worker's pay status on the date of injury can be mystifying to most supervisors.

Postal procedures for recording pay on the employee's date of injury (DOI) are found in section 13-4 of the EL-505, Workers' Compensation Handbook.

On the DOI, an injured employee is kept in a work status or granted *"administrative leave for any fraction of a day or shift lost, so that the employee receives pay for the entire shift that he or she is scheduled to work,"* including overtime.

COP is not charged on *"the DOI to the 45-day COP period, except when the injury occurs before the beginning of the workday or shift."*

*"– If an employee receives first-aid treatment and returns to work the same day, excuse his or her time spent for first-aid treatment to administrative leave."* An employee is not required *"to clock out when leaving the place of duty for first-aid examination or treatment."*

*"– If an employee, including a casual or temporary employee, is directed by management to an on-site or off-site medical unit the same day as the accident, the time spent waiting for and receiving medical attention is recorded as work time, up to all time that the employee would have been directed to work beyond the regularly scheduled shift."*

The EL-505 is citable in a grievance.



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#### **d. Failing to pay continuation of pay (COP)**

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On the employee portion of the CA-1, Claim for Traumatic Injury, workers must choose between COP and using sick or annual leave. To be eligible for COP, a worker must have a job-related traumatic injury, file a CA-1 within 30 days of the DOI, and begin losing time from work due to the injury within 45 days.

In most cases, selecting COP makes the most sense. An employee may choose to use leave instead of COP if they did not file the claim within the COP time limits.

Most on-the-job injuries are resolved within a relatively short period of time. When amending the FECA in 1974, Congress created COP to prevent employees' income loss while their claim was being adjudicated. COP acts as a financial bridge so injured workers continue to get paid while they heal and get back to work with minimal complications, providing savings to both injured workers and the Postal Service.

OWCP has the exclusive authority to determine questions of entitlement and all other issues relating to COP. The Postal Service can controvert COP but must pay COP until OWCP decides entitlement.

Postal managers have the responsibility to provide COP, and if they fail to do so when there is entitlement, they are in violation of **ELM 543.41, Continuation of Regular Pay:**

*"For most employees who sustain a traumatic injury, FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability up to a maximum of 45 calendar days."*



If management fails to properly enter COP and charges an injured worker's sick or annual leave, the injured worker can require management to change the leave to COP. To accomplish this, the injured worker must make a written request to the postmaster 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. See 20 CFR 10.206 and ELM 543.42(c).

The regulations governing COP are found at **20 CFR 10.200; 5 USC 8118; and ELM 545.7, 545.73, and 545.74.**

**EL-505** requires Postal management to make the claimant aware of their right to choose COP.

***EL-505, Section 4-15 Responding to an Employee's Election of COP, Sick, or Annual Leave***

*Obligation: Informing Injured Employees of Right to COP, Sick, or Annual Leave:*

*A traumatically injured employee may elect to have COP for the first 45 calendar days of disability or to use sick or annual leave. This election must be made on the CA-1. If the employee chooses sick or annual leave, ensure that the employee has been made aware of his or her rights and responsibilities (see Exhibit 3.5b, Sample Letter: Employee Rights, Responsibilities, and Choice of Physician).*

The EL-505 also requires the service to counsel the injured employee by use of Exhibit 3.5a found in Section 13-4.



**Article 21.4 of the National Agreement states:**

*Section 4. Injury Compensation Employees covered by this Agreement shall be covered by Article 21.4 Subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.*

**Page 21-4 of the JCAM explains:**

**Workers' Compensation.** *Letter carriers who sustain occupational injury or disease are entitled to workers' compensation benefits under the Federal Employees' Compensation Act (FECA), administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP).*

**National Arbitrator Bernstein ruled in case number H1N-5G- C 14964:**

*"Article 5 of the National Agreement serves to 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. This incorporation has significance primarily in terms of enforcement mechanism--it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations."*

**e. Improperly calculating CCA COP and Compensation**

CCAs are protected by the FECA, just like their career counterparts. FECA protection exists from the first day a CCA



begins their employment with the Postal Service, be it a “shadow” day, orientation, or classroom instruction.

Proper computation of COP and wage-loss compensation (WLC) for CCAs has been problematic in some cases.

In some districts, the Postal Service simply paid CCAs COP hours equal to their minimum call-in guarantee. That is inconsistent with OWCP regulations and thus constitutes a contractual violation that a contract enforcer should grieve. While the computation of COP and WLC is relatively straightforward for career employees with set work schedules, it is more complex for employees like CCAs who work variable hours, with few or no guarantees.

OWCP addressed the issue of how to calculate COP and WLC for Postal Service CCAs, in FECA Bulletin (FB 13-03). The bulletin provides OWCP claims examiners and agency injury compensation specialists with guidance for determining CCA COP and WLC.

It is important to understand that the Postal Service pays COP (but it is required to pay it in accordance with OWCP regulations), while OWCP pays WLC (but bases it on certification by the Postal Service of employee pay rates and hours worked).

The formula that OWCP requires agencies (including the Postal Service) to use to calculate COP is different than the formula OWCP uses to calculate WLC, for employees with no set work hours such as CCAs. In addition, there are separate formulas for determining WLC for employees who have worked in the CCA position for 11 months or more, versus those CCAs who have worked in the position for less than 11 months. The three formulas are described below.



The method for calculating COP weekly pay for CCAs is found at 20 CFR 10.216(b)(2): Calculate the total pay earned by the employee during the one-year period prior to date of injury (excluding overtime), divided by the number of weeks worked by the employee during that one-year period (a partial workweek counts as an entire week).

Many CCAs have worked in the CCA position for less than one year. In those cases, COP is calculated by dividing the total wages earned (minus overtime) by the number of weeks worked.

The method for calculating WLC weekly pay for CCAs depends on how long the CCA has been employed as a CCA. There are two possible methods:

- 1) If the employee has not worked 11 months or more in the CCA position: WLC is calculated in accordance with 5 USC 8114(d)(2) as follows: Total pay (excluding overtime) for the year prior to date of injury for an employee in the same (or neighboring) facility who did work 11 months or more in either TE or CCA positions. If there is more than one such employee, the one who worked the most hours in the year must be used. Divide that total by 52 weeks to calculate weekly wage-loss compensation.*
- 2) If the employee has worked 11 months or more in the CCA position: WLC is calculated in accordance with 5 USC 8114(d)(1) as follows: total pay earned by the employee during the one-year period prior to the date of injury (excluding overtime) divided by 52 weeks.*

Contract enforcers should initiate grievance investigations for any CCA getting less than 40 hours of COP or WLC. Necessary



documents will include the payroll journals for the year prior to injury, Form 50s, CA-7s, and the documentation the Postal Service used to determine their COP or provided to OWCP to determine WLC amounts.

Grievances should be filed whenever the Postal Service pays COP inconsistent with OWCP regulations detailed above, or when it provides incorrect or incomplete salary and work hour information to OWCP affecting the injured worker's WLC.

**f. Failing to provide OWCP with pay rates**

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When an injured worker submits a CA-7 for wage-loss compensation, OWCP will contact the Postal Service by letter, phone, or email requesting pay rate information. OWCP normally gives the Postal Service 15 days to provide the pay rate information. Compensation will not be paid until the pay rate information has been received.

The Postal Service is obligated to provide claim related documents to OWCP in a timely manner. The Postal Service often delays or fails to provide pay rate information, delaying payment of COP or wage-loss compensation. Grievance officers should cite:

**ELM 544.12**

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



### **g. Providing a CA-2a instead of a CA-1 or CA-2**

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When a worker suffers an injury to the same body part as a previous injury, they may be tempted to file a CA-2a, Notice of Recurrence. In most cases the new injury would require new claim and filing a CA-2a will lead to costly delays in treatment and wage-loss compensation.

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

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

Form CA-2a, *Notice of Recurrence*, is used to report recurrences of previously accepted injuries. However, the OWCP definition of recurrence is highly technical and commonly misunderstood. Use of the correct form, whether CA-1, CA-2 or CA-2a, is important to injured letter carriers.

Supervisors frequently provide a Form CA-2a to injured letter carriers in circumstances that call for a CA-1 or CA-2. Unsuspecting carriers then complete and submit the wrong form. This results, at best, in long delays in payment of compensation, medical benefits, and so on.

In the context of on-the-job injuries, recurrence is defined at:



**20 CFR 10.5(x):**

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

**20 CFR 10.104 adds:**

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

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

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

In this example, CA-2a is the wrong form because there was new exposure to the work environment that caused the illness. The correct form is CA-2 because the four months of casing caused tendonitis to flare up. Very few supervisors are



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

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

**ELM 541.2p** restates the OWCP definition of recurrence.

**EL-505**, page 124 also restates that definition.

**EL-505, Exhibit 5.1** restates the definition of recurrence and provides a 4-page explanation of how to distinguish between new injury and recurrence, and gives several examples.

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

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



Submission of the appropriate form is important to injured workers. Management is required to discuss the situation with an employee and provide the form requested.

However, management routinely fails to do so. This often causes problems for injured workers, whose claims are delayed or even denied. Shop stewards should enforce the regulations regarding recurrences and hold managers accountable for their failures.

#### **h. Delaying forwarding of CA-1 or CA-2 to OWCP**

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

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

An injured worker can avoid this by filing a claim electronically via the ECOMP web portal. The injured worker receives an electronic control number (ECN) verifying submission. Once a claim is filed in ECOMP the Postal Service receives an email from OWCP to complete their portion.

Injured workers can track their supervisor's processing of forms via their ECOMP dashboard. If the forms are not submitted to OWCP within 10 working days, a grievance investigation should be initiated.



Supervisors may also return the form for the employee asking the employee to resubmit the form. This will delay claim development and Continuation of Pay, COP. If the supervisor returns to the form to the filer for resubmission, the steward should investigate the reason for the resubmission.

In almost all cases 20 CFR 10.110(b) requires the employer to complete and transmit the form to OWCP no more than 10 working days after receipt from the employee. The limited exceptions include situations where there is no medical charge against OWCP, no disability beyond the day of injury, no need for more than two appointments for medical examination and/or treatment, and so on.

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

#### **ELM 544.11.f**

*Prompt completion and forwarding of Form CA-1 or CA-2 to the control office or control point on the same day it is received from the employee.*

#### **ELM 544.12**

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



## **ELM 544.212**

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

## **ELM 545.12**

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

## **ELM 545.75d**

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

## **EL-505, Section 4.4**

*Under no circumstances may ICCO personnel... delay submission of the CA-1 to the OWCP within 10 working days from the date received by the supervisor.*

## **EL-505, Section 8.3**

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

## **EL-505, Section 10.5**

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



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

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

Claims filed through ECOMP are automatically sent to the Postal Service OHC office and allow injured workers to track the claim via their ECOMP dashboard.

Often such investigations result in quick transmittal of the delayed form to OWCP. Nonetheless, shop stewards should enforce the applicable regulations.

Generally, if an employee has not received a claim number from OWCP by the end of three weeks after submitting a CA-1 or CA-2, the steward should investigate. The investigation should start with an interview of the supervisor who received the form and then proceed to interview ICCO/OHC personnel. Additionally, the injured worker can call the OWCP National Office (202-513-6860) and ask if they have received the form from the Postal Service.



## **i. The right to choose a physician**

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

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

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

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

### **20 CFR 10.300(d)**

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